QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on Inclusionary Housing Plan Change

Report and Recommendations of Independent Commissioners

Commissioners

Jan Caunter (Chair)

Jane Taylor

Ken Fletcher

Dr Lee Beattie

Dated 5 June 2024

Table of Contents

1 PRELIMINARY

1.1 Terminology used in this Report

1. Throughout this report, we use the following abbreviations:

Act/ RMA	Resource Management Act 1991
Council/ QLDC	Queenstown Lakes District Council
District/ QLD	Queenstown Lakes District
HASHAA	Housing Accords and Special Housing Areas Act 2013
HBA	Housing and Business Development Capacity Assessment
IH/IZ	Inclusionary Housing/ Inclusionary Zoning are terms used interchangeably
IHP	Independent Unitary Plan Panel (Auckland)
JWS	Joint Witness Statement
NPS-UD	National Policy Statement – Urban Development 2020
ODP	Operative District Plan
Panel	Hearing Panel appointed by the Council
PC24	Plan Change 24
PDP	Proposed District Plan
PORPS19	Partially Operative Regional Policy Statement 2019 for Otago
PRPS 21	Proposed Otago Regional Policy Statement
QLCHT	Queenstown Lakes Community Housing Trust
RVA	Residential Visitor Accommodation
SHA	Special Housing Area
SIA	Social Impact Assessment
UIV	Urban Intensification Variation
Variation	The notified Inclusionary Housing Variation

1.2 Variation - Inclusionary Housing

2. The Variation was notified by the Council as a variation to its Proposed District Plan to provide for affordable housing in the District through the mechanism of a financial contribution.[1]

3. It is intended that an affordable housing financial contribution apply to residential subdivisions and developments (including Residential Visitor Accommodation (RVA) and independent living units in retirement villages) in QLD. The contribution will be required in areas where housing is in high demand and generally close to employment, education and community services, being land within urban growth boundaries, or where a plan change or resource consent seeks to establish urban scale development.[2] The Variation also requires residential developments that indirectly influence housing choices for low to moderate income households, such as residential development in Special and Settlement zones and rural residential subdivisions, to contribute to meeting affordable housing needs.

4. As notified, the Variation included a number of strategic objectives. These are:

[1] Opening legal submissions for the Council dated 23 February 2024, paragraph 1.1
[2] Policies 4.2.1.1 and 4.2.1.2

Chapter 3: Strategic Direction PDP
3.2 Strategic Objective
Add the following to 3.2.1 – The development of a prosperous, resilient and equitable economy in the district (addresses issue 1)*:*

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

Chapter 40: Inclusionary Housing PDP
40.2 Objectives and Policies

40.2.1 Objective: Provision of affordable housing for low to moderate income households in a way and at a rate that assists with providing a range of house types and prices in different locations so as to support social and economic well-being and manage natural and physical resources, in an integrated way.

5. The objectives are supported by a number of policies in Chapter 3 and the new Chapter 40.

6. The Variation as notified included Rule 40.6.1 which specified that the financial contributions to be paid are as follows:
   - Residential subdivisions within urban growth boundaries or other residential zones outside urban growth boundaries:
     - resulting in more than 1 but less than 20 new lots shall pay equal to 5% of the estimated sales value of the serviced lots; or
     - resulting in 20 or more lots, a contribution of land comprising 5% of serviced lots transferred for no monetary or other consideration to the Council.
   - Residential subdivisions in a Settlement Zone, Rural-Residential Zone, Wakatipu Basin Rural Amenity Zone Lifestyle Precinct or Special Zone shall pay a monetary contribution of 1% of the estimated sales value of the lots created.
   - Development – residential floorspace for any new or relocated units on lots within the urban growth boundary or residential zones outside urban growth boundaries that have not been subject to a financial contribution in a subdivision shall pay a monetary contribution equal to the lesser of 2% of the estimated sales value of the additional units or $150 per sqm of the net increase in residential floorspace.
   - Development - residential floorspace for any new or relocated units on lots in the Settlement Zone, Rural-Residential Zone, Wakatipu Basin Rural Amenity Zone Lifestyle Precinct or Special Zone that have not been subject to a monetary contribution in a subdivision shall pay a monetary contribution equal to $75 per sqm of the net increase in residential floorspace.
   - Development – new residential floorspace that have provided a monetary contribution in subdivision shall pay a top up monetary contribution equal to the formula specified in the rule.

7. The notified Variation recognises that some forms of residential development either provide affordable housing or do not put pressure on housing resources and should therefore not have to make the financial contribution. These are identified as:[3]
   - residential flats;
   - social or affordable housing delivered by Kainga Ora, a publicly owned urban regeneration company, the Council or a registered community housing provider;
   - managed care units in retirement villages or rest homes;

[3] Rule 40.6.1.3

- residential units located in a zone that already contains affordable housing provisions in the district plan, or where previous agreements and affordable housing delivery with Council have satisfied the two specified objectives of the Variation and their associated policies.

8. Rule 40.6.2 specifies that affordable lots provided in accordance with 40.6.1.1.a.ii shall be located within the development site, serviced and unencumbered. As notified the Variation included a policy stating that contribution in the form of money was preferred.[4]

9. The point at which the contribution is required varies between subdivision and development, and whether the contribution is in the form of land or money. The subdivision requirement is that the money contribution is paid, or all necessary legal agreements to ensure transfer of land contribution are made, before the issuance of a s224c certificate. Financial contributions of money from a land use activity must be paid to the Council no later than 3 months after the issue of the necessary Code Compliance Certificate under the Building Act 2004.[5]

10. The notified Variation requires that the financial contributions received *"shall be used for the purposes of providing affordable housing for low to moderate income households."*[6] Although the Purpose statement identifies the work of Queenstown Lakes Community Housing Trust (QLCHT) as *"the primary means of implementation of contributions received by the Council"*, this is not incorporated into the policies or rules.[7]

11. There is provision as a discretionary activity for the provision of affordable housing by other than a financial contribution, such as a direct transfer of land or units to a registered community housing provider, but only in exceptional circumstances and when subject to a retention mechanism and eligibility criteria.[8]

12. The Variation includes a retention mechanism to apply if an alternative to a financial contribution is sought as a discretionary activity such that ownership and re-sale would be limited to a registered community housing provider, Kainga Ora, a publicly owned redevelopment agency or a registered community housing provider, or an occupier approved by the Council as meeting the regulatory criteria set out in the Variation (see below). The Variation limits rent and resale to an eligible buyer based on a formula that ensures the lot or dwelling remains affordable into the long term, including a future residential unit in the case of vacant site subdivision, and prevents circumvention of the retention mechanism.[9]

13. As notified, the Variation did not include a definition of affordable housing. It does endeavour to explain the term, as follows: [10]

> "Affordable housing is where a low-or moderate-income household spends no more than 35% of their gross income on rent or mortgage (principal and interest) payments. In the Queenstown Lakes District, and for the purposes of these provisions, 120% of the District's Median Household Income for the most recent 12 months is used to define a low to moderate income."

---

4 Policy 40.2.1.6
5 Policies 40.4.1 and 40.4.2
6 Policy 40.2.1.7
7 40.1 Purpose
8 Policy 40.2.1.8 and Assessment Matter 40.7.1.5
9 40.8.1.1
10 40.1 Purpose

14. The Variation defines "Affordability" as:[11]

> "Affordability means households who have an income of no more than 120% of the district's median household income and spend no more than 35 per cent of their gross income on rent or mortgage payments, where:
>
> a. median household income shall be determined by reference to Statistics New Zealand latest data, and as necessary, adjusted annually by the average wage inflation rate;
> b. in the case of purchase, normal bank lending criteria shall apply. Body Corporate or Resident Society fees may be included in the calculation of purchase costs;
> c. in the case of the sale of a vacant site only, the site is sold at a price such that the resulting dwelling plus the site will meet the criteria set out above."

15. Under the heading Eligibility an "eligible buyer" is defined as:[12]

> "40.8.1.2 For the purposes of 40.8.1.1 an eligible buyer shall:
>
> a. Be a household with a total income of no more than 120% of the District's area median household income;
> b. Be a household whose members do not own or have interest in other real estate;
> c. Must not own or be a beneficiary of a business or trust that has adequate income and/or assets that enable you to enter into home ownership independently;
> d. Will live at the address and not let or sub let the unit to others; and
> e. Have at least one member who is a New Zealand resident or citizen."

16. We address the problem of the shortage of affordable housing and its causes in detail in section 4 of our report.

1.3 Appointment of Commissioners

17. By resolution of the Council on 10 August 2023 under section 34A of the Act, the Council appointed a panel of Hearing Commissioners to hear the submissions and further submissions on the Variation, and to make recommendations to the Council on those submissions and further submissions.

18. Appointed to this Panel were: Jan Caunter (Chair), Jane Taylor, Ken Fletcher and Dr Lee Beattie.

1.4 Notification and Submissions

19. The Variation was publicly notified on 13 October 2022. A summary of submissions was notified on 9 February 2023. 181 submissions were received. Most opposed the Variation in whole or in part. 14 submitters supported the Variation. The submissions were summarised and attached as Appendix 2 to the s42A Report.[13]

1.5 Section 42A Report/ Evidence and Legal Submissions from all Parties

20. The Council's Section 42A Report dated 14 November 2023 (prepared by Mr Mead) was accompanied by statements of evidence from Amy Bowbyes (planning), Shamubeel Eaqub (economics) and Charlotte Lee (social impact assessment).

21. Council's rebuttal evidence dated 13 February 2024 comprised evidence from Mr Mead, Ms Bowbyes and Mr Eaqub. Ms Bowbyes also lodged a supplementary statement of evidence dated 29 February 2024, at our request.

---

11 40.8.1.3

12 40.8.1.2

13 Section 42A Report paragraphs 2.1-2.2

22. Opening legal submissions from the Council were dated 23 February 2024. Reply legal submissions were dated 28 March 2024. Reply Evidence was received from Mr Mead, Ms Bowbyes, Mr Eaqub and Ms Lee.

23. Evidence for submitters was lodged on 19 December 2023. Some presented summary or supplementary evidence at the hearing in response to the Council's presentation, or in response to points raised by the Panel in questioning. Legal submissions for submitters were also mostly pre-lodged.

24. We address the pertinent points of the evidence and submissions in later sections of our report.

1.6 Hearing Arrangements

25. The hearings were held in Queenstown on 27th and 28th February, and 4th, 5th, 6th and 7th of March 2024, and in Wānaka on 29th February and 1st March 2024.

26. Parties heard from were as follows:

Council
- Nick Whittington, Counsel
- Amy Bowbyes, Planner
- Shamubeel Eaqub, Economist
- Charlotte Lee, Planner
- David Mead, Consultant Planner

Te Arawhiti[14]
- Rosemary Dixon, Counsel
- Monique King
- Katrina Ellis

Lorraine Rouse[15]

Papatipu Runanga and Te Runanga o Ngāi Tahu[16]
- Rachael Pull

Te Whatu Ora, National Public Health Service Southern[17]
- Monica Theriault, Health Promotion Advisor
- Tom Scott, Public Health Protection Officer

Queenstown Lakes Community Housing Trust[18]
- Julie Scott, Chief Executive
- Jayne Macdonald, Trustee

14 Submission 127
15 Further Submission 205
16 Submission 72
17 Submission 38
18 Submission 41

Metlifecare Ltd[19]

- Michelle van Kampen

Kingston Flyer Ltd[20]

- James Gardner-Hopkins, Representative

Cardrona Village Ltd[21]

- James Gardner-Hopkins, Representative

Ben Mitchell[22]

Community Housing Aotearoa[23]

- Chris Glaudel, Deputy Chief Executive

Marama Hill Ltd[24]**, Foley Koko Ridge Ltd**[25]**, Foley Investment Trust**[26]**, Wayne A Foley**[27]**, Timothy Paul Allen**[28]**, Pine Lane Ltd**[29]**, Mackenzie Homes (Queenstown) Ltd**[30]

- Kristy Rusher, Counsel
- Tim Allan

QT Lakeview Developments Ltd[31]

- Mark Benjamin

Darryll Rogers[32]

Gibbston Highway Ltd[33]**, Silverlight Studios Ltd**[34]**, The Station at Waitiri Ltd**[35]**, Maryhill Ltd**[36]**, Glenpanel Developments Ltd**[37]**, MacFarlane Investments Ltd**[38]

- Maree Baker-Galloway, Counsel
- Chris Ferguson, Planner
- David Serjeant, Planner
- Lawrence Yule, Local Government Expert
- Phil Osborne, Economist

---

19 Submission 147
20 Submission 138
21 Submission 139
22 Submission 1
23 Submission 63
24 Submission 112
25 Submission 113
26 Submission 114
27 Submission 115
28 Submission 116
29 Submission 118
30 Submission 143
31 Submission 128
32 Submission 108
33 Submission 64
34 Submission 82
35 Submission 92
36 Submission 94
37 Submission 99
38 Submission 111

Glendhu Bay Trustees Ltd[39], Glendhu Station Properties Ltd[40], Henley Downs Land Holdings Ltd[41], Jacks Point Land Ltd[42], Jacks Point Village Holdings No 2 Ltd[43], Jacks Point Village Phase 2 Ltd[44], Peninsular Hill Farm Ltd[45], Willow Pond Farm Ltd[46], Mt Christina Ltd[47], Jacks Point Village Holdings Ltd[48]

- Maree Baker-Galloway, Counsel
- Berin Smith, Planning Manager
- Ted Ries, Investment Manager
- Chris Ferguson, Planner
- David Serjeant, Planner
- Lawrence Yule, Local Government Expert
- Phil Osborne, Economist

Winton Land Ltd[49]

- Daniel Minhinnick, Counsel
- Chris Ferguson, Planner
- David Serjeant, Planner
- Lawrence Yule, Local Government Expert
- Phil Osborne, Economist

Glenpanel Developments Ltd[50]

- James Gardner-Hopkins, Representative
- Mark Tylden, Director
- Robin Oliver, Tax Specialist

Maryhill Ltd[51]

- Kristan Stalker, Managing Director

Banco Trustees, McCulloch Trustees 2004 Ltd, Richard Newman, John Guthrie[52], Roger and Marliese Donaldson[53], Classic Developments Ltd[54], Exclusive Developments Ltd[55], Trojan Holdings Ltd[56], Qianlong Ltd[57], Tussock Rise Ltd[58], Latitude 45 Development Ltd[59]

- Rosie Hill, Counsel

---

39 Submission 75
40 Submission 83
41 Submission 84
42 Submission 86
43 Submission 87
44 Submission 88
45 Submission 89
46 Submission 90
47 Submission 91
48 Submission 93
49 Submission 132, Further Submission 199
50 Submission 99
51 Submission 94
52 Submission 150
53 Submission 152
54 Submission 153
55 Submission 154
56 Submission 156
57 Submission 157
58 Submission 158
59 Submission 160

Fulton Hogan Land Development Ltd[60]

- Sue Simons, Counsel
- Fraser Colegrave, Economist
- Daniel Thorne, Planner
- Gregory Dewe, Operations Manager

Gibbston Valley Station Ltd[61]**, Trojan Helmet Ltd and Boxer Hill Trust**[62]

- Rebecca Wolt, Counsel
- Brett Giddens, Planner
- Fraser Colegrave, Economist

Northlake Investments Ltd[63]

- Warwick Goldsmith, Counsel
- Julian Cook

Bruce Williams[64]

Sanderson Group and Queenstown Commercial Ltd[65]

- Jared Baronian, Chief Executive

Ladies Mile Property Syndicate Ltd Partnership[66]

- Jeremy Brabant, Counsel
- Hamish Anderson, Development Consultant
- Fraser Colegrave, Economist
- Hannah Hoogeveen, Planner

Alister Munro[67]

Queenstown Central Ltd[68]

- Ian Gordon, Counsel
- Fraser Colegrave, Economist
- Hannah Hoogeveen, Planner

Millbrook Country Club Ltd[69]

- Ian Gordon, Counsel
- Ben O'Malley, Director

John Glover[70]

---

60 Submission 146, Further Submission 201
61 Submissions 155 and 168
62 Submission 181
63 Submission 129
64 Submission 25
65 Submission 137, Further Submission 196
66 Submission 149
67 Submission 39
68 Submission 120
69 Submission 120
70 Submission 33

Universal Developments Ltd[71], Metlifecare[72], Willowridge Developments, Orchard Road Holdings Ltd, Three Parks Properties Ltd[73]

- Bal Matheson, Counsel
- Allen Dippie, Director Willowridge Group
- Lane Hocking, Director Universal Developments Ltd
- Tim Williams, Planner
- Fraser Colegrave, Economist

Remarkables Park Ltd[74]

- Rowan Ashton, Counsel
- Alistair Porter, Director

27. As evident above, Messrs Colegrave, Osborne and Yule were called in support by several different parties. They each presented only one statement of evidence that was repeated under the intituling of the different parties. They each appeared once to answer our questions.

1.7 Procedural Steps and Issues

1.7.1 Request for Council's legal advice

28. Having received the s42A Report for this hearing, submitters raised with the Panel their concerns about the Council's lack of provision of the legal advice provided to it addressing the lawfulness of the Variation.[75] We were advised that Anderson Lloyd had made successive requests under the Local Government Official Information and Meetings Act 1987 for this legal advice. Those requests were refused. Counsel were concerned that they and their clients be given this advice to assist them to better understand the Council's view of the legal basis for the Variation in advance of being required to provide their expert evidence. The Panel considered the request to be a reasonable one and directed that the Council advise whether it agreed to provide its legal advice on these matters, requesting it to address section 32 in its response.[76] For the Council, Mr Whittington advised the Council wished to maintain legal professional privilege. A summary of the Council's legal position was provided. This essentially pointed to the *Infinity* case, the NPS-UD, the PORPS and Part 2 of the Act. It concluded with this statement:[77]

> "*Drawing those threads together, it is open to a territorial authority to adopt an approach of ameliorating the likely consequences of the development of land (the undersupply of affordable housing) arising from the economic conditions (unresponsive housing supply and increased house prices) which affect the people and communities of Queenstown Lakes District*."

29. We were unable to take this any further.

---

71 Submission 131

72 Submission 147

73 Submission 148, Further Submission 185

74 Submission 124

75 Joint Memorandum of Counsel for Submitters dated 22 November 2023. The points raised concerned the legality of the Variation as a whole.

76 Minute 2 dated 23 November 2023

77 Memorandum of Counsel for Queenstown Lakes District Council – Minute 2, dated 28 November 2023, paragraph 11

1.7.2 Conferencing and Joint Witness Statements

30. In January 2024 we requested that the expert witnesses undertake conferencing and prepare Joint Witness Statements.[78]

31. The first two conferences occurred on 30 and 31 January 2024 and responded to a list of questions from the Panel. These conferences were facilitated by an Independent Hearing Commissioner, Mr Ian Munro. The Joint Witness Statements were provided to the Panel shortly thereafter, ahead of the date by which the Council's Rebuttal Evidence was due.

32. A third conference comprising planners involved in the Hāwea/Wānaka Sticky Forest issues was undertaken on 8 February 2024. This conference was undertaken by Microsoft Teams and was not facilitated by an independent facilitator. The planners involved in that conference recorded matters agreed between them concerning iwi issues. This JWS was also provided to the Panel ahead of the date by which the Council's Rebuttal Evidence was due.

1.7.3 Application for waiver and extension of time limit

33. On 26 February 2024, the day before the hearing was scheduled to commence, the Panel received a request from the Council for a waiver and time extension under section 37 of the Act. The request noted that the Notice of Hearing had only been posted on the Council website that day, nine working days late, and that all submitters had been provided with a copy of the Notice of Hearing. The request also noted that all submitters had been emailed the evidence exchange timetable dates and the hearing start date on 12 October 2023. The hearing start date was also advised to all submitters in Minute 1, circulated on 1 November 2023. All submitters who had indicated on their submission form that they wished to speak at the hearing had been contacted by the Council's district plan administration staff and those submitters who wished to speak had been allocated hearing time slots. Having reviewed the Council's application and section 37 of the Act, the Panel Chair issued a procedural decision on 26 February 2024, granting the request for the waiver and time extension. No person was considered to be directly affected or prejudiced by the granting of the waiver and time extension.

1.7.4 Request to recuse Commissioner Fletcher

34. By way of a Memorandum dated 8 March 2024[79], Mr Gardner-Hopkins, representing Glenpanel Developments Limited ("GDL"), made a request for Commissioner Fletcher to be recused. The Memorandum noted that Commissioner Fletcher had made his own independent inquiries of Statistics New Zealand as to how it categorises development and financial contributions, as was raised in Commissioner Fletcher's questioning of GDL's tax expert, Mr Oliver. It was alleged Commissioner Fletcher's inquiry was "*quite extraordinary, and improper*" and that as a quasi-judicial body, the Panel must make its decision on the basis of the evidence put before it.[80] There was a concern that Commissioner Fletcher had "*entered the fray*" in a way that raised a question of bias.[81] Mr Gardner-Hopkins set out various case law and referenced other documents in support of GDL's concerns and referenced various

78 Minute 5 dated 17 January 2024

79 The Memorandum was lodged after the hearing had been adjourned on 7 March 2024, pending receipt of the Council's Reply. Due to the timing of this Memorandum being received by Council staff, the Panel did not receive the Memorandum until 11 March 2024. The recording of the relevant hearing day referred to in Mr Gardner-Hopkins' Memorandum was not available for review, as the recording mechanism had failed on that particular day.

80 Paragraph 3

81 Paragraph 4

excerpts from the hearing recordings that, it was alleged, could suggest Commissioner Fletcher has a personal agenda or a predetermined outcome that his questions were designed to assist with. In particular, it was suggested Commissioner Fletcher had "*an angle*" centred around uplift in value and could have an "*apparent bias towards developers*."[82]

35. The Memorandum noted that to his credit, Commissioner Fletcher admitted in open hearing that he had made this inquiry and also noted that following the line of questioning, the Panel had requested Mr Oliver to make his own enquiries of Statistics New Zealand and to file a supplementary statement setting out the result of these enquiries. That went some way to resolving the natural justice issue.[83]

36. As this matter was raised after the hearing was adjourned, GDL was content for the matter to be considered on the papers. The Panel Chair requested Commissioner Fletcher to provide a Memorandum to the Chair setting out his response to the points raised by GDL. This was circulated to all parties with Minute 7, on 14 March 2024.

37. Commissioner Fletcher's Memorandum made the following points:
    - Mr Gardner-Hopkins' Memorandum omitted to mention both the context of the discussion and several significant parts of the discussion with Mr Oliver. With reference to paragraphs 26-27 of Mr Oliver's evidence, in which Mr Oliver discussed the international standards' treatment of, and the distinction between, fees and taxes, and referenced various international treatment of same, Mr Oliver stated that New Zealand followed these international statistical standards. Commissioner Fletcher pointed out to Mr Oliver that he had not stated in his evidence how New Zealand classifies development and financial contributions and asked him why not. Commissioner Fletcher's recollection of the answer was that Mr Oliver gave no reason to explain why he had not included the New Zealand approach but stated that New Zealand followed the international standards and classified development and financial contributions as taxes. Commissioner Fletcher's recollection was that he asked Mr Oliver the same question again and received the same answer.[84]
    - Commissioner Fletcher then disclosed to Mr Oliver that he had worked in the National Accounts division of Statistics New Zealand for 22 years, most of which was in a senior technical role. In this role, one of Commissioner Fletcher's speciality areas of expertise was the classification of transactions such as development and financial contributions. Having read Mr Oliver's evidence, he had made a phone call to Statistics New Zealand to check his own memory of classifications in these two transactions. This confirmed that development and financial contributions were classified as unrequited capital transfers and not taxes. In questioning Mr Oliver, he asked Mr Oliver to make his own enquiries with Statistics New Zealand on this and to report the findings of that enquiry to the Panel, along with any additional comment he wished to make on the point.[85]
    - Commissioner Fletcher considered Mr Oliver should have been aware of the division of Statistics New Zealand responsible for this matter and should have known how the contributions would be classified. In Commissioner Fletcher's view, this was a gap in Mr Oliver's evidence.[86]

---

82 Paragraph 20

83 Paragraph 15

84 Paragraph 2

85 Paragraph 2

86 Paragraph 3. We note that Mr Oliver's additional supplementary statement dated 19 March 2024 made further comment on this (see discussion below)

- Commissioner Fletcher set out his own understanding of the Council thesis underlying the Variation going into the hearing, which included planning value uplift resulting from further urbanisation within the District and where that value would lie. The Council's thesis was that the uplift would be provided to the landowners by the community as a windfall gain. Faced with the financial contribution requirement imposed through the Variation, it was assumed that developers would push the costs back on to landowners when negotiating the purchase of land for development.[87]
- In his Memorandum, Commissioner Fletcher also noted the thesis of the witnesses for the developers as being that the Variation would result in increased cost and reduced supply of housing and that the answer to the affordable housing issue was to enable more land for urbanisation and/or increased urbanisation, meaning the developer community would be part of the solution, not the problem (and should not be singled out to make the contribution).[88]
- As the economist on the Panel, Commissioner Fletcher tested these theses on every relevant witness and some counsel, not only those identified by Mr Gardner-Hopkins. In particular, all three economists were asked the same line of questioning and most, if not all, developers and planners. These discussions included value uplift on urbanisation and the timing of that, sufficiency of land currently enabled, whether such land was genuinely infrastructure ready and feasible, whether developers would seek to, or be able to, push the cost of financial contributions back to the landowner and under what circumstances, any impact of that on the supply of land for development and any impact on the price and supply of developed sections/ houses.[89]
- At least once, these questions were couched in terms of equity and fairness between the community providing the uplift and the developer/ landowner benefiting from the uplift. This was acknowledged by Mr Gardner-Hopkins in his Memorandum.[90]
- Commissioner Fletcher confirmed he had made no "*investigations*" as alleged by Mr Gardner-Hopkins. In light of the omission in Mr Oliver's evidence, he had checked one matter to be sure his own personal memory was correct. Otherwise, he had read the Variation documents, the evidence and much of the material referenced in the evidence.[91]
- Commissioner Fletcher then stated:[92]

  "*I have no agenda or position to promote (refer Mr Gardner-Hopkins' para 16) and confirm I approached all reading and the hearing with an open mind. That remains the case*."

38. Mr Gardner-Hopkins was invited to respond to Commissioner Fletcher's Memorandum. Mr Gardner-Hopkins provided a Second Memorandum dated 19 March 2024, which noted the following points:
    - GDL accepted that Commissioner Fletcher had been consistent in his testing of the theses he had identified, in his questioning of most, if not all, developer witnesses and planners.
    - However, GDL remained concerned that the nature of the questioning "*suggests an acceptance of the proposition that: because a landowner/developer obtains an uplift in value due to a zoning change, it is fair for the Council to take a financial contribution from them for affordable housing. GDL considers that proposition to amount to an evident logical fallacy (at least as a generalisation), as it fails to take into account the myriad of circumstances that go into what might be considered "fair""*.

87 Paragraph 5
88 Paragraph 6
89 Paragraph 8
90 Paragraph 9
91 Paragraph 10
92 Paragraph 11

- GDL therefore maintained its request for Commissioner Fletcher to be recused.

39. Mr Gardner-Hopkins' Second Memorandum was accompanied by an additional supplementary statement from Mr Oliver[93] responding to the relevance of the current position of Statistics New Zealand in respect of this hearing. Mr Oliver noted first that he had not been involved with, nor seen, the request for recusal lodged by Mr Gardner-Hopkins and had no comment on such matters. He then noted that in his Supplementary Statement dated 18 March 2024, he had agreed that "*Statistics New Zealand seemed to categorise development and financial contributions, as they are currently implemented in practice, as not a tax*." However, he went on to note that he had tried to be clear in his Supplementary Statement that the label placed on a charge does not determine whether a charge is a tax or not, and provided some further explanation for this.[94]

40. The Panel, (excluding Commissioner Fletcher, given the matters raised), has carefully considered the request for recusal made by GDL and the memoranda lodged by Mr Gardner-Hopkins and Commissioner Fletcher. It has decided there are no grounds to recuse Commissioner Fletcher. It accepts Commissioner Fletcher's statement that he had no agenda or position to promote and that he has approached his task as an independent hearing commissioner with an open mind. As openly stated by Commissioner Fletcher in the hearing, and in his Memorandum, he had some specialist expertise in the area in question and wanted to check that his memory of the approach taken to the particular matter at issue by Statistics New Zealand was correct. The topic in question was very specific and did not prejudice any party. Commissioner Fletcher has confirmed that no wider investigation occurred on that or any other topic. Given the line of questioning, Mr Oliver was given the same opportunity to make enquiry of Statistics New Zealand and to file supplementary evidence setting out his findings, and his opinion, on those matters. He did so. No natural justice issue therefore arises.

41. Nor do we consider any public perception of bias arises. Commissioner Fletcher pursued the same line of enquiry with many witnesses, from both the Council and submitters, and in particular the economists. As he stated, he was exploring with relevant witnesses (and in some cases, counsel) the theses that he considered underpinned the Variation and the submitters' position in response. We consider that line of questioning to have been fair to all parties, and certainly not biased.

2 INTERNATIONAL EXPERIENCE AND THE LITERATURE ON INCLUSIONARY HOUSING

42. The Issues and Options paper prepared by Mr Mead[95] that preceded the notification of the Variation included a discussion on the international experience with various forms of inclusionary housing. It drew on the research done for PC24, but it is unclear to what extent it was updated to reflect international experience in the intervening years. It identified that a range of North American mountain resorts face environmental and landscape issues, as does QLD, with similar resulting housing supply issues. Some have used linkage zoning, where development proposals creating low to moderate income employment are required to contribute toward affordable housing based on the number of jobs they are expected to create.

---

93 Dated 19 March 2024

94 Paragraphs 7-11

95 Affordable Housing and Queenstown Lakes Proposed District Plan, Issues and Options, David Mead, June 2021 (Issues and Options)

43. Whistler in Canada and Aspen and Vail in Colorado are examples of this.[96] In Whistler, it is job creation alone that generates the affordable housing or employee housing requirement, while in Aspen it is based on residential development, and requires that at least 30% of the increase in liveable space must be in affordable housing. Vail has a mix of both commercial and residential development requiring the provision of employee and/or affordable housing.

44. The Issues and Options paper also considered international experience with inclusionary housing schemes in metropolitan areas.[97] It stated that these are typically more broadly based, and are aimed at enabling general community wellbeing by creating mixed communities with households of all income levels having options to live in most communities. Typically they require that a set proportion of new homes be sold at affordable prices determined with reference to median household incomes. It draws on an Australian research paper[98] into affordable housing strategies from 2018 that reports planning schemes are increasingly being used to generate supplies of affordable housing, that the ability to access land has the greatest impact on the feasibility of affordable housing projects, and that inclusionary planning mechanisms should be targeted to local market conditions and be designed to work in conjunction with planning incentives that support and encourage overall housing supply.

45. In his section of the s32 Report[99], Mr Eaqub analysed inclusionary housing through a tax lens and stated that in some jurisdictions inclusionary zoning can apply when planning rights change or on building permit applications when additional planning rights can be traded to compensate for the affordable housing requirement. He went on to report that how the tax is described is relevant and he cited UK and Australian experience in framing the inclusionary zoning requirement in terms of a tax on windfall planning gains of landowners, that these planning gains are not the result of productive efforts, and that this:

> "*framing of the tax, who it falls on, and how some of the costs are offset against societal gains is critical to the success of IZ[100] policies internationally*."[101]

46. Mr Eaqub went on to reference international literature to make the following points:[102]
    - Inclusionary housing policies are used to increase the share of affordable housing and to break up the socioeconomic segregation of cities;
    - Inclusionary zoning works best when part of a whole of government strategy addressing the continuum of housing needs;
    - In Germany affordable housing supply is increased through public subsidies in conjunction with inclusionary zoning.

47. Mr Eaqub summarised the key messages for inclusionary zoning from a 2019 OECD report and other international studies[103], including that:
    - Most successful applications occur where the mechanism is simple to administer, and widely applied;

---

96 Issues and Options at 5.1

97 Issues and Options at 5.2

98 Inquiry into increasing affordable housing supply: Evidence-based principles and strategies for Australian policy and practice, Australian Housing and Urban Research Institute, May 2018

99 Section 32 Report Appendix 3g Economic Assessment 4.2

100 We take this to be a reference to inclusionary zoning.

101 Section 32 Report Appendix 3g Economic Assessment p 20

102 Section 32 Report Appendix 3g Economic Assessment at 5, p21

103 Section 32 Report Appendix 3g Economic Assessment, paragraph 5, pp21-23

- Without it, the supply of low value/affordable housing falls dramatically;
- Although not common in Australasia it is widely used, including by over 500 cities in the USA, and in the UK and other parts of the world, with varying degrees of success;
- Australia now has over 7,500 affordable dwellings provided through inclusionary zoning in South Australia and Sydney;
- There is some risk of reducing overall supply incentives, but good quality studies on its use in expensive markets find no impact on overall supply;
- Schemes gain acceptance over time and private developers accept the requirements when they are known in advance and levied consistently;
- Inclusionary zoning on its own is not the answer and other mechanisms are required to ensure housing supply across the continuum of housing need;
- The level of contribution required varies, with 1% in Sydney and 15% in South Australia given as examples;
- Retention of the affordable homes increases the wider social and economic benefits, the longer the retention the bigger the impact, with 30-plus years being a general retention period;
- The evidence of the impact on the housing supply is mixed, with studies finding no or marginal effects on housing supply, and that other planning benefits to developers can mitigate any impact;
- Some studies found that housing supply did slow, but that was attributed to the way the policies were applied, and some found a reduction in the size and quality of dwellings;
- The evidence was mixed on the impact on house prices, with most studies showing no impact, and those that did showing greater increases during periods of increasing prices, and greater declines during periods of decreasing prices.

48. We note that almost all of Mr Eaqub's references post-date PC24, and many of them date from within the last decade.[104]

49. In his evidence, Mr Eaqub added ACT to the states in Australia that have implemented an inclusionary housing policy.[105] He stated that the UK and USA experience is that inclusionary housing schemes gain traction over time and developers accept them when they are known in advance and levied consistently.[106] He quoted[107] a 2022 American study that concluded that jurisdictions

> *"where the policy was mandatory, older, and covered the entire jurisdiction, or had complex requirements to reach lower income levels, had higher production of 'affordable units'."*

50. A 2013 UK study found that inclusionary housing policies reduce the windfall gain to landowners, not the developer margins.[108]

51. In the Social Impact Assessment (SIA), Ms Lee referenced the international literature and experience, some of which overlaps with the Issues and Options paper prepared by Mr Mead

---

104 Section 32 Report Appendix 3g Economic Assessment, References at p31. The details of PC24 are discussed later in our report.

105 Statement of evidence in chief of Shamubeel Eaqub, paragraph 5.6

106 Statement of evidence in chief of Shamubeel Eaqub, paragraph 5.16

107 Statement of evidence in chief of Shamubeel Eaqub, paragraph 5.17

108 Statement of evidence in chief of Shamubeel Eaqub, paragraph 5.18

and Mr Eaqub's references.[109] Without repeating the points made above, she made the following points:

- Inclusionary zoning originated in the 1970s in the USA, responding to strict land-use zoning contributing to rising housing costs, initially in suburban greenfield developments, and spreading to areas of redevelopment;
- In the UK inclusionary zoning is driven by s106 of the Town and Country Planning Act 1990, which makes the provision of affordable housing a *"material consideration"* in the granting of planning permissions by local authorities who specify the percentage of affordable housing developers must provide; [110]
- The UK has excluded sites of 10 units or less from the requirements;
- In the Netherlands, since 2008 local authorities have had the authority to allocate a percentage of land in new developments to social or affordable housing;
- In Germany, local government promotes a co-builder approach with a proportion of units reserved for social housing;
- In Colombia the law requires that developments in Bogota have a percentage of units as social housing – 20% in developed areas and higher in peripheral areas;
- Evaluating inclusionary zoning policies can be difficult due to the variations in design and implementation.

52. As we note later in our report, one submitter, Mr Glover, had some personal experience of the programme in Aspen and was able to provide some detail on the programme, which expanded on the points made in the Issues and Options paper of Mr Mead and the information provided by Ms Lee.

53. In his Peer Review of Mr Eaqub's s32 Report, Mr Colegrave accepted Mr Eaqub's summary of international literature and practice, but rejected much of its relevance as the Variation offers no offsetting mitigation and the international examples do.[111] In his evidence, Mr Colegrave drew on international literature to support this view, with a quote illustrating that offsets make a difference to the number of affordable units produced and the impact on the wider housing market.[112] He was then generally critical of Mr Eaqub's reliance on international studies as they reflect different policy designs.[113]

54. Mr Osborne made similar comments to Mr Colegrave on the applicability of international studies, given they provided development incentives where the Variation does not.[114] He went on to state that most of the international literature found that there was potential for negative impacts on housing supply[115] and price.[116]

55. Mr Serjeant also traversed the international literature and experiences.[117] Without repeating the points already made above in detail, he identified:

- The political, statutory and administrative framework in which the programmes operate is critical to any analysis;[118]

---

109 Statement of evidence in chief of Charlotte Lee, Appendix 1, paragraph 5.1
110 Statement of evidence in chief of Charlotte Lee, Appendix 1, paragraph 5.1.1
111 Insight Economics Peer Review p 14
112 Statement of evidence in chief of Fraser Colegrave, paragraph 154
113 Statement of evidence in chief of Fraser Colegrave, paragraph 163
114 Statement of evidence in chief of Philip Osborne, paragraphs 51-52
115 Statement of evidence in chief of Philip Osborne, paragraph 58(a)
116 Statement of evidence in chief of Philip Osborne, paragraph 70
117 Statement of evidence of David Serjeant, paragraphs 39-52
118 Statement of evidence of David Serjeant, paragraph 41

- Drawing on a 2021 paper surveying American programmes across three states also referenced by Ms Lee, he identified that 70% of programmes are mandatory, 57% provide planning incentives, 99% included same-site provision while nearly 50% had off-site and/or payment in lieu as options, 38% had contribution levels of 20% or more, 62% had a threshold before contributions are required of between 2 and 10 dwelling units, and 94 (out of 685) also covered non-residential development;
- That same paper considered that inclusionary housing policies in the US had two objectives, affordable housing and economic and racial integration, which Mr Serjeant considered to differentiate them from the Variation proposed here;[119]
- The mountain resorts of Whistler, Aspen, Sun Valley, Lake Tahoe and Vail housings had causes of housing affordability similar to those of QLD, and these areas used linkage zoning for both residential and commercial development;
- Victoria in Australia also had introduced inclusionary zoning;
- South Australia over 10 years to 2015 produced 5485 affordable houses, accounting for 17% of new housing supply, mostly on government land or with other incentive or subsidy.[120]

56. We consider that between them Mr Eaqub and Ms Lee have fairly covered the international experience and literature, with some helpful detail added by Mr Serjeant. We accept that they reflect a range of different programme designs and implementation, and occur in a range of different planning, statutory and administrative environments which may differ from those available to us under New Zealand law. While any individual programme may not be reflective of the Variation, in broad sweep they do provide insight into the appropriateness of the Variation and the design characteristics of successful programmes. We consider that they are relevant to our consideration of the Variation and we give them due weight at the relevant points in our report.

3 SOCIAL IMPACT ASSESSMENT

57. In preparing the Variation, the Council instructed Beca Limited to prepare a SIA. The background to, and results of, this assessment were addressed in detail in the evidence of Charlotte Lee.

58. Ms Lee explained that the SIA sought to understand the potential social impacts (both positive and negative) of the Variation. This process included engaging with the community and stakeholders through an online survey and semi-structured interviews. She noted that impacts identified through a SIA can be either positive or negative, depending on whether the anticipated social consequences will either enhance or detract from community values, social processes or social infrastructure. The assessment considered whether the Variation would improve existing conditions and reduce the overall housing problem, maintain the status quo or exacerbate existing conditions.[121] It was recognised that potential changes to the current situation may be experienced differently by different groups in QLD. The assessment therefore looked at effects at the QLD community level and at the individual/family level and an overall impact rating was given. The assessment set out a number of detailed findings under various headings, which we summarise here.

---

119 Statement of evidence of David Serjeant, paragraphs 47-48

120 Statement of evidence of David Serjeant, paragraph 51(a)

121 Statement of evidence in chief of Charlotte Lee, paragraphs 4.2-4.3

59. In assessing people's way of life, the interviews indicated that some parts of the community are having to move between temporary accommodation due to changes in rental accommodation provision and/or a lack of short-term affordable housing. Some people sleep rough. Employers were finding it difficult to attract and retain employees in the area due to the high cost of living and a lack of affordable housing. Interviewees noted that if the market is left as it is, the shortage of workers is likely to affect business operations, impacting on the services available in the community.[122] The location of new affordable houses and the proximity of these to goods, services, employment, community facilities and other opportunities was noted.[123] Some interviewees were aware of businesses in QLD providing worker accommodation, which had both positive and negative impacts. The importance of providing public transport near new residential developments was also highlighted. This part of the assessment concluded that there is likely to be a low positive impact on people's way of life in the QLD from the Variation. It was considered unlikely to have a substantial impact on business operations in the short-term, but this could change if the extent of affordable housing increased.[124]

60. Interviewees indicated the lack of affordable housing had an impact on the existing social cohesion and character of QLD, as only those who could afford to stay and settle did so. The rather transient community particularly impacted on younger populations. 92% of community survey respondents agreed that housing affordability is impacting the community and it is also impacting the operation of integral services and facilities. Key workers, such as nurses, teachers and healthcare professionals find it difficult to find and retain accommodation, particularly in the rental market. It was noted that the QLCHT now has a specific waiting list for key workers. The lack of affordable rentals is also impacting hospitality and tourism workers. This was linked to property owners preferring to rent out their properties for Air BnB stays or other home-sharing platforms. As 38% of the QLD population rent, this impact is noticeable. The assessment noted that the Variation would give greater certainty to the QLCHT over funding. The Variation would result in a moderate positive impact on community cohesion and character as there would be greater access to affordable housing.[125]

61. At a political level, the lack of presence of Kainga Ora in the QLD and its lack of plans to build more properties was noted. The survey indicated that in this District, the QLCHT was the preferred place for people to sign up for housing support and it was felt that the QLCHT would assist in providing more affordable housing. Some considered an increase in affordable housing would have the potential to free up housing options in the market and provide more accommodation options. Several interviewees noted the "disconnect" between local and central government in terms of housing affordability and potential interventions to address more affordable housing. Overall, there was considered to be a low positive impact on political systems and this was assessed as very low at the QLD community level. Other than the QLCHT, there appeared to be no or few other options at play in the market to assist the issue.[126] Ms Lee stated:[127]

> "*It is acknowledged that the impacts for those who are able to access this housing have the potential to be significant; however, the high demand for this housing and the QLCHT eligibility criteria as it stands means the extent of the impact (i.e. the*

---

122 Statement of evidence in chief of Charlotte Lee, paragraph 5.4
123 Statement of evidence in chief of Charlotte Lee, paragraph 5.5
124 Statement of evidence in chief of Charlotte Lee, paragraphs 5.8-5.9
125 Statement of evidence in chief of Charlotte Lee, paragraphs 5.11-5.21
126 Statement of evidence in chief of Charlotte Lee, paragraphs 5.22-5.29
127 Statement of evidence in chief of Charlotte Lee, paragraph 5.29

number of people impacted) will be relatively small, compared to the QLD community as a whole."

62. Interviewees noted that the impact of affordable housing has resulted in people living in cars, vans and tents in areas that are not designed for this in the long-term. This has an effect on the quality of the environment. Some also noted that although housing stock is expensive, that does not mean there is a higher quality of housing. Some housing becomes overcrowded due to the high demand for housing. The assessment noted that those able to access affordable housing are likely to experience an improvement in their living environment. Overall, the assessment concluded that at a community level, there would be a low positive impact on the quality of the environment from the Variation. However, for individuals and families, there would be a high positive impact.[128]

63. The level of negative impact of housing on people's health and wellbeing was found to be high. In that regard, we note that the submission lodged by Te Whatu Ora National Public Health Service, and the evidence it lodged, also addressed the negative impact that unaffordable housing has on physical and mental wellbeing.[129] Stress results from people having to find or retain affordable housing and some noted the unstable nature of some housing in the QLD. Retention of any secured home is not certain. One interviewee mentioned a family renting a property from someone who lived overseas, but not knowing if the owner would want the house back if they returned for the ski season. 37% of community survey respondents commented on the negative impact of Air BnB on housing in QLD. High rents were also an issue as they impacted on affordability of living in the community generally. The assessment noted that families can become separated if a family home cannot be found. Staff retention is an issue for businesses, with some staff being lost to other parts of New Zealand where accommodation is more affordable. At a community level, the assessment found there is likely to be a low positive impact from the Variation. In the short-term, there is unlikely to be a substantial change, but depending on the extent of affordable housing that could be provided through the QLCHT's scheme, there may be more hope for some that a home will eventually be found. The report concluded that there will be a moderate positive impact on those individuals and families accessing affordable housing. Overall, the impact of the Variation on health and wellbeing in the QLD would be low.

64. In considering personal and property rights, it was noted respondents considered that changes in tenancy law have disincentivised landlords to rent their properties long-term and instead they have rented them on Air BnB and other short-term rental platforms. QLD has had a 49% reduction in rental listings in the period December 2021-December 2022. The large number of vacant properties in the District was also noted. Both factors were considered to be contributing to a demand for housing and driving up property prices. Steps taken by some employers to buy property for employees was noted. The five developers interviewed through the SIA anticipated the Variation would make many projects unviable and they would consider not developing in the area. The impact of this would be a reduction in the supply of affordable housing. Overall, the assessment concluded the Variation would result in a moderate positive impact on people's personal and property rights, with the greatest impact being on individuals

128 Statement of evidence in chief of Charlotte Lee, paragraphs 5.30-5.34

129 Statement of evidence of Monica Theriault and Tom Scott. In the hearing, we made an oral procedural ruling that this evidence would not be admitted as it was not filed in accordance with the hearing timetable. Te Whatu Ora sought to table the evidence on the day of its appearance, meaning other parties had not had the chance to review it and could be prejudiced. We have since reviewed our procedural decision and have decided the evidence may be admitted, as there is no apparent prejudice to any party.

and families. At a community level, it was expected the Variation would result in a very low (negligible) impact as it is unlikely the Variation will have any real impact on those living in privately owned housing.[130]

65. On fears and aspirations, a number of people noted their concerns for the future community. A lack of affordable housing was altering the community's fabric as those from different income brackets and backgrounds could not afford to live in QLD. Safety issues arising from a lack of affordable housing and overcrowding were also raised. The assessment concluded the Variation would have a low positive impact at the QLD community level and a high positive impact on individuals and families. Overall, the assessment found the Variation would have a moderate positive impact on fears and aspirations.[131]

4 SHORTAGE OF AFFORDABLE HOUSING IN THE DISTRICT

4.1 Background and Underlying Thesis to the Variation

66. The s42A Report prepared by Mr Mead set out the background and context to the Variation. The District has faced housing affordability issues for many years, with the pressure on the housing resource said to result from a combination of factors – fast population growth, prevalence of second homes and investment properties and the use of housing for short-term accommodation for visitors.

67. QLD has high house prices and rents. As at September 2023, the median house price to median income ratio in QLD was 14.86, well above a ratio of 8.88 for the Auckland metropolitan area and the national average.[132] Worker salaries do not generally match the high price of housing and service workers, in particular, are impacted by housing stress.

68. The main driver for growth in QLD is migration into the District. The s42A Report noted that Statistics New Zealand estimates that between 2019 and 2022, the District grew by 7,040 residents, of which 5,500 were new residents shifting to the District.[133]

69. As at September 2021, QLD was short of 2,350 affordable dwellings[134] with 1093 on the QLCHT waitlist.[135] This shortage is predicted to rise to 7,000 by 2050.[136] In the period 2013-2022, QLCHT has produced 109 dwellings with a further 147 dwellings in train for completion in the period 2023-2026.[137]

70. In response to questions from the Panel, Mr Mead made the point that despite some land being zoned to enable more dense residential development, affordable housing was still not being delivered in the QLD. He referred to the development of land at Three Parks in Wanaka as an example.[138] The same theme was explored with several parties throughout the hearing.

---

130 Statement of evidence in chief of Charlotte Lee, paragraphs 5.46-5.56
131 Statement of evidence in chief of Charlotte Lee, paragraphs 5.57-5.63
132 Section 42A Report, paragraphs 3.1 and 3.2
133 Section 42A Report, paragraph 3.3, referring to Statistics New Zealand sub-national population estimates
134 Queenstown Lakes District Council (2021c) Housing Development Capacity Assessment 2021, page 5
135 Social Impact Assessment, Beca Limited, 13 November 2023, section 4.2.2
136 *Housing Needs Assessment*, Market Economics 2019
137 Statement of evidence of David Serjeant, paragraph 20(c)
138 Panel questioning, 27 February 2024

This lack of delivery was behind the mandatory approach the Council has taken to the Variation.

71. We have already outlined the SIA prepared in support of the Variation, which discussed many concerns felt in the community about the shortage of affordable housing. Submitters in support of the Variation also gave evidence about the extent of the housing affordability problem and the effects on the community's wellbeing overall. Evidence from Te Whatu Ora's Queenstown office noted that healthcare services are only responsible for approximately 15-20% of health outcomes, with most of these outcomes being created by a wide range of factors beyond the health sector. These included conditions in which people are born, grow, live, work, and age and impacts of environmental, social and behavioural factors. Access to safe and healthy accommodation was described as "*one of the most basic human needs.*"[139] Te Whatu Ora expanded on the adverse impacts of a lack of affordable housing, including the cost burden resulting from a lack of affordable homes and housing insecurity. It considered inclusionary zoning provided a systematic way of providing more affordable housing for the District and noted again the positive health impacts this would bring.[140]

72. Community Housing Aotearoa also supported the Variation. In his oral evidence[141] Mr Glaudel explained the importance of the community being able to live where they work and the connections provided through family, neighbours and schools. He noted the new central government's comments on the links between the housing crisis and productivity and its view that housing is a "*moral issue*". Mr Glaudel noted the difficulty in this District of employers being able to retain workers due to housing unaffordability.

73. When asked if he could point to good examples of affordable housing in New Zealand, Mr Glaudel told us the process that has been undertaken with QLCHT is regarded as a success outside of Queenstown. He also noted that projects in Hastings involving iwi and local government had worked well and referred to the importance of resources being provided by central government. In his role as Deputy Chief Executive of Community Housing Aotearoa, he had some awareness of the approach taken in other countries and noted different legal requirements might apply. He considered that a mandatory requirement to provide affordable housing was the best option and that any delivery of affordable housing in this community would be a step forward.

74. QLCHT also supported the Variation. We address the evidence for QLCHT in more detail below.

75. As we have detailed elsewhere in our report, QLDC has long recognised that the market is not providing for the housing needs of low and moderate income households and has been leveraging private plan changes to obtain a contribution to affordable housing since 2003.[142] QLDC has made direct contributions enabling 74 affordable dwellings with a further commitment for 5% of the sale of a substantial area of CBD land to be provided.[143]

76. While this approach to inclusionary housing has been successful to date, underlying the Variation is the expectation that with the repeal of the Housing Accords and Special Housing

---

139 Statement of evidence of Monica Theriault and Tom Scott, paragraphs 1-6

140 Statement of evidence of Monica Theriault and Tom Scott, paragraphs 7-34

141 Oral evidence of Chris Glaudel, 29 February 2024

142 Statement of evidence in chief of Amy Bowbyes, paragraph 3.13, Section 32 Report Appendix 3g Economic Assessment at p22

143 Statement of evidence in chief of Amy Bowbyes, paragraph 3.19

Areas Act 2013 (HASHAA) and the enablement of land to meet the requirements of the NPS-UD, funding for retained affordable housing going forward will be uncertain.[144]

77. The thesis underlying the inclusionary housing Variation was most clearly stated by Mr Eaqub in his evidence.[145] In summary this is:

- Increasing the enablement of land for residential purposes gives a significant value uplift to the landowner. This value uplift is a windfall planning gain to the landowner bestowed by the community, represented by the local authority;
- Inclusionary housing is a mechanism to capture some of this windfall gain and return it to the community in the form of affordable housing;
- The ideal is to capture the windfall gain directly from the landowner who receives it, and this can be done when the landowner or developer initiates the uplift through a private plan change or resource consent application;
- When the uplift is provided by a council initiated upzoning that opportunity is lost;
- After council-initiated uplift occurs, the next opportunity to capture some of the windfall gain is at the development stage;
- If the inclusionary housing requirements are firmly entrenched in the market, then the imposition of the requirement will be passed back to the landowner in terms of the purchase price of land for development, if the supply of land enabled for development is significantly increased.

78. Essentially, determining whether the Council's approach is correct, lawful and the most appropriate method to address the need for affordable housing in the District is the subject of this report.

79. It was accepted by all parties that there is a shortage of affordable housing within QLD and that action to increase the supply of affordable housing within the District was necessary.[146] The economic evidence was clear that the housing shortage in QLD extended to all types of housing and was most acute for affordable housing.[147]

4.2 Demand for Affordable Housing

80. It is apparent from the evidence that QLD's affordable housing issues are not a short-term crisis, but a long-term structural issue. The Council has been addressing the issue of affordable housing since at least 2003 and released the Housing our People in our Environment (HOPE) strategy in 2005.[148] The Council established the Queenstown Lakes Community Housing Trust, and notified PC24, in 2007.[149]

81. Mr Eaqub's evidence showed that both the price to income ratio and the rent to income ratio in QLD has been consistently well above the New Zealand average since at least 2000.[150] He

---

144 Statement of evidence in chief of Amy Bowbyes, paragraph 3.18; Statement of evidence in chief of Shamubeel Eaqub, paragraph 5.12

145 Statement of evidence in chief of Shamubeel Eaqub, paragraphs 5.11-5.16

146 For example, Synopsis of legal submissions for Glendhu Bay Trustees Limited and others dated 1 March 2024, paragraph 7; Evidence of Timothy Allen, paragraph 14; Legal submissions for Fulton Hogan Land Development Limited dated 4 March 2024, paragraph 2.1; Legal submissions for Qianlong and others dated 1 March 2024, paragraph 6

147 Joint Witness Statement of Economic Experts dated 30 January 2024, paragraph 3.2.1 (1)

148 Statement of evidence in chief of Amy Bowbyes, paragraph 3.6

149 Statement of evidence in chief of Amy Bowbyes, paragraphs 3.7 and 3.12

150 Statement of evidence in chief of Shamubeel Eaqub, paragraphs 4.11-4.12

considered[151] that even the high building rate within the District was not enough to meet the demand in the District, and that:

> "*current supply is not enough to flow through to the entirety of the housing continuum…(and) without the adoption of a policy to influence a channelling to the more affordable end of the continuum, the status quo will continue, and likely worsen*."

82. Mr Colegrave described the District's housing affordability problem as "*chronic*".[152]

83. Mr Osborne's evidence showed that QLD average house prices have been consistently well above the New Zealand average since at least 2005, and getting more so since 2016. By 2023 the QLD average price at $1.7m was nearly double the national average price.[153] Mr Osborne considered that the past was not necessarily the future, and that the latest RVA changes and intensification enablement through the NPS-UD (proposed to be implemented in the Urban Intensification Variation (UIV)) would most likely shift and improve housing affordability in the District once they were bedded in.[154]

84. The economists agreed that the underlying fundamentals of the causes of the problem are unlikely to materially change in at least the short or medium term. They considered some of the relevant factors include:[155]
    a. Significant sustained demand for housing in the District;
    b. Significant natural constraints to where and how development could occur;
    c. Diversion of housing to the short-term rental market;
    d. Historical planning requirements which have tended to limit more flexible housing solutions and densities.

4.3 Causes of the Shortage of Affordable housing in QLD

85. As recognised by the Variation, the causes of the shortage of affordable housing in the District are varied and complex. The Purpose of the Variation as notified identified some of them, including:[156]

- High rates of visitor accommodation;
- High rates of holiday home ownership;
- Geographic constraints on urban growth;
- The need to protect the District's landscape and scenic values.

86. The economists endorsed these and added historical planning provisions limiting more flexible housing solutions and densities.[157] Mr Eaqub included the very high rate of growth within the District from both natural increase and very high inward migration, and considered that there was a broader market failure due to the price signals being insufficient to enable sufficient supply.[158] Mr Colegrave added the District's extremely high land prices and elevated

---

151 Statement of evidence in chief of Shamubeel Eaqub, paragraph 4.22
152 Statement of evidence in chief of Fraser Colegrave, paragraph 21
153 Statement of evidence in chief of Philip Osborne, paragraph 14 and Figure 1
154 Statement of evidence in chief of Philip Osborne, paragraph 47
155 Joint Witness Statement of Economic Experts dated 30 January 2024, paragraph 3.2.1 (6)
156 Variation Purpose at 40.1 as notified
157 Joint Witness Statement of Economic Experts dated 30 January 2024, paragraph 3.2.1 (6)
158 Statement of evidence in chief of Shamubeel Eaqub, paragraphs 2.2 (a) and (b) and 3.2

construction costs, and emphasised the impacts of short term rentals reducing the supply available for long term rentals.[159] Mr Osborne added the high level of wealthy international buyers.[160] He also noted the high level of section trading[161] which we understand is a reference to a heightened level of trading in sections as an investment rather than for building.

87. We do not consider the different points commented on by the economists to indicate any disagreement between them, but rather serve to underline the complexity of the causes of the shortage of both housing generally and affordable housing in particular.

88. The planning experts recorded a number of points that they considered were the underlying causes of housing affordability issues within QLD. We summarise these as follows:[162]

a. At a high level, a mismatch between average incomes and average house prices exacerbated by both higher build costs and an economy based on a higher proportion of lower paid service or tourism type jobs to some others;
b. The desirable attributes of QLD – landscape, recreation, international airport. These are contributing to higher demand and higher housing prices but also, importantly, large numbers of people able to pay those high prices;
c. Historically long timeframes between a decision to rezone land and the delivery of housing to the market;
d. Plan provisions that do not maximise the provision of housing. Ms Bowbyes' agreement to that statement was on the basis that the Council has publicly notified the UIV;
e. Concerns with efficiency and effectiveness of district plan administration (Mr Mead, Ms Bowbyes and Mr Ferguson noted they had no opinion on this);
f. Lack of infrastructure or capacity for zoned land;
g. Land banking or other actions by landowners that limit housing supply on land that is otherwise capable;
h. Exceptionally high demand for housing (related to RVA rather than residential use);
i. Fragmented existing allotment patterns (for example, large lots associated with quite new houses);
j. Limited spatial opportunity for brownfield development;
k. Limitations imposed by land covenants and other title instruments; and
l. The market may not support theoretical densities available.

89. The planning experts also recorded that there are examples of affordability being addressed in some subdivisions within the District, Shotover Country being one example. They also noted that most of the examples occurred via developer type agreements and that the plan policy from PC24 formalised a process for Council and developers to discuss affordability. The Planning JWS recorded external factors such as increased building costs, fluctuating interest rates, material supply constraints, labour costs and labour shortages all contributed to housing affordability. The planners also made the point that affordable housing provided in developments such as Bridesdale had not remained affordable due to price escalation since the first point of sale.[163]

159 Statement of evidence in chief of Fraser Colegrave, paragraph 25
160 Statement of evidence in chief of Philip Osborne, paragraph 41
161 Statement of evidence in chief of Philip Osborne, paragraphs 17-18
162 Joint Witness Statement of Planning Experts dated 30 and 31 January 2024, paragraph 3.2.2
163 Joint Witness Statement of Planning Experts dated 30 and 31 January 2024, paragraph 3.2.13

4.4 Provision of Affordable Housing, Not Solving the Causes of the Shortage

90. It became clear during the hearing that the Variation is not attempting to address the causes of the shortage of affordable housing in QLD. However, this was obviously not well initially understood by some of the submitters. Submitters often opposed the Variation in part as they considered it would not address perceived causes of the shortage of affordable housing in the District.[164] Submitters' experts also criticised the Variation for not addressing the causes of the District's affordable housing.[165]

91. The Variation is not attempting to address the causes of the shortage of affordable housing. It is not about adjusting the housing market to address the structural issues that are resulting in the shortage of affordable housing. Rather, it is solely focused on the actual provision of some affordable housing now and going forward. This is clearly stated in the Variation's proposed Strategic Objective 3.2.1.10, Purpose and Objective 40.2.1.

92. Strategic Objective 3.2.1.1 as notified states (our emphasis)

> "**Affordable housing choices** for low to moderate income households **are provided**…"[166]

93. The Purpose of the Variation is stated as (our emphasis):

> "…**to make provision for** housing choices for low to moderate income households in new neighbourhoods and in redevelopments of existing neighbourhoods."[167]

94. Objective 40.2.1 is stated as (our emphasis):

> "**Provision of affordable housing**…in a way and at a rate that **assists with providing** a range of house types and prices…"[168]

95. Mr Mead made this clear in his rebuttal evidence, stating (emphasis added):[169]

> "*The proposed AHFC policy is not intended to be a substitute for increased supply …. It is complementary to such moves,* ***ensuring that a component of new supply*** *enabled by the PDP …* ***is directed towards affordable housing demands***."

96. It is perhaps unfortunate that the language used in the Variation, and the supporting evidence, "*to make provision for*" and "*ensuring that a component of new supply … is directed towards affordable housing*" did not make explicit that the Variation is not about solving the causes of the shortage of affordable housing, but is about providing an on-going source of finance and land supply to directly supply housing that is affordable and remains affordable over time. This was most clearly stated in the s32 Report, where it stated (our emphasis): [170]

---

164 E.g. Submission of Blair Devlin on behalf of McLintock Topp Family Trust ((sub 71), paragraph 11

165 E.g. Statement of evidence in chief of Fraser Colegrave, paragraphs 25 and 56-74

166 Variation Strategic Objective 3.2.1.10, as notified and unchanged in David Mead's Rebuttal evidence. Bolding added.

167 Variation 40.1 Purpose, as notified and unchanged in David Mead's Rebuttal evidence. Bolding added.

168 Variation Objective 40.2.1, as notified and unchanged in David Mead's Rebuttal evidence. Bolding added.

169 Rebuttal evidence of David Mead at 3.10. Bolding added.

170 Queenstown Lakes District Proposed District Plan Section 32 Evaluation for Inclusionary Housing, 18 July 2022, paragraph 1.4

> "*The affordable housing provisions should be based on a financial contribution model whereby the **main form of contribution is a monetary contribution** to Council **which will be used for the express purposes of supporting the delivery of affordable housing via the Queenstown Lakes Community Housing Trust**. "*

97. The policies include Policy 40.2.1.7 which states (our emphasis):[171]

> "**Financial contributions received** by the Council **shall be used for the purposes of providing affordable housing** for low to moderate income households."

98. The proposed financial contribution is intended to provide the land and funds to build the stock of affordable housing within the District. It is clear that the Variation is narrowly targeted at providing an on-going source of funding that will be used to provide retained affordable housing within the District.

4.5 Target housing of the Variation

99. What also did not come across clearly in most of the evidence was that the Variation is focused on a specific segment of the affordable housing market. As noted above, the economists agreed that the housing shortage was across all types of housing. However the market for affordable housing is comprised of different parts, ranging from emergency housing needs, through to social housing, housing for transient/short-term workers, through to those on moderate incomes unable to access suitable housing to rent and those unable to purchase in the local market.

100. The Variation is not aimed at the transient workforce that is a substantial part of the QLD workforce. It is not aimed at providing supported social housing, although those on government support are eligible under the Variation. The Variation is primarily intended to address the need for housing for those workers who meet the criteria specified in the Variation, namely residents of the District with low to moderate household incomes as defined by the Variation without other interest in real estate.[172] The Variation will only provide rental or leasehold housing,[173] it is not providing a direct pathway to home ownership.[174] It is aimed at providing **some** affordable housing choices for those residents any community depends upon – for example, the teachers, healthcare workforce, police and council staff.[175]

101. With the QLCHT no longer providing a shared ownership option, the Trust's activity is solely focused on providing affordable secure rentals and affordable leasehold property. The leasehold model has 100-year leases of the land, with the lessee buying the building, with the requirement that it can only be sold back to QLCHT at purchase price plus a CPI adjustment plus any improvements. Thus, while the need for affordable housing encompasses those requiring emergency housing, short-term and transient workers and all salary and wage workers in the District, the Variation will only address the need of a segment of the wider market, and only that segment of the market that fits within the criteria and successfully obtains a house from QLCHT.

---

171 Variation as notified, Policy 40.2.1.7

172 Variation as notified 40.8.1.2

173 Statement of evidence in chief of Amy Bowbyes, Appendix 1, Relationship Framework Agreement, Schedule 1 and 2,

174 Confirmed to the Panel by Ms Scott (Recording 4, 28 February 2024, at about 12min).

175 Section 32 Report, paragraph 7.20

5 ISSUES RAISED BY SUBMISSIONS

102. Paragraph 8.3 of the s42A Report summarised the issues raised in submissions. We set out below the main issues we have identified through our reading of the submissions and further submissions, the Council reports, legal submissions and evidence. We address each of these issues in detail in section 13 of our report.

103. We summarise the issues as follows:

a) Does the Variation fall within the scope of the RMA? In that regard, a number of matters were raised:
   i. The functions and powers of the Council under s31(1) and ss72-77 of the RMA;
   ii. Whether the levying of the proposed financial contributions is a rule for a resource management purpose;
   iii. Whether the proposed financial contribution addresses or mitigates an adverse effect associated with residential subdivision or development and whether such a test is relevant in this context;

b) The ability to impose financial contributions under s108 of the RMA, including consideration of these matters:
   i. Has the financial contribution been imposed in accordance with the purposes specified in the plan and has the level of financial contribution been determined in the manner described in the plan? –ss108(1)(a)and (b) of the RMA;
   ii. Does the imposition of the proposed financial contribution fairly and reasonably relate to the development to which the consent relates?
   iii. Is the condition requiring a financial contribution for the purposes of affordable housing fair or proportionate to both the residential development community and the wider community as the result of a process rather than arbitrary whim?

c) Does the Variation satisfy the tests in s32 of the Act?
d) Does the Variation give effect to the NPS-UD?
e) Is the financial contribution a tax?
f) Points addressing the detail of the Variation provisions including the scope of the Variation in relation to the ODP and PDP;
g) Transitional arrangements;
h) Is the passing on of financial contributions to the QLCHT legally valid?
i) Matters raised by iwi in relation to Sticky Forest; and
j) Should the Variation apply to retirement villages, resorts, rural zoned land and Remarkables Park?

104. Section 14 of our report sets out our final recommendation.

6 STATUTORY FRAMEWORK

6.1 Parts 1 and 2 RMA

105. Section 2 of the Act defines "environment" as follows:

> "**Environment** includes-
> (a) ecosystems and their constituent parts, including people and communities; and

(b) all natural and physical resources; and
(c) amenity values; and
(d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters:"

106. Section 3 of the Act defines the meaning of "effect":

> "**Meaning of "effect"**
> In this Act, unless the context otherwise requires, the term **effect** includes-
> (a) any positive or negative effect; and
> (b) any temporary or permanent effect; and
> (c) any past, present, or future effect; and
> (d) any cumulative effect which arises over time or in combination with other effects –
> regardless of the scale, intensity, duration, or frequency of the effect, and also includes-
> (e) any potential effect of high probability; and
> (f) any potential effect of low probability which has a high potential impact."

107. Section 5 of the Act states the purpose of the Act as promoting the sustainable management of natural and physical resources.[176] Sustainable management is defined in s5(2) as follows:

> "In this Act, **sustainable management** 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 wellbeing and for their health and safety while –
> (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
> (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
> (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment."

108. Section 6 RMA sets out several matters of national importance, which, in achieving the purpose of the Act, shall be recognised and provided for by all persons exercising functions and powers under the Act in relation to managing the use, development, and protection of natural and physical resources. In this hearing, s6(e) was relevant to matters raised in relation to Hāwea/Wānaka Sticky Forest and the history of dispute and settlement between the Crown and iwi over the land in question. Section 6(e) provides for the recognition and provision for "*the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga*:"

109. Section 7 sets out other matters to which we should have particular regard. The following are relevant:

> s.7(a) – kaitiakitanga;
> s.7(aa) - the ethic of stewardship;
> s.7(b) – the efficient use of natural and physical resources;
> s.7(c) - the maintenance and enhancement of amenity values;
> s.7(f) – the maintenance and enhancement of the quality of the environment.

110. Section 8 RMA addresses the Treaty of Waitangi and is particularly relevant to the matters concerning Hāwea/Wānaka Sticky Forest. It states:

> "In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

[176] Section 5(1)

6.2 Part 3 RMA

111. Section 18A sets out procedural principles.[177] It states:

> "Every person exercising powers and performing functions under this Act must take all practicable steps to –
> (a) use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised; and
> (b) ensure that policy statements and plans-
> i. include only those matters relevant to the purpose of this Act; and
> ii. are worded in a way that is clear and concise; and
> (c) promote collaboration between or among local authorities on their common resource management issues."

6.3 Part 4 RMA

112. The functions of territorial authorities are set out in s31. We set out s31 in full later in our report. Subsection (1)(a) states the first function as being:

> "the establishment, implementation and review of objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:"

113. Section 31(1)(aa) provides that a territorial authority's functions include:

> "(aa) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district:"

114. As discussed later in our report, there were different statutory interpretations placed on s31(1)(aa) and suggestions were made by some submitters that the Council's powers did not stretch to the nature of the financial contribution the Council now seeks to impose.

115. Section 32 is at the heart of the evaluation that must be undertaken by the Council in preparing its Variation, and by us in our consideration of it. We set out the relevant provisions of s32:[178]

> "(1) An evaluation report required under this Act must-
> (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
> (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by –
> i. identifying other reasonably practicable options for achieving the objectives; and
> ii. assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
> iii. summarising the reasons for deciding on the provisions; and
> (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
> (2) An assessment under subsection (1)(b)(ii) must –

---

177 Section 18A was inserted into the Act, as from 19 April 2017, by s9 of the Resource Legislation Amendment Act 2017. It was part of a range of amendments intended to create better efficiencies and to minimise the cost of RMA processes.

178 Sections 32(3)-(5) are not directly relevant to the matters at issue. Subsection (6) defines objectives, proposal and provisions so far as they relate to section 32.

a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for –
   i. economic growth that are anticipated to be provided or reduced, and
   ii. employment that are anticipated to be provided or reduced; and
b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions."

….

(4)A If the proposal is a proposed policy statement, plan, or change prepared in accordance with any of the processes provided for in Schedule 1, the evaluation report must -

(a) summarise all advice concerning the proposal received from iwi authorities under the relevant provisions of Schedule 1; and

(b) summarise the response to the advice, including any provisions of the proposal that are intended to give effect to the advice.

116. Section 32AA of the Act is relevant if a further evaluation is required under the Act as the result of changes made to, or proposed to, the proposal since the evaluation report was completed. The further evaluation must be undertaken in accordance with s32(1) to (4) and at a level of detail that corresponds to the scale and significance of the changes.

6.4 Part 5 RMA

117. The purpose of a national policy statement (NPS) is set out in section 45(1) of the Act as being "*to state objectives and policies for matters of national significance that are relevant to achieving the purpose of this Act.*" A national policy statement must state objectives and policies for matters of national significance that are relevant to achieving the purpose of the Act.[179] It may also state a range of other matters, including (relevantly here):[180]

- matters that local authorities must consider in preparing policy statements and plans;
- methods or requirements in policy statements or plans, and specifications for how local authorities must apply those methods or requirements, including the use of models and formulae;
- matters that local authorities are required to achieve or provide for in policy statements and plans;
- constraints or limits on the content of policy statements or plans;
- objectives and policies that must be included in policy statements and plans;
- directions to local authorities on the collection and publication of specific information;
- directions to local authorities on monitoring and reporting on relevant matters.

118. The relevant NPS here is the NPS-UD, which we discuss in more detail later in our report. Section 55(2) RMA requires that a local authority must amend a document if a national policy statement directs that so that the objectives and policies of the plan give effect to the NPS.

119. Sections 72-76 address district plans. The salient points of these provisions are as follows:

- District plans are prepared, implemented and administered so as to assist territorial authorities to carry out their functions in order to achieve the purpose of the Act.[181]

179 Section 45A(1)
180 Section 45A(2)
181 Section 72

- A territorial authority must prepare and change its district plan in accordance with its functions under s31, the provisions of Part 2, its obligation (if any) to prepare an evaluation report in accordance with s32, its obligation to have particular regard to an evaluation report prepared in accordance with s32 and a national policy statement.[182]
- In addition to the requirements of ss75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to a proposed regional policy statement or a proposed regional plan of the region in regard to any matter of regional significance for which the regional council has primary responsibility under Part 4 of the Act. It must also have regard to any management plans and strategies prepared under the Act to the extent that their content has a bearing on resource management issues of the district.[183] We address regional planning instruments later in our report. We do not consider there to be any other relevant management plans and strategies that must be considered under this head.
- So too, a territorial authority must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district.[184] We address this in more detail in our discussion of iwi matters concerning Hāwea/Wānaka Sticky Forest.
- A territorial authority must not have regard to trade competition or the effects of trade competition when preparing or changing a district plan.[185]
- A district plan must state objectives for the district, policies to implement the objectives and the rules (if any) to implement the policies.[186]
- A district plan may also state the significant resource management issues for the district; methods, other than rules, for implementing policies for the district; the principal reasons for adopting the policies and methods; the environmental results expected from the policies and methods; the procedures for monitoring the efficiency and effectiveness of the policies and methods; the processes for dealing with issues that cross territorial boundaries; the information to be included within a resource consent application; and any other information required for the purpose of the territorial authority's functions, powers and duties under the Act.[187]
- A district plan must give effect to, amongst other things, any national policy statement and any regional policy statement.[188]
- Rules may be included in a district plan for the purpose of the territorial authority carrying out its functions and achieving the objectives and policies of the plan.[189]
- In making a rule, the territorial authority is to have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.[190]

120. Sections 77A-77E set out additional provisions for regional and district rules. Section 77E is particularly relevant to this Variation as it addresses a council's powers to make a rule about financial contributions. It states:

> "**Section 77E Local authority may make rule about financial contributions**

182 Section 74(1)
183 Section 74(2)
184 Section 74(2A)
185 Section 74(3)
186 Section 75(1)
187 Section 75(2)(b) and (c)
188 Section 75(3)(a) and (c)
189 Section 76(1)
190 Section 76(3)

(1) A local authority may make a rule requiring a financial contribution for any class of activity other than a prohibited activity.
(2) 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.
(3) To avoid doubt, if a rule requiring a financial contribution is incorporated into a specified territorial authority's district plan under section 77G, the rule does not have immediate legal effect under section 86B when an IPI incorporating the standard is notified."
(4) In this section and section 77T, financial contribution has the same meaning as in section 108(9)."

6.5 Part 6 RMA

121. Section 108 addresses conditions of resource consents. The following provisions are relevant to the Variation:

"108 Conditions of resource consents

(1) Except as expressly provided in this section and subject to section 108AA and any regulations, a resource consent may be granted on any condition that the consent authority considers appropriate, including any condition of a kind referred to in subsection (2).

(2) A resource consent may include any one or more of the following conditions:
    (a) subject to subsection (10), a condition requiring that a financial contribution be made:
    ……..

(9) In this section, financial contribution means a contribution of-
    a) money; or
    b) land, including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent), but excluding Māori land within the meaning of Te Ture Whenua Māori Act 1993 unless that Act provides otherwise; or
    c) a combination of money and land.

(10) A consent authority must not include a condition in a resource consent requiring a financial contribution unless-
    a) the condition is imposed in accordance with the purposes specified in the plan or proposed plan (including the purpose of ensuring positive effects on the environment to offset any adverse effect); and
    b) the level of contribution is determined in the manner described in the plan or proposed plan."

122. Section 108AA sets out requirements for conditions of resource consents. It states:

"**108AA – Requirements for conditions of resource consents**

(1) A consent authority must not include a condition in a resource consent for an activity unless-
    (a) the applicant for the resource consent agrees to the condition; or
    (b) the condition is directly connected to 1 or more of the following:
        (i) an adverse effect of the activity on the environment:
        (ii) an applicable district or regional rule, or a national environmental standard;
        (iii) a wastewater environmental performance standard made under section 138 of the Water Services Act 2021; or

(c) the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.

(2) Subsection (1) does not limit this Act or regulations made under it.

(3) This section does not limit section 77A (power to make rules to apply to classes of activities and specify conditions), 106 (consent authority may refuse subdivision consent in certain circumstances), or 220 (condition of subdivision consents).

(4) For the purpose of this section, a district or regional rule or a national environmental standard is applicable if the application of that rule or standard to the activity is the reason, or one of the reasons, that a resource consent is required for the activity.

(5) Nothing in this section affects section 108(2)(a) (which enables a resource consent to include a condition requiring a financial contribution)."

123. Section 111 states that where Council has received a cash contribution under section 108(2)(a), it is to deal with that money in reasonable accordance with the purpose for which the money was received.

6.6 Schedule 1 RMA

124. Schedule 1 sets out a number of provisions relating to the preparation and change of policy statements and plans by local authorities.

7 OTHER STATUTORY DOCUMENTS

125. We discuss later in our report the Local Government Act 2002 and the Local Government (Rating) Act 2002. These are relevant to the consideration of a rates option under section 32.

8 QUEENSTOWN LAKES COMMUNITY HOUSING TRUST AND FUNDING FROM DEVELOPMENT TO DATE

8.1 Queenstown Lakes Community Housing Trust

126. The QLCHT was established in 2007 as an action from the "HOPE strategy".[191] The QLCHT is an independent, not for profit, registered Community Housing Provider.[192] Its key objective was stated by Ms Scott, QLCHT's Chief Executive, as "*ensuring residents of the Queenstown Lakes District have access to decent, affordable and secure tenant housing at a cost within their means*."[193] The QLCHT is governed by a Trust Deed administered by a Board of six trustees and is regulated by the Community Housing Regulatory Authority. It has provided a range of housing programmes in the community, including rent-to-buy and assisted ownership, which is intended to provide *"an enabling process for households to transition along the housing continuum."*[194]

---

191 HOPE refers to Housing our People in our Environment strategy, released by the Council in 2005. It set out 32 actions to improve housing affordability in the district. Refer Statement of evidence in chief of Amy Bowbyes, paragraph 3.6

192 Statement of evidence of Julie Scott, paragraphs 7 and 8

193 Statement of evidence of Julie Scott, paragraph 9

194 Statement of evidence of Julie Scott, paragraphs 10 and 11. At the hearing, Ms Scott advised the QLCHT no longer provides rent-to-buy or assisted ownership options.

127. The SIA prepared in support of the Variation described the types of housing provided by QLCHT as follows:[195]

- Public Housing Rental – QLCHT is the landlord, housing is funded through the Ministry of Social Development (we note Ms Scott described this funding as coming from the Ministry of Housing and Urban Development)[196];
- Affordable Rental – fixed term for 5 years, rent based on either 80% of market rate or 30-35% of gross household income;
- Senior Housing – sits under either Affordable Rental or Public Housing, depending on a household's financial position at the time of application. Senior Housing tenancies do not have an end date;
- Rent Saver – fixed term of 5 years where a savings incentive is applied, matched up to $2,600 annually. QLCHT will put matched savings towards a secure home deposit;
- Secure Home – leasehold ownership tenure borne out of the Mayoral Housing Taskforce in 2017. The purchase price of the dwelling is solely derived from construction cost, with the land subject to a 100-year land lease. Residents must remain in the house for the first 3 years, after which they may sell back to QLCHT for a price determined by cost and inflation. Residents pay ground rent annually.

128. The SIA also recorded basic eligibility criteria as including that the applicant must have lived in the QLD for a minimum of six months and have made it their permanent home. At least one adult member of the household must hold New Zealand residency or New Zealand citizenship. At least one member of the household must be working full-time (minimum 30 hours per week). The applicant for housing must not own or have shares in any property or land anywhere in the world.

129. Ms Scott told us that the QLCHT currently has 1144 eligible households on its waiting list, with over 300 new registrations in the past 12 months. 83% of these households currently reside in the wider Wakatipu Basin, with 17% in the Upper Clutha area.[197] QLCHT's submission noted that those on the waiting list (at the time the submission was lodged in October 2022) comprised 53% families with children, 17% couples, 27% sole individuals and 3% senior citizens.

130. The relationship between the Council and the QLCHT is governed by a Relationship Framework Agreement. This determines how the two parties will work together to deliver affordable housing and, in particular, how the contributions from the Council must be used by the QLCHT. By way of example, any land transferred to the QLCHT through the contribution process must only be used for affordable housing. The QLCHT undertakes quarterly reporting to the Council, confirming the inclusionary housing contributions it has received and the status of those contributions.[198] The Relationship Framework Agreement must be reviewed every 3 years and was last reviewed in 2022, at which time some minor amendments to Schedules 1 and 2 of the Relationship Framework Agreement were made relating to the protocols that apply to the Secure Home Programme and Rental Programme to improve their operability. No amendments were made to the wider framework.[199]

131. An important element of the model used to date is that affordable housing must be retained as such. Ms Scott provided us with an example of a covenant typically entered into when land

195 Social Impact Assessment, section 4.2.2
196 Statement of evidence of Julie Scott, paragraph 11
197 Statement of evidence of Julie Scott, paragraph 14
198 Statement of evidence of Julie Scott, paragraphs 21-22
199 Statement of evidence in chief of Amy Bowbyes, paragraph 3.9

is provided to QLCHT. This includes recording that the land is endowment land and "*must be held on trust for the purposes of affordable housing.*"[200] It also records that the land in question is transferred to QLCHT "*expressly on the basis that the Covenantor would only use the Land for the purposes of providing Approved Affordable Housing Solutions*."[201] The same requirement is set out in the covenants provided by QLCHT.[202] "*Approved Affordable Housing Solutions*" are defined as "*means housing solutions to be provided to Eligible Persons by the Covenantor on the Land pursuant to Affordable Housing programs [sic] approved by the Covenantee*."[203] The retention factor is discussed in more detail later in our report.

132. We asked Ms Scott about whether, in her view, affordable housing could or should be located throughout the District as suggested by proposed Strategic Objective 3.2.1.8 (as part of the Variation) and its supporting Policies 3.3.38, 3.3.39 and 3.3.40, particularly Policy 3.3.38 which seeks to ensure that affordable housing choices are incorporated into new neighbourhoods and within the development of existing neighbourhoods. Ms Scott told us that it was not about location, but increasing the provision and supply of affordable housing. That should be the focus. She said she would not be concerned if the affordable housing was created in one area over another or in different parts of the District.

8.2 QLCHT funding to date

133. The QLCHT has received $48 million in land and/ or cash from developers through the funding provided to date. This has been used to deliver affordable housing to 272 households. The Council has facilitated the negotiations and delivery of the contributions since 2003. Ms Scott acknowledged that the QLCHT has been able to leverage the contributions by generating additional capital and favourable finance facilities through central government, community trusts and market banks, which has in turn enabled it to "*scale up*" the delivery of affordable housing. Examples of this were provided in Ms Scott's evidence. In terms of central government assistance, the QLCHT has to date received grants, operating supplements and interest-free loans totalling $16 million, with a further $20 million of interest-free loans currently under contract with the Ministry for Housing and Urban Development. The QLCHT currently has net assets of $64 million.[204]

134. In recent years, the Council has granted consent to a number of Special Housing Areas (SHAs) consented under HASHAA. Through these SHAs and other forms of development achieved through private plan changes, the Council has negotiated agreements with developers to secure housing contributions. The funding provided by developers has assisted to fund the QLCHT.

9 STEPS COUNCIL HAS TAKEN TO DATE TO ADDRESS AFFORDABLE HOUSING

135. Ms Bowbyes' evidence set out in detail several steps taken by the Council to date to attempt to address housing affordability in the District.[205] These include:
    - In 2007, several years prior to HASHAA coming into force, the Council notified PC24 which sought to introduce a link to the provision of affordable housing through development in

200 Covenant, clause 2
201 Covenant, clause 3
202 Covenant, clause 5,1
203 Covenant, Interpretation clause 2
204 Statement of evidence of Julie Scott, paragraphs 16-20
205 Statement of evidence in chief of Amy Bowbyes, paragraphs 3.13-3.36

the District. This plan change was appealed by a number of parties to the Environment Court and on to higher Courts. The final result of that process was the insertion of an objective and policies into the ODP relating to enabling affordable housing, but no specific rules or requirements. PC24 was the subject of much discussion at the hearing. We address PC24 in more detail in later sections of our report.

- As outlined above, the Council has negotiated agreements with developers through private plan change requests;
- HASHAA developments were combined with the Council's "Lead Policy" to ensure a portion of housing supply created through HASHAA would remain affordable in perpetuity. This was achieved through requiring a percentage of all qualifying developments in Council recommended SHAs to contribute land and/or money to the Trust, resulting in over $23 million of contributions;
- The Council has made its own land contributions to QLCHT at Arrowtown (68 units at Jopp St and 6 units in Suffolk St), and the Lakeview site in Queenstown (5% of the yields of the sale of this highly priced piece of land in the CBD are to be provided for affordable housing);[206]
- The Mayoral Taskforce on Housing Affordability 2016-2017 provided a commitment to investigate key proposals, including developing an Affordable Ownership Programme delivered by the QLCHT, establishing a pool of affordable longer-term rentals, additional funding models, enabling more urban land for housing and increasing density;
- The Council's Homes Strategy 2021-2031 confirmed the action for improved housing outcomes set by the Mayoral Taskforce. It provided actions to support the delivery of affordable housing in the district. The Homes Strategy confirmed the Council's interest in partnering with government for housing solutions as well as pursuing locally-driven solutions such as inclusionary housing;
- The notification of this Variation in October 2022; and
- The Joint Housing Action Plan 2023-2028, designed to implement the Homes Strategy. This was developed in partnership with central government and the QLCHT, and determined key actions for each agency in addressing the District's housing challenges.

136. Ms Bowbyes explained that the Council has a number of workstreams in place at present seeking to address housing supply and diversity. These include implementing key actions of the Queenstown Lakes Spatial Plan 2021, which aligns with actions in the Homes Strategy and the Joint Housing Action Plan.[207]

137. Ms Bowbyes noted that the number of Kainga Ora homes owned and managed in the District is just 13, and has been the same number for several years. In Ms Bowbyes opinion, central government's investment in assisted housing in the District has not kept pace with population growth and need.[208]

---

206 At paragraphs 2.8-2.11 of her supplementary statement, Ms Bowbyes provided information requested by the Panel to explain how the Council had arrived at a 5% contribution at the Lakeview site (refer also Attachment 1 to that evidence). In recognising housing affordability for the District, the Council 2017 report noted that the sum of the contribution to be made to address affordable housing should include consideration of factors such as the Council's investment in the land to date, providing for housing on the site and the potential to increase housing supply on the land via Plan Change 50. A contribution rate of 5% was recommended by Council officers to the Council.

207 Statement of evidence in chief of Amy Bowbyes, paragraph 4.1

208 Statement of evidence in chief of Amy Bowbyes, paragraph 3.2

10 THE IMPACT OF RESIDENTIAL VISITOR ACCOMMODATION

138. Ms Bowbyes noted that the issues associated with RVA have arisen through the development and subsequent rise in popularity of online home sharing platforms such as Air BnB. RVA is impacting on the availability of housing in the District for residents. In November 2017, the Council introduced a variation which sought to place restrictions on the number of nights per year that a dwelling could be used for short term letting. It sought to limit the ability for a residential unit to be used for RVA but enable flexibility for homestays. Ms Bowbyes stated that the key issue that the variation sought to address was the impact of short-term letting on housing availability and affordability, along with addressing impacts on residential cohesion, character, amenity, traffic and parking.[209]

139. In questioning by the Panel, Ms Bowbyes explained that one of the key issues in the RVA hearing was the difficulty in limiting a property's use of RVA while also enabling the property to be used as a holiday home. In her supplementary statement, she outlined her understanding of the key reasons for the Council agreeing to the mediated outcome in the Environment Court appeal process. This primarily related to a lack of relevant data on key matters.[210] Ms Bowbyes expanded on these points in her rebuttal evidence.[211]

140. The RVA rules now applying through the PDP require that a person using their home for RVA must register with the Council. Different rules restricting RVA use then apply in different residential zones of the District. RVA is a permitted activity in zones where residential activities are enabled so long as it complies with specified standards. Breaches of those standards trigger a controlled or restricted discretionary consent. The number of permitted days that RVA activity can operate differs across the various zones, ranging from 42 days to any number of nights.[212]

141. Ms Bowbyes also provided the Panel with information about how the Council's rating system is applied for each rate fund and RVA in the District.[213] She confirmed that the requirement for RVA activities to now be registered with the Council was expected to enable more data to be collected on the impact of short-term letting to inform future District planning decisions. Nevertheless, she expressed a note of caution in considering arguments made by submitters that managing RVA was the key method for addressing the District's affordable housing issues. She noted it is one tool and that as the RVA provisions had only recently been settled, it was appropriate for the Council to monitor the provisions before considering any further action.[214]

142. As part of the questions put to the planners through the expert conferencing, we sought the views of planners as to the effect of RVA and other short term rental options on housing affordability across the District, taking into account Mr Colegrave's suggestion that these types of short-term rental options now accounted for approximately 23% of the dwelling use in the District compared to 2.3% nationally.

---

209 Statement of evidence in chief of Amy Bowbyes, paragraphs 4.21-4.22

210 Supplementary statement of evidence of Amy Bowbyes, paragraphs 2.3-2.5

211 Rebuttal evidence of Amy Bowbyes, paragraphs 2.9-2.12

212 Council Practice Note January 2023 Operation of the visitor accommodation provisions in the District Plan, referenced in Ms Bowbyes' supplementary statement of evidence at paragraph 2.2

213 Supplementary Statement of evidence of Amy Bowbyes, paragraph 2.3

214 Rebuttal evidence of Amy Bowbyes, paragraph 2.13

143. As we noted earlier in our report, the planners agreed that visitor accommodation options had, and were contributing to the housing affordability issues in the District.[215] For completeness, we note that we did not hear any different views or opinions from any of the parties during the hearing, or through the further planning evidence we received. However, we also note the point made by the planners that there was limited data available for the planners to reach a view or to determine the actual extent and impact of short-term rental options on housing affordability, and availability within QLD. The Council raised the same point in its reports and evidence.

144. We understand that in the recently heard Ladies Mile Variation, the Council proposed provisions to control RVA. These were to provide for limited RVA in the High Density Residential Precinct, Commercial Precinct and Glenpanel Precinct and to avoid RVA altogether in the Low and Medium Density Residential Precincts.

145. Overall, it was very clear to us from Ms Bowbyes' evidence, the Planning JWS, the Economist JWS and evidence for submitters, that RVA and other short-term rental options are having a significant impact in the District and are contributing to the housing affordability issue. We particularly note the point made by Ms Bowbyes and other witnesses that there is a lack of data on the extent of this impact. That is unfortunate. As we have already mentioned, Ms Bowbyes noted in her evidence that this lack of data was one of the reasons for the Environment Court agreeing to the terms of the consent order put before it settling appeals on the RVA section of the PDP appeals. Clearly, urgent work is required in this area. We can take the matter no further.

11 PLANNING FRAMEWORK

11.1 National Policy Statement – Urban Development 2020 (NPS-UD)

146. It was the position of most, if not all, of the submitters in opposition that the Variation would not give effect to the NPS-UD and was in fact contrary to it.

147. In *Middle Hill*, the Environment Court stated the purpose of the NPS-UD as follows:[216]

> "*The NPS-UD has the broad objective of ensuring that New Zealand's towns and cities are well-functioning urban environments that meet the changing needs of New Zealand's diverse communities. Its emphasis is to direct local authorities to enable greater land supply and ensure that planning is responsive to changes in demand, while seeking to ensure that new development capacity enabled by councils is of a form and in locations that meet the diverse needs of communities and encourage well-functioning, liveable urban environments. It also requires councils to remove overly restrictive rules that affect urban development outcomes in New Zealand cities*."

148. As we noted earlier in our report, the Variation is required to give effect to the objectives and policies of the NPS-UD. We consider the most relevant of these to be the following:

> **Objective 1:** New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.

---

215 Joint Witness Statement of Planning Experts dated 30 and 31 January 2024, paragraph 3.2.3

216 *Middle Hill Limited v Auckland Council* [2022] NZEnvC 162, at [33]

Objective 2: Planning decisions improve housing affordability by supporting competitive land and developments markets.

Objective 5: Planning decisions relating to urban environments, and FDSs, take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).[217]

Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

(a) have or enable a variety of homes that:
    (i) meet the needs, in terms of type, price, and location, of different households; and
    (ii) enable Māori to express their cultural traditions and norms; and
(b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and
(c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and
(d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and
(e) support reductions in greenhouse gas emissions; and
(f) are resilient to the likely current and future effects of climate change.

Policy 2: Tier 1, 2 and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.[218]

Policy 9: Local authorities, in taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) in relation to urban environments, must:

(a) involve hapu and iwi in the preparation of RMA planning documents and any FDSs by undertaking effective consultation that is early, meaningful and, as far as practicable, in accordance with tikanga Māori; and
(b) when preparing RMA planning documents and FDSs, take into account the values and aspirations of hapu and iwi for urban development; and
(c) provide opportunities in appropriate circumstances for Māori involvement in decision-making on resource consents, designations, heritage orders, and water conservation orders, including in relation to sites of significance to Māori and issues of cultural significance; and
(d) operate in a way that is consistent with iwi participation legislation.

149. The NPS-UD defines '**development capacity**' as meaning:

> "… the capacity of land to be developed for housing or for business use, based on:
>
> a) the zoning, objectives, policies, rules, and overlays that apply in the relevant proposed and operative RMA planning documents; and
> b) the provision of adequate development infrastructure to support the development of land for housing or business use."

150. There was some discussion at the hearing as to the interpretation of the NPS-UD as regards housing and/or business use. With reference to the above definition of 'development capacity', we interpret the NPS-UD as defining land to be developed for housing, rather than the development of housing, or housing use. That interpretation is supported by subparagraph (b) of the definition, which refers to the provision of adequate development

---

217 The term "FDS" is defined in the NPS-UD as "Future Development Strategy required by subpart 4 of Part 3". QLDC is required to have a Future Development Strategy.

218 We note that QLDC is a Tier 2 local authority.

infrastructure to support the development of land for housing. This point is important because the Variation is directed at subdivision activities for residential purposes and residential development as defined (see earlier). It is not directed at the actual provision of housing. Housing on the developed lots is generally provided by private owners of the lots in question. In some cases, the provision of the housing is a permitted activity. It is generally accepted resource management law that conditions cannot be imposed on permitted activities. However, we note that s77E(1) of the RMA, introduced to the Act in December 2021, is an exception to this approach, expressly providing for financial contributions to be imposed as conditions on any class of activity other than a prohibited activity.

151. Our evaluation of the Variation against the NPS-UD requires consideration of the term "urban environment". This term is defined in the NPS-UD as follows:

> "**urban environment** means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:
> (a) is, or is intended to be, predominantly urban in character; and
> (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people."

152. We received some submissions suggesting particular parts of the District should not be subject to the Variation because they were not urban in character. These submissions tended to address the issue at a more general level rather with specific reference to the NPS-UD definition. The economic evidence considered the District as a whole, as opposed to considering whether the Variation should apply to identified parts of the District, where population centres were highest. Given our final recommendation, we have not come to a definitive view on this matter but address the question of the consistency of the Variation with the NPS-UD in section 13.4 of our report. We address the application of the Variation to resorts, retirement villages, rural zoned land and Remarkables Park in section 13.10 of our report.

153. Part 3 of the NPS-UD sets out a non-exhaustive list of actions that local authorities must do to give effect to the objectives and policies of the NPS-UD. Nothing in this part of the NPS-UD limits the general obligation under the Act to give effect to those objectives and policies.[219]

154. Subpart 1 of Part 3 addresses the provision of development capacity. Clause 3.2 sets out provisions related to sufficient development capacity for housing. This applies to Tier 1, 2 and 3 local authorities. In summary, it states:

- The local authority must provide at least sufficient development capacity to meet expected demand for housing in existing urban areas and for both standalone dwellings and attached dwellings, and in the short, medium and long term.
- In order to be sufficient to meet expected demand for housing, the development capacity must be plan-enabled, infrastructure-ready, feasible and reasonably expected to be realised, and for Tier 1 and 2 local authorities, meet the expected demand plus the appropriate competitiveness margin.

155. Clause 3.4 of Part 3 defines the terms "plan-enabled" and "infrastructure-ready". These terms are important to the issues raised by submitters in this hearing and we set out the definitions in full:

> "(1) Development capacity is **plan-enabled** for housing or for business land if:
> (a) in relation to the short term, it is on land that is zoned for housing or for business use (as applicable) in an operative district plan

[219] Clause 3.1(1) NPS-UD

(b) in relation to the medium term, either paragraph (a) applies, or it is on land that is zoned for housing or for business use (as applicable) in a proposed district plan
(c) in relation to the long term, either paragraph (b) applies, or it is on land identified by the local authority for future urban use or urban intensification in an FDS or, if the local authority is not required to have an FDS, any other relevant plan or strategy.

(2) For the purpose of subclause (1), land is **zoned** for housing or for business use (as applicable) only if the housing or business use is a permitted, controlled, or restricted discretionary activity on that land.

(3) Development capacity is **infrastructure-ready** if:
(d) in relation to the short term, there is adequate existing development infrastructure to support the development of the land
(e) in relation to the medium term, either subparagraph (a) applies, or funding for adequate development infrastructure to support development of the land is identified in a long-term plan
(f) in relation to the long-term, either subparagraph (b) applies, or the development infrastructure to support the development capacity is identified in the local authority's infrastructure strategy (as required as part of its long-term plan)."

156. Clause 3.5 of Part 3 requires that local authorities be satisfied that the additional infrastructure to service the development capacity is likely to be available.

157. Clause 3.10 of Part 3 requires that the Council assess the demand for housing and for business land in urban environments, and that the development capacity is sufficient (as described in clauses 3.2 and 3.3) to meet that demand in the District in the short, medium and long term. This requirement is addressed through the preparation of the Housing and Business Development Capacity Assessment (HBA).

158. Clause 3.22 of Part 3 defines "competitiveness margin" as:
(1) A competitiveness margin is a margin of development capacity, over and above the expected demand that tier 1 and 2 local authorities are required to provide, that is required in order to support choice and competitiveness in housing and business land markets.

(2) The competitiveness markets for both housing and business land are:
(a) for the short term, 20%
(b) for the medium term, 20%
(c) for the long term, 15%."

159. Housing "bottom lines" for tiers 1, 2 and 3 are set out in Clause 3.6 of Part 3. These refer to HBAs. As a Tier 2 local authority, QLDC is required to prepare a HBA every 3 years, and make this publicly available.[220] Importantly, the HBA provisions raise the question of housing affordability. The analysis to be undertaken by the Council must be informed by market indicators (including indicators of housing affordability, housing demand and housing supply and information about household incomes, housing prices and rents) and price efficiency indicators.[221]

160. Clause 3.23 of Part 3 requires that the Council include in each HBA an analysis of how planning decisions and provision of infrastructure affects the affordability and competitiveness of the local housing market. This includes an analysis of how the demand of different groups within

220 Clause 3.19(1) of subpart 5 of Part 3 NPS-UD
221 Clause 3.23 of subpart 5 of Part 3 NPS-UD

the community, for example low income households, will be met. The analysis must be informed by market indicators, including indicators of housing affordability.

161. Clause 3.24(5) states that:

> "Every HBA must:
>
> (a) set out a range of projections for demand for housing in the short term, medium term, and long term; and
> (b) identify which of the projections are the most likely in each of the short term, medium term, and long term; and
> (c) set out the assumptions underpinning the different projections and the reason for selecting the most likely; and
> (d) if those assumptions involve a high level of uncertainty, the nature and potential effects of that uncertainty."

162. The Council developed two HBAs in 2016 and 2021 and is currently developing the 2024 assessment. The 2021 HBA identified that the District had sufficient plan-enabled capacity to accommodate housing growth across the urban environment that is more than sufficient to meet the projected demand in all locations of the District in the short, medium[222] and long term.[223] However, the Council's position was that while there was sufficient plan-enabled capacity to meet demand, that did not completely address the sufficiency of land.[224] The infrastructure-ready capacity and its funding were also relevant to understanding the District's housing supply. A summary of the infrastructure investment that Council is planning to make through the 2021-31 Long Term Plan, totalling $1.67 billion capital investment, to be funded via debt, was provided.[225]

163. The 2021 HBA identified a shortfall of housing in the District in the lower price bands and that, over time, house price growth was expected to be faster than growth in real incomes in the District. It was therefore expected that housing affordability would continue to decline. With reference to the 2021 HBA, Ms Bowbyes stated:[226]

> "*The upward pressure on housing prices is not attributed to planning and infrastructure, rather a range of other social and national factors not impacted or influenced by the District Plan*."

164. We discuss the HBA assessments in more detail in the Economics section of our report. We set out our findings on whether the Variation gives effect to the NPS-UD in section 13.4 of our report.

11.2 Partially Operative RPS 2019 and Proposed RPS 2021

165. Section 74(2)(i) requires us to have regard to the Partially Operative Regional Policy Statement for Otago 2019 (PORPS19) and the Proposed Otago Regional Policy Statement 2021 (PRPS21) when considering this Variation, and we found Ms Bowbyes' summary of the relevant PORPS19 and PRPS21 objectives and policies helpful.[227] We note for completeness we did not

---

222 Nearly 48,000 additional dwellings

223 Nearly 65,000 additional dwellings

224 Clause 3.2 of the NPS-UD is referred to above. In order to be sufficient to meet expected demand for housing, the development capacity must be plan-enabled, infrastructure-ready, feasible and reasonably expected to be realised.

225 Statement of evidence in chief of Amy Bowbyes, paragraphs 4.3-4.12

226 Statement of evidence in chief of Amy Bowbyes, paragraph 4.19, referencing page 191 of the 2021 HBA

227 Appendix Two: Statutory Plans to Ms Bowbyes' evidence in chief

receive any evidence expressing a different opinion to that of Ms Bowbyes' summary of the relevant issues for us to consider under these regional policy documents. With this, we note that we did not receive the same level of analysis and attention given to these regional planning documents as we did for the NPS-UD, which could be expected given the NPS-UD's requirements. The analysis we did receive placed the relevant PORPS19 and PRPS21 provisions within the NPS-UD context.[228]

166. Turning first to the PORPS19, it appears that its overarching policy approach seeks to ensure that the Region's resources are used sustainably to promote the economic, social and cultural wellbeing of its residents and communities.[229] With this, it seeks to ensure that the social and economic wellbeing and the health and safety of its people and communities are provided for during the development process.[230] To achieve these outcomes, it seeks to ensure that sufficient housing and business development opportunities are provided for throughout the Region. In many ways, this policy direction reflects and seeks to give effect to the NPS-UD's Objectives 1, 2 and 3 and supporting Policy 1, along with Part 2 of the RMA.

167. We find that the provision of affordable housing is consistent with the outcomes sought by the PORPS19, and, as with the NPS-UD, would assist in promoting the social and economic wellbeing of the Region's, and in particular the District's, residents and communities by providing a range of housing options for all of its residents. We also acknowledge that the District has provided sufficient opportunities through its land supply strategy for housing and business development activities to take place within the District and has had appropriate regard to the PORPS19 policy approaches in developing this Variation.

168. The PRPS21 has a similar, but more focused approach than the PORPS19 towards the provision of affordable housing within the Region, and its policy approaches are more closely aligned to the outcomes sought by the NPS-UD. This is not unexpected given the two documents were prepared at similar times. This is reflected in the PRPS21's Urban Development and Form section, including Objectives UFD 1 and 2, with Objective 2 stating:[231]

> *Development of urban areas*
> *The development and change of Otago's urban areas:*
> *1) Improves housing choice, quality and affordability*

169. Objective 3 (UFD-03) states:

> *There is sufficient development capacity supported by the integrated infrastructure provision for Otago's housing and business needs in the short, medium and long term*.

170. These are supported by Policies UDF 1 and 2, which seek to ensure that councils (supported by methods) can demonstrate that they are giving effect to Objective 3. Policy 3 (UFD-03) seeks to ensure that intensification within urban areas is contributing to the establishment of a well-functioning urban environment.

---

228 For example, Statement of evidence in chief of Chris Ferguson, paragraphs 58-64; the Council's section 32 evaluation sections 5.15-5.19; the Council's section 42A Report section 2.6; the Otago Regional Council's submission #34

229 PORPS19: Chapter One Objective 1.1

230 PORPS19: Policy 1.1.2

231 PRPS21, page 186

171. It is clear to us, just as with the PORPS19, that the concept of providing for affordable housing within the District is consistent with the outcomes sought by the PRPS21 and could result in further housing choice and affordable housing options for its residents as part of a well-functioning urban environment.

172. We note that, importantly, ORC's submission challenged the Variation's section 32 process and, while supporting the principal reasons for the Variation, suggested "*it's open to alternative and/or complimentary methods*" to achieve these outcomes.[232]

11.3 Operative and Proposed District Plan

173. The review of the Proposed District Plan (PDP) has been underway since 2016, and has been reviewed in a phased or staged process, with large parts now being made operative having been through the statutory process and beyond challenge. However, as Mr Ferguson[233] and Mr Mead[234] set out, the PDP has been divided into two volumes, with Volume A containing the land reviewed as part of the current PDP process and Volume B containing the land not yet included in the PDP review process, such as the Meadow Park Zone.

174. This approach is set out in Chapter 1 (1.1) of the PDP and is relevant to our consideration of the Variation, as the Variation would only apply to the chapters of the PDP contained in Volume A, with the decision to include Volume B chapters (should the Variation be adopted) being made as part of that process at that time. Mr Ferguson was of the view that as the Variation did not seek to vary Chapter 1 of the PDP, there may be uncertainty about its impacts on Volumes A and B. Mr Mead did not share this view and sought to address this issue in his Reply evidence by proposing amendments to the Variation.[235]

175. Section 4.10 of the ODP contains a set of objectives and policies that relate to affordable and community housing, introduced through PC24. As we noted earlier in our report, there are no methods associated with these ODP provisions. However, as Mr Goldsmith reminded us in his responses to our questions, these objectives and policies apply to any resource consent application the Council considers. As he said "*they are there and you have to address them …. and they were part of the thinking for the affordable housing contributions offered for the Jack's Point subdivision application*".[236] For completeness we have set out the ODP's Objective 4.10.1 below:

> "*Access to Community Housing or the provision of a range of Residential Activity that contributes to housing affordability in the District*."

176. Objective 4.10.1 is supported by three policies (4.10.1.1 to 4.10.1.3) that seek to provide for opportunities for low and moderate households to live in the District and enable community housing through the provision of voluntary approaches. Policy 4.10.1.2 requires that regard should be had to density, height and site coverage if it contributes to residential affordability.

177. As we discussed earlier in our report, the current ODP provisions have been used on a number of occasions to provide residential lots for the QLCHT affordable housing programme. These include Northlake subdivision (Wānaka) and Jack's Point (Queenstown). It appears that these

232 Section 2.1 of ORC Submission #34
233 Statement of evidence in chief of Chris Ferguson, paragraphs 38-43
234 Rebuttal evidence of David Mead, paragraphs 2.1-2.745
235 Reply evidence of David Mead, paragraph 2.4
236 Oral response to Panel questions 6 March 2024

provisions, while not as voluntary as some have suggested, in conjunction with the SHAs, have provided a limited degree of retained affordable housing options to the District.

178. Turning to the PDP, as noted earlier in our report, the Variation seeks to introduce a new chapter to the PDP and to also insert a new strategic objective (3.2.1.10) and supporting policies (3.3.52, 3.3.53 and 3.3.54) into the PDP's Strategic Chapter (Chapter 3). This raises questions about whether the Variation is structurally sound in plan making terms, both internally to the Variation (ensuring there is a line of logic between the strategic direction set out in Chapter 3 and the new Chapter 40) and within the PDP itself. That is, ensuring the Variation provisions are both vertically and horizontally sound and will not create '*flow on*' effects within the PDP and thereby create a set of unintended consequences.

179. Turning to the Variation provisions (vertical consistence) we discussed with Mr Mead the policy outcome sought by 3.3.52, which states:[237]

> "*Ensure that affordable housing choices for low to moderate income households are incorporated into new neighbourhoods and settlements and in redevelopments of existing neighbourhoods*."

180. We were concerned that this policy, which seeks to provide for affordable housing choice in new neighbourhoods and settlements and in redevelopments of existing neighbourhoods, had not been carried through to the wording of the objective and policies in the new Chapter 40. This was also a concern in light of Ms Scott's view that location of the actual affordable housing was a District-wide issue and not a neighbourhood issue.

181. Mr Mead sought to address our concerns in his Reply evidence. While he acknowledged Ms Scott's view that in planning terms it would be appropriate to have a "*spread of affordable housing options*" throughout the District,[238] he was of the opinion that the proposed strategic direction set out in Chapter 3's additional objectives and policies had been carried through and aligned with the policy approach in Chapter 40, and that these provisions enabled a spread of affordable housing options.[239] He noted that Objective 40.2.1 provided for affordable housing in different locations. The whole of that objective states:

> "*Provision of affordable housing for low to moderate income households in a way and at a rate that assists with providing a range of house types and prices in different locations so as to support social and economic well-being and manage natural and physical resources, in an integrated way*."

182. Given our final recommendation, we have not explored this issue further, save to suggest we do not believe this issue has been appropriately resolved. We have some concerns as to how affordable housing can be seen as a 'District Wide' issue and not as a neighbourhood or at very least a settlement issue through the proposed Variation provisions. Including a neighbourhood or settlement approach may be required to achieve a well-functioning urban environment.

183. Turning to the issue of the impact of the Variation's internal (horizontal) consistence with the other parts of the PDP, we did not receive any real evidence exploring this issue at the objective and policy level. As we have noted elsewhere in our report, it was clear to us that

237 Through our oral questions to David Mead

238 Reply evidence of David Mead, paragraph 2.4

239 Reply evidence of David Mead, paragraph 2.5

there was general acceptance that the primary objective and supporting policies were appropriate, subject to varying degrees of amendments. However, the methods were opposed by planning witnesses for opposing submitters.

184. Given our final recommendation, we have not explored this issue further, particularly as the Variation's proposed methods relate to other PDP sections (including methods). We have some degree of concern about how these provisions would effectively integrate (horizontal consistence) with the rest of the PDP.

11.4 Relevant non-RMA plans and strategies

185. As with the PORPS19 and the PRPS21, s74(2)(b) of the RMA requires us to take into account any other relevant management plans and strategies prepared under other Acts, including the Local Government Act 2002. These documents have been listed in 6.1 of the Council's s.32 evaluation and include:

- The 2005 QLDC HOPE strategy;
- The Council's Special Housing Area Policy[240] (July 2017)
- The 2017 Mayoral Taskforce on Housing Affordability (Oct 2017);
- The 2021 Homes Strategy;[241]
- The QLDC Housing Development Capacity Assessment (15 Sept 2021)[242]; and
- The Queenstown Lakes Spatial Plan.

186. It is clear to us from our reading of these documents (and all of the planning evidence we received, together with Ms Lee's SIA) that these documents acknowledge that housing affordability has been an issue in the District for some time and is only getting worse. We do not see any value in summarising these documents in detail, save to acknowledge we have had regard to them in our consideration of this Variation, particularly their desire to address the housing affordability issues within the District.

187. Section 74(2A) of the RMA requires us to take into account any relevant Iwi Management Plan(s) when considering this Variation. These were set out in the QLDC's section 32 evaluation and include *Kāi Tahu ki Otago* and *Te Tangi a Tauira – The Cry of the People*.[243] While *Kāi Tahu ki Otago* appears to be primarily aimed at addressing water quality and management issues, and *Te Tangi a Tauira* is aimed at assisting Ngāi Tahu achieve a meaningful rangatiratanga and kaitiakitanga in resource management processes and allocation of resources within the rohe,[244] it is clear to us that the issues associated with housing affordability and housing choice are of relevance and importance to mana whenua. The same issues are relevant to our consideration of Part 2 RMA.

---

240 Acknowledging this was also required under the previous HASHAA legislation

241 https://www.qldc.govt.nz/your-council/major-projects/improving-housing-outcomes/queenstown-lakes-homes-strategy/ viewed 18 May 2024

242 This is considered in detail below and while referenced here, forms part of other assessments within this report

243 Section 5.20 of the Council's section 32 Report

244 Section 1.2 (Kaupapa of this Plan) https://www.es.govt.nz/repository/libraries/id:26gi9ayo517q9stt81sd/hierarchy/about-us/plans-and-strategies/regional-plans/iwi-management-plan/documents/Te%20Tangi%20a%20Tauira%20-%20The%20Cry%20of%20the%20People.pdf, viewed 18 May 2024

188. We consider the Council's s32 evaluation took these Iwi Management Plans into account when developing the Variation. We have also taken them into account. We address iwi issues in more detail later in our report.

189. Finally under this heading, we acknowledge and have considered (as we have discussed elsewhere in this report) the funding relationship between the Council and the QLCHT and how this relates to this Variation.

12 THE ECONOMICS

190. As discussed earlier in our report:[245]
- the economists were agreed that the causes of the shortage of affordable housing were varied and complex, that they were long term structural issues, and would persist into the long term;
- This Variation is not intended to address the causes of the shortage of affordable housing;
- This Variation is only about increasing the provision of affordable housing.

191. Elsewhere we acknowledge that inclusionary housing in general, and the Variation in particular, are just one part of the solution to the shortage of affordable housing, and that it needs to be set within a wider strategy addressing housing.

192. As such, the economic issues that are relevant to our recommendations are restricted to those arising from the provision of affordable housing as proposed through the Variation. These can be summarised as:
- How much affordable housing will be provided through the Variation?
- What are the benefits of this provision?
- What are the costs of this provision?
- Who bears the costs of this provision?

193. Once these have been addressed, there is a separate exercise of considering the reasonable alternatives to the proposed Variation in light of our findings on the above. One alternative to be considered is to do nothing – allowing the current practice to continue.

12.1 How much affordable housing will be provided through the Variation?

194. We were disappointed that no-one made any attempt to estimate how much affordable housing might flow from the implementation of the Variation. Mr Eaqub in the s32 Report worked with an assumption of 1000 households over 30 years.[246] His key findings summary stated that *"up to 1,000 IZ homes may be delivered over the next 30 years"*[247]. We understand from his discussion with us that this figure is based on historical averages of house construction in the District and the outcome that would flow from applying the Variation's 5% financial contribution. He indicated that there was no precision attached to the number, but it was the "*kind of number*" that they were thinking about in the context of the Variation. We understand that the figure of 1000 households used by Mr Eaqub was not an estimate of the numbers that would result from the Variation, but was just a reasonable number to work with in assessing the costs and benefits of the Variation.

---

245 See sections 4.1-4.4 above

246 Section 32 Report Appendix 3g Economic Assessment at 6.3

247 Section 32 Report Appendix 3g Economic Assessment p1

195. We note that neither Mr Colegrave nor Mr Osborne took issue with this approach. Mr Colegrave used the same assumption of 1000 households in his critique of Mr Eaqub's cost-benefit analysis.[248] In his discussion of Mr Eaqub's cost benefit analysis, Mr Osborne did not explicitly comment on the appropriateness of the 1000 household number. Rather he supported Mr Colegrave's critique of it[249] and added that unintended market responses to the Variation may act to reduce the number of dwellings flowing from the Variation.[250]

196. An alternative approach would have been to take the projected household growth over 30 years (16,300 over 2020-2050[251]) and apply the financial contribution as per the Variation. There would undoubtedly be assumptions involved in making such an estimate, just as there are in Mr Eaqub's 1000 households. However, it would have provided an estimate of the flow of funds available for the provision of affordable housing arising from the Variation. Such an estimate may have helped in assessing the Variation's proposed methods compared to other reasonably practicable alternatives.

12.2 What are the benefits of providing affordable housing?

197. The benefits that would flow from the implementation of the Variation was the most contested issue between the economists. The s32 Report included **Appendix 3g, The Economic Case for Inclusionary Zoning in QLDC**, authored by Mr Eaqub,[252] which included an estimate of the economic benefits of the Variation.[253] In his evidence, Mr Eaqub qualified this estimate as an "*indicative* cost benefit analysis" (his italics).[254] Mr Colegrave disputed significant parts of Mr Eaqub's estimated benefits,[255] a view endorsed by Mr Osborne[256] who identified some additional issues.[257] We summarise each in turn below.

12.2.1 Mr Eaqub

198. As discussed above, Mr Eaqub assessed the benefit of 1000 additional affordable dwellings over a 30-year timeframe. He considered reduced labour turnover to be the most significant benefit, noting that QLD's labour turnover rate was 25% in 2019, compared to a national average of 16%, and has been so since at least 2001. One third of the difference was due to the industry mix of QLD's employers, but the remaining 6% difference was due to local factors including the large number of short-term workers from overseas.[258] He estimated that unnecessary employee turnover cost the District $105-$200m per year, made up of increased labour costs and reduced profits, and that each reduction in unnecessary turnover had a benefit of $55,000-$110,000,[259] and that there were additional wider social and wellbeing benefits.

---

248 Peer Review of "The Economic Case for Inclusionary Zoning in QLDC" by Sense Partners, Insight Economics Ltd, 16 Nov 2022 (Insight Economics Peer Review) at 6.4

249 Statement of evidence in chief of Philip Osborne, paragraph 63

250 Statement of evidence in chief of Philip Osborne, paragraphs 65-67

251 2021 Housing Development Capacity Assessment at Table 2.9

252 Statement of evidence in chief of Shamubeel Eaqub, paragraph 2.1 and footnote 1

253 Section 32 Report Appendix 3g Economic Assessment, at 6.3

254 Statement of evidence in chief of Shamubeel Eaqub, paragraph 4.24

255 Insight Economics peer review.

256 Statement of evidence in chief of Philip Osborne, paragraph 44

257 Statement of evidence in chief of Philip Osborne, paragraph 58

258 Section 32 Report Appendix 3g Economic Assessment at 3.2 p15

259 Section 32 Report Appendix 3g Economic Assessment at 3.2 p16

199. It was common ground between the economists that there was potential for the Variation to cause an increase in the price of existing and new houses, and Mr Eaqub stated that the international literature found price increases ranged from no increase to increases of between 1% and 2.2%.[260] Any increase in house prices arising from the Variation would give an immediate benefit to existing owners and an additional cost to future owners.[261] Mr Eaqub stated that QLDC's experience with inclusionary zoning to date showed no discernible impact on housing supply or prices.[262] We understand that Messrs Colegrave and Osborne did not dispute that QLDC's experience had caused no discernible impact on price or supply of housing, but they questioned the relevance of that to the effect of the Variation going forward.[263] Mr Eaqub used a price increase of 1% in his worst case scenario, with no price increase in his best case scenario.[264]

200. Mr Eaqub's estimate of the economic benefits of the Variation is copied below.[265] We understand that he excluded the private, financial costs and benefits - lower housing costs to receiving households, and higher costs/lower profits including to developers, as these will largely offset each other.[266] He included estimates of the non-monetised benefits to households receiving the housing, the benefit to employers of reduced labour turnover, assuming it reduces to the national average turnover rate, and the benefits and costs of an increase in house prices. He estimated a net benefit of between $3m (worst case) and $101m (best case).

260 Section 32 Report Appendix 3g Economic Assessment p27, footnote 20, Statement of evidence in chief of Philip Osborne, paragraph 58(d), Insight Economics Peer Review at 6.3 (7)

261 Section 32 Report Appendix 3g Economic Assessment p27

262 Section 32 Report Appendix 3g Economic Assessment p25

263 Insight Economics Peer Review at 5.2 p 13; Statement of evidence in chief of Philip Osborne, paragraph 58(b) and Footnote 15; Statement of evidence in chief of Fraser Colegrave, paragraph 92

264 Section 32 Report Appendix 3g Economic Assessment at 6.3 p26

265 Section 32 Report Appendix 3g Economic Assessment at 6.3 p25

266 Section 32 Report Appendix 3g Economic Assessment at 6 p24

FIGURE 16: ESTIMATED ECONOMIC BENEFITS OF QLDC IZ POLICY

	Volume	Impact		NPV ($m; @6%)	
Element	Households	Direction	Monetary value	Worst case	Best case
Economic Impact					
Labour turnover[(1)]	1,000	+	55,000-110,000	27	96
Mental health improvement[(2)]	1,000	+	366	2	3
Education Outcome[(2)]	1,000	+	6-20	0	0
Energy & other cost savings[(2)]	1,000	+	30-200	0	2
House price effect on:					
House price change[(3)]				1%	0%
Existing homeowners	19,137	+		187	0
New home buyers	17,300	-		-212	0
Total				3	101

(1) Assume that employment rate equals QLDC rate and labour turnover reduces to national rate

(2) Sourced from Treasury's Porirua Regeneration Business Case

(3) We assume no house price change in high case, and 1% increase in low case

12.2.2 Mr Colegrave

201. Mr Colegrave was highly critical of Mr Eaqub's estimates, and the benefit attached to labour turnover in particular, describing Mr Eaqub's s32 Report as "*deeply flawed*" and *"an unreliable basis for policy making"*.[267] He used labour turnover rates and house prices for 2019 by territorial authority to show that there was very little statistical correlation between house prices and labour turnover rates.[268] Mr Colegrave acknowledged that Mr Eaqub had recognised that industrial structure has a major impact on labour turnover rates,[269] but considered that other factors also impact on labour turnover rates, and identified employee age, sector (public or private) of employment and size of firm.[270] From this he could have no confidence in there being a link between house prices and labour turnover rates.[271]

202. Mr Colegrave also disagreed with Mr Eaqub's estimate of $55,000-$110,000 cost to the local economy of per employee turnover. He considered Mr Eaqub had not justified those numbers, and his own estimate was that it was in the order of $15,000 per employee turnover.[272] Further, he considered that Mr Eaqub was assuming that the Variation would reduce the District's labour turnover rate to that of the national average, which he described as *"fanciful at best"*. He also considered that if the costs of staff turnover were as high as Mr Eaqub suggested, then employers would have a "*compelling private incentive to address it*".[273] He was critical of the assumptions around house price increases, and in Mr Eaqub's use of only

267 Insight Economics Peer Review p1
268 Insight Economics Peer Review p4
269 Insight Economics Peer Review p7
270 Insight Economics Peer Review pp7-9, Statement of evidence in chief of Fraser Colegrave, paragraph 130(a)
271 Insight Economics Peer Review p9
272 Insight Economics Peer Review p10
273 Insight Economics Peer Review p1

1% increase in his worst case and 0% in his best case scenario. Mr Colegrave considered that any house price increase would impact new houses more than existing houses, and therefore Mr Eaqub had understated the negative impact of the increase in house prices.[274]

203. In addition, Mr Colegrave considered that Mr Eaqub had failed to include the costs of implementing and administering the Variation, which he considered would be "*very high*".[275] He was also of the view that there were considerable distributional and wealth transfer effects that would flow from the Variation that Mr Eaqub had not taken into account.[276] However, he did not place a value on these effects, so they are apparently neutral in terms of the total cost/benefit and speak more to where and on whom the costs and benefits fall.

204. Mr Colegrave provided a reworking of Mr Eaqub's estimates, adopting what he considered to be more appropriate assumptions, which is copied below.[277] He assumed that:

- the benefit of reduced employee turnover would be limited to 25% of the average salary in the hospitality industries, so $15,000 compared to Mr Eaqub's $55,000-$110,000;
- house prices would increase by 1% in the best case and 2.2% in the worst case;
- the impact on new homes would be twice the impact on existing homes; and
- that implementation and administration costs would be $10m in the worst case and $5m in the best case scenario.

Table 4: Reworked CBA ($millions over 30 years in today's dollars)

Economic Impact	**Best Case**	**Worst Case**
Labour turnover	$7	$13
Mental health improvement	$2	$3
Education, Energy & Other	$0	$2
Policy implementation & administration	-$5	-$10
House price effect on:		
House price change	1%	2.20%
Existing homeowners	$94	$206
New home buyers	-$212	-$466
Total (Net Impacts)	**-$114**	**-$253**

205. Mr Colegrave's reworked analysis gave a net cost of $114m (best case) and $253m (worst case), compared to Mr Eaqub's net benefit of $3m and $101m respectively.

12.2.3 Mr Osborne

206. Mr Osborne endorsed Mr Colegrave's views from the Insight Economics Peer Review as outlined above.[278] He noted that the District's labour turnover rate had been falling over the last 20 years during which there had been significant house price inflation, casting more doubt on the significance of housing affordability to labour turnover.[279] He noted that the changes

274 Insight Economics Peer Review p17
275 Insight Economics Peer Review p18
276 Insight Economics Peer Review p18
277 Insight Economics Peer Review p19
278 Statement of evidence in chief of Philip Osborne, paragraphs 43 and 63
279 Statement of evidence in chief of Philip Osborne, paragraph 43(b)

to the operation of the Variation as proposed in the s42A Report would reduce the scope of the Variation and so reduce any benefit as calculated by Mr Eaqub.[280] He also referred to a study of the Auckland Special Housing Areas that had results indicating an average price increase of around 5%.[281] He expanded on the implementation and administration costs that Mr Colegrave had identified but not specified, added the impact of increased house prices caused by the Variation on worker turnover, and concluded that Mr Colegrave's worst case may be optimistic.[282]

12.2.4 Discussion

207. The economists were unable to reconcile their different views of the benefits of the provision of affordable housing through the Variation. Messrs Osborne and Colegrave considered that the benefits primarily accrue to those receiving the affordable housing, and that societal benefits are limited, as shown by the cost-benefit analysis. Mr Eaqub pointed to the SIA for the societal benefits. All three referred us to their respective statements of evidence.[283]

208. The s32 Report stated that the cost-benefit analysis was indicative,[284] a point that Mr Eaqub reiterated and stressed in his Evidence in chief[285] and in his Rebuttal evidence.[286]

Labour Turnover

209. Addressing the criticism of his estimate of the cost of labour turnover, Mr Eaqub countered that each turnover incurred cost, and if a position turned over 4 times within a year that was four sets of costs.[287] In discussion with us on Mr Colegrave's statistical analysis, he agreed there may be other factors at play, but noted that Queenstown's labour turnover was so much higher, even compared to Taupo and Rotorua, and that the social impact assessment and statements from employers confirmed that affordable housing is a big constraint on hiring and retention. He reiterated that it is a cost every time there is a staff turnover, and that it is a huge cost to the business. He acknowledged that his estimate was a "*rough cost*".[288]

210. We note that Mr Colegrave was clear in his comments on his statistical analysis that his conclusions applied to the relationship of house price to staff turnover "*across TAs (Territorial Authorities)*".[289] His results showed very little relationship between house prices and labour turnover at a national level based on the combined analysis of the ratio of each TA. His results said nothing about the relationship within QLD, and Mr Colegrave did not claim it to do so.

Wider Social Benefits

211. The s32 Report was clear that the wider social and wellbeing benefits had not been included in the cost-benefit analysis, and that these might be as high as $170m.[290] The social impact

280 Statement of evidence in chief of Philip Osborne, paragraphs 61-62
281 Statement of evidence in chief of Philip Osborne, paragraph 58(b)
282 Statement of evidence in chief of Philip Osborne, paragraph 64
283 Joint Witness Statement of Economic Experts dated 30 January 2024, paragraphs 8-10
284 Section 32 Report Appendix 3g Economic Assessment, at p24
285 Statement of evidence in chief of Shamubeel Eaqub, paragraph 4.19
286 Rebuttal evidence of Shamubeel Eaqub, paragraphs 4.1 and 4.24
287 Rebuttal evidence of Shamubeel Eaqub, paragraph 3.1
288 Recording 3, 27 February 2024, at 1:30
289 Insight Economics Peer Review p4
290 Section 32 Report Appendix 3g Economic Assessment at p1 and Rebuttal evidence of Shamubeel Eaqub, paragraph 4.1

assessment had not been available when Mr Eaqub prepared his s32 Report cost-benefit analysis.[291] In discussion with us Mr Eaqub emphasised that estimating the wider social and wellbeing benefits was difficult, a point that we understand Messrs Colegrave and Osborne did not dispute.

212. What was in dispute was how significant the wider societal benefits were. Mr Eaqub considered they are significant, and based on the literature, might be as high as $170m.[292] He considered the SIA was the most appropriate approach to assessing them.[293] He told us that there were few studies that valued the wider benefits in a rigorous way, but those that do indicate that the wider benefits are in the order of three times that of the monetised benefits (3:1), and he referred us to two such studies, one from Canada and one from Australia.[294] He referenced the Australian study in his Reply evidence.[295]

213. Messrs Colegrave and Osborne were of the opinion that the societal benefits were "*limited*".[296] When we put to them Mr Eaqub's statement that the literature put the non-monetised benefits as a factor of three times the monetised benefits, Mr Osborne agreed that there was a significant social cost to the community of a lack of affordable housing, and he agreed that the benefits could be in Mr Eaqub's 3:1 range.[297]

214. Mr Colegrave agreed that the non-monetised benefits were "*significant and tangible*", but he said he did not know where Mr Eaqub's 3:1 ratio had come from, and that Mr Eaqub had not referred to it in the s32 Report or his evidence. We note that although Mr Eaqub had stated the wider wellbeing benefits may be as high as $170m in his s32 Report,[298] he did not mention the 3:1 range or provide a reference in his s32 Report. Links to the Australian papers were provided by Mr Eaqub in his Rebuttal and Reply evidence.[299]

215. Mr Colegrave told us that Mr Eaqub had attempted to include the wider social benefits in his cost-benefit analysis, referring to Mr Eaqub's reference to a Treasury paper (Appendix A of the s32 Report) that outlined the potential benefits from improved housing. He considered the list provided was quite comprehensive, and he thought they were included in the original cost-benefit analysis. Mr Colegrave was not prepared to put an estimate on the relative size of the non-monetised benefits.[300]

216. We note that Mr Eaqub's Appendix A to his s32 Report was a listing of the benefits to the individuals receiving the affordable housing. Subjective wellbeing, physical health, mental health, education, cost savings and jobs/training were the high level headings.[301] Of these, mental health, education and energy and other cost savings are included in Mr Eaqub's cost-benefit analysis.[302] The commentary on the cost-benefit analysis stated that the Treasury paper covered economic, well-being and fiscal domains, but the s32 Report focused on the

291 Rebuttal evidence of Shamubeel Eaqub, paragraph 4.1
292 Rebuttal evidence of Shamubeel Eaqub, paragraph 4.1
293 Reply evidence of Shamubeel Eaqub, paragraph 4.4
294 Recording 4, 27 February 2024 at 9:00
295 Reply evidence of Shamubeel Eaqub, paragraph 4.2, Footnote 2
296 Joint Witness Statement of Economic Experts dated 30 January 2024, paragraph 8
297 Recording 3, 4 March at 1:46:00
298 Section 32 Report Appendix 3g Economic Assessment p1
299 Rebuttal evidence of Shamubeel Eaqub, paragraph 4.2; Reply evidence of Shamubeel Eaqub, paragraph 4.2, Footnote 2
300 Recording 1, 6 March 2024 at 0:38
301 Section 32 Report Appendix 3g Economic Assessment Appendix A
302 Section 32 Report Appendix 3g Economic Assessment Fig 16 p26

economic domain only[303] and was explicit that the wider well-being benefits had not been included in the report.[304] This was confirmed by Mr Eaqub in his Reply evidence. He stated that the wider well-being benefits were not included in his cost-benefit analysis, and that he considered the SIA the appropriate way to assess the wider benefits.[305]

House Price Increases

217. As noted above, it was common ground that the Variation had the potential to cause a general increase in house prices. Mr Eaqub stated that the literature identified this as between no increase to up to 1-2.2%.[306] He assumed no increase in his best case and a 1% increase in his worst case. Mr Colegrave assumed a 1% increase in his best case and 2.2% in his worst case scenario.[307] Mr Osborne referred to a study of the Auckland SHAs that indicated a price increase of approximately 5%,[308] and supported Mr Colegrave's 1-2.2% range of price increase. He clarified in his Supplementary Statement that he did not intend to suggest that the Variation would produce price increases similar to that identified in the Auckland study.[309]

218. We note that both Mr Eaqub's 0-1% range and Mr Colegrave's 1-2.2% range are assumptions based on the literature. Mr Eaqub seemed to be basing his range on the Variation being well-designed with a broad based, low rate. Mr Colegrave seemed to base his range on a mis-reading of Mr Eaqub's report of the literature. Mr Colegrave reported Mr Eaqub as identifying the literature as giving price increases of 1% to 2.2%[310] when Mr Eaqub actually reported the literature as some showing no increase and others having increases of 1.0%-2.2%.[311] Mr Colegrave appears to have missed or ignored the "*no increase*" part of the report on the literature.

12.2.5 Findings

219. It was common ground that QLD's labour turnover rate is very high and well above the New Zealand average, and we accept Mr Eaqub's opinion, based on interviews with employers and the SIA, that housing affordability is a significant part of the reason for that. It was common ground that labour turnover has a significant cost, and that reducing it would be of significant benefit to the District. We accept that Mr Eaqub's estimate of the benefit of reduced labour turnover was "*indicative*" and provides a "*rough cost*" of that benefit.

220. It was also common ground that there is the potential for the Variation to cause an increase in house prices, and that any induced price increase would be a one-off event and not an on-going driver of price increases. We consider Mr Colegrave has mis-read the reported literature on the range of price increases. We accept that the Variation will likely have a price impact consistent with Mr Eaqub's 0%-1% estimate, and put that in the context of Mr Eaqub's comment that we are considering a difference of 1.2% in the estimates when the District's house prices increased by 7% last year.

303 Section 32 Report Appendix 3g Economic Assessment p24
304 Section 32 Report Appendix 3g Economic Assessment p1
305 Reply evidence of Shamubeel Eaqub, paragraphs 4.3-4.4
306 Section 32 Report Appendix 3g Economic Assessment p2, Footnote 20
307 Insight Economics Peer Review, Table 4 p19
308 Statement of evidence in chief of Philip Osborne, paragraph 58(b)
309 Supplementary statement of evidence of Philip Osborne, paragraph 3
310 Statement of evidence in chief of Fraser Colegrave, paragraph 7
311 Section 32 Report Appendix 3g Economic Assessment p2, Footnote 20

221. It was common ground that there are substantial societal benefits that arise from the provision of affordable housing and we accept that these are not captured in Mr Eaqub's monetised cost-benefit analysis. We accept the view of Messrs Eaqub and Osborne that these are in the order of three times the monetised benefit.

222. We accept that the cost-benefit analysis is at best indicative and that the wider societal benefits have not been monetised.

223. Overall, we find that there would be substantial positive benefits to the District from the implementation of the Variation, that much of the benefit cannot be quantified, but that in total it will be well in excess of that indicated by Mr Eaqub's indicative cost-benefit analysis.

12.3 What are the costs of the Variation?

224. In addition to the potential for an increase in house prices as outlined above, the economists identified the potential for a reduction in new residential supply.[312] These potential costs are linked and can be seen as two sides of the same coin. The Variation may produce a price increase or a supply decrease or a combination of both. This was identified in Mr Eaqub's s32 Report[313] and developed by both Mr Colegrave[314] and Mr Osborne.[315] In addition it was common ground that there was the potential for the Variation to cause a distribution of growth to competing districts.[316]

225. Messrs Colegrave and Osborne also identified administrative costs of the Variation, the potential slowdown in construction activity and the potential loss of relationship between QLDC and stakeholders.[317] Mr Eaqub acknowledged that the costs of administering the Variation would be real.[318]

12.3.1 Impact on the Supply of New Housing

Mr Eaqub

226. In his s32 Report Mr Eaqub identified the potential for the Variation to cause a reduction in the supply of market housing, identifying it as deadweight loss, and stated that to reduce the impact of the Variation on society "…*requires significantly increasing the supply of zoned and serviced land.*"[319] In his evidence he noted that "…*Inclusionary Housing is designed to work alongside overall housing supply policies*".[320] When discussing who bears the cost of inclusionary housing, he stated that it "…*will fall on consumers and developers, unless significantly increasing the supply of zoned and serviced land. So, it is critical to use all available levers to enable overall supply*."[321]

---

312 Joint Witness Statement of Economic Experts dated 30 January 2024, paragraph 23 (b)
313 Section 32 Report Appendix 3g Economic Assessment p 20
314 Insight Economics Peer Review at 5.3
315 Statement of evidence in chief of Philip Osborne, paragraph 65
316 Section 32 Report Appendix 3g Economic Assessment p 20, EIC of Mr Osborne, paragraph 58(c), Insight Economics Peer Review at 7 5.p20
317 Joint Witness Statement of Economic Experts dated 30 January 2024, paragraph 24(3)
318 Rebuttal evidence of Shamubeel Eaqub, paragraph 8.1(a)
319 Section 32 Report Appendix 3g Economic Assessment p 20
320 Statement of evidence in chief of Shamubeel Eaqub, paragraph 5.8
321 Statement of evidence in chief of Shamubeel Eaqub, paragraph 5.16

227. In his s32 Report and his evidence Mr Eaqub stated that the international evidence on the impact of inclusionary housing on housing supply is mixed, that high quality studies generally found no effect, that large cross jurisdictional studies generally found no or marginal effects between locations with and without inclusionary housing,[322] and that whether housing supply slowed depended on the stringency of the inclusionary housing requirements. He noted that when QLDC increased the inclusionary requirement from 5% to 10% in the SHAs in 2013, housing supply improved.[323]

228. His s32 Report stated that the impact of the Variation on new housing supply will depend on who ultimately bears the burden of the imposition of financial contributions, and this will vary with the elasticities of supply and demand. When demand for housing is inelastic, as it is in QLD, and supply is perfectly elastic, developers may delay building or build elsewhere.[324] He recognised that costs falling on developers may reduce supply. He stated:[325]

> "…*who bears the cost will depend on the relative elasticity of demand. If home buyers are relatively inelastic, because of the unique amenities of QLDC, then home buyers will absorb the cost. If the price increase is too much and buyer demand reduces (that is the demand is elastic), then developers and landowners will exit the market, delay developments or lower prices, slowing housing supply or reducing the price of land*."

Mr Colegrave

229. Mr Colegrave stated that by directly increasing development costs the Variation "*will directly affect the viability of supplying new housing in the district."*[326] Relying on QLDC's previous experience with inclusionary housing, he noted that the Variation had broader application and provided no windfall planning gains from which developers could fund the contributions, and that the Variation is:[327]

> "…*fundamentally different to previous versions, so relying on the impacts witnessed in the past to assess the pros and cons of this proposal is specious and should therefore be treated with extreme caution*."

230. Mr Colegrave considered that Mr Eaqub had not assessed the impact of the Variation on development viability and therefore on the impact on new housing supply. He acknowledged that Mr Eaqub stated the need for significantly increased land supply, but noted that the Variation *"…provides no offsetting supply boosts..."*. He stated that, despite Mr Eaqub's recognition of the need for complementary policies aimed at increasing housing supply, *"…we are unaware of any such policies being promulgated in the district."* He accepted that the international experience is mixed in terms of the effects on housing supply, but considered this is due to the variability in the provision of offsetting mitigations, and that the Variation does not have any offsetting mitigations.[328]

231. All three economists used the analogy of a tax to discuss the effect of the Variation on housing supply and/or price. Mr Colegrave used classic supply and demand curves to show the

---

322 Statement of evidence in chief of Shamubeel Eaqub, paragraph 5.17; S 32 Report Appendix 3g Economic Assessment p 22-23

323 Statement of evidence in chief of Shamubeel Eaqub, paragraph 5.21

324 Section 32 Report Appendix 3g Economic Assessment p 20

325 Section 32 Report Appendix 3g Economic Assessment p 25

326 Insight Economics Peer Review at 5.1

327 Insight Economics Peer Review at 5.3, p15. See also Statement of evidence in chief of Fraser Colegrave, paragraph 93

328 Insight Economics Peer Review at 5.3, p14

theoretical response of the housing market to the Variation (the "tax"), which shifts the supply further up the demand curve, reducing the total amount of housing supplied, and identifying the deadweight loss that Mr Eaqub had referred to.[329] He concluded that the Variation would "…*reduce likely future supply*…".[330] In discussion with us he commented on the effects of the elasticity of demand and stated that the price impact of the tax is shared between the developer and the final consumer as determined by the elasticity of demand.

Mr Osborne

232. Mr Osborne agreed that the Variation would either increase prices or reduce supply,[331] and he suggested that it was more likely to have more adverse effects on the supply of affordable housing and less on the supply of higher value housing.[332] He noted that the short term impacts were likely to be more pronounced than the long term impacts, as increased supply would play a greater part in the long term.[333] Otherwise, he did not address the effect on supply in his evidence.

233. Mr Osborne took issue with Mr Eaqub's claim that QLDC's past experience with inclusionary housing had no "*discernible impact on supply*", taking the view that there was no evidence as to the impact QDLC's SHAs had on overall supply, and that there was no assessment of the effects of the SHAs on housing supply.[334] He stated that the SHAs provided incentives for the provision of affordable housing, which the international assessments indicated mitigated at least some of the impact on housing supply.[335] He noted that most international examples of inclusionary housing found *"...very real potential for negative impacts on supply…".*[336]

12.3.2 Discussion

234. There was no dispute between the economists that there was the potential for a reduction in new housing supply. Messrs Eaqub and Colegrave were also in agreement that significantly increased housing land supply was required if a reduction in supply was to be avoided. Mr Eaqub considered that the wider policy direction of QLDC was enabling of additional land supply, while Messrs Colegrave and Osborne considered that the Variation stood on its own and should be assessed without reference to other proposals.[337] We have discussed elsewhere the broad scope of actions being undertaken by QLDC to address the housing supply.

235. We note that Messrs Eaqub and Colegrave both reached their different conclusions from a first principles, theoretical approach, their assessment of the relevance of QLDC's past experience with inclusionary housing, and their interpretation of the international literature. Mr Osborne leaned on the absence of any assessment of the impact of QLDC's previous use of inclusionary housing on the housing supply and the international use of incentives to mitigate impacts on the housing supply to conclude that the "…*Variation represents a risk to the efficient and effective operation of the QLD housing market*…".[338]

---

329 Statement of evidence in chief of Fraser Colegrave, paragraphs 38-42
330 Statement of evidence in chief of Fraser Colegrave, paragraph 51(a)
331 Joint Witness Statement of Economic Experts dated 30 January 2024, paragraph 23 (b)
332 Statement of evidence in chief of Philip Osborne, paragraph 65
333 Statement of evidence in chief of Philip Osborne, paragraph 66
334 Statement of evidence in chief of Philip Osborne, paragraphs 53 and 58(a)
335 Statement of evidence in chief of Philip Osborne, paragraphs 53-54
336 Statement of evidence in chief of Philip Osborne, paragraph 58
337 Joint Witness Statement of Economic Experts dated 30 January 2024, paragraph 23 (b)
338 Statement of evidence in chief of Philip Osborne, paragraph 70

236. Messrs Eaqub and Colegrave both discussed supply and demand in their evidence, Mr Colegrave through the illustrative supply and demand curves, and Mr Eaqub in discussing the relative elasticities of supply and demand and the effect on price and supply. Mr Eaqub noted that the mitigation for the relatively inelastic demand in QLD is increasing overall land supply.[339] We note that Mr Colegrave used generic supply and demand curves with no reference to elasticity or to the actual QLD supply and demand curves. Mr Colegrave illustrated the theoretical point rather than applying it to the specific QLD situation.

237. Elsewhere in our report we have discussed the previous experience with inclusionary housing in the District, and Messrs Eaqub and Colegrave acknowledge that past experience. Mr Eaqub took comfort that the previous experience *"…does not show any discernible impact on house prices or housing supply."*[340] Mr Colegrave considered past experiences were *"… all tied to some form of planning gain or value uplift…"*[341] and that the Variation *"…provides no incentives or benefits… which help offset costs…(and) this differs from all past IZ policies…."*.[342]

238. Mr Eaqub saw the international literature as providing *"…a nuanced view on what a successful IZ policy looks like…"*[343] and set out how the Variation reflects those international attributes of success.[344] Mr Colegrave considered that *"…overseas experience should not be the primary or sole basis upon which policies are assessed... because overseas experience invariably reflects countless political, economic, social, cultural and environmental variables that affect observed outcomes, but which vary spatially"*. [345] He identified what he considered to be key features that vary between the different international experiences[346] and considered that Mr Eaqub had not acknowledged and adjusted for these variances.[347] Mr Colegrave cautioned against *"…reliance on overseas… experience to predict the likely impacts of the (Variation) because that is not an 'apples with apples' comparison."*[348]

239. Both Messrs Eaqub and Colegrave considered that the impact on new housing supply is tied up with who bears the cost of the financial contribution, so we turn to that next.

12.4 Who Bears the Cost of the Financial Contributions?

12.4.1 <u>The Tax Lens</u>

240. While not necessarily claiming the financial contributions to be a tax, the three economists agreed that viewing the Variation with a tax 'lens' was a useful analytical approach.

241. Mr Eaqub saw that inclusionary housing[349]

> "*either tax(es) windfall planning gains or gives incentives (negative tax) to provide affordable housing*."

339 Section 32 Report Appendix 3g Economic Assessment p 20
340 Section 32 Report Appendix 3g Economic Assessment p 25
341 Statement of evidence in chief of Fraser Colegrave, paragraph 92
342 Statement of evidence in chief of Fraser Colegrave, paragraph 26
343 Section 32 Report Appendix 3g Economic Assessment p 22
344 Section 32 Report Appendix 3g Economic Assessment p 22-23
345 Statement of evidence in chief of Fraser Colegrave, paragraphs 77-78
346 Statement of evidence in chief of Fraser Colegrave, paragraph 86
347 Statement of evidence in chief of Fraser Colegrave, paragraph 87
348 Statement of evidence in chief of Fraser Colegrave, paragraph 93
349 Section 32 Report Appendix 3g Economic Assessment p 19-20

and that

"*In the long term, if land markets are competitive, landowners will bear the cost of IZ programs through lower land prices paid by developers*."

242. Mr Eaqub went on to state:

"*We want to avoid imposing costs on consumers and impose the cost on land owners (who receive the additional property rights)*."

and

"*Consumers pay more when demand is inelastic (which is the case in Queenstown Lakes District, as we have a shortage of homes) and supply is perfectly elastic (developers may build elsewhere or delay building, unless the land market is large and competitive). So, house prices will rise at the margin, unless we take mitigating action on increasing overall land supply across the entire labour market area*."

"*Land prices will adjust when supply is inelastic, there is no close substitute and demand shifts if price changes. These conditions can only hold if greenfield zoned land is ample (many decades of future demand and infrastructure is planned/provisioned), and there are no close substitutes…*"

243. Later he stated:[350]

"*The costs, or at least perceived costs, are borne by landowners and/or non-IZ buyers, depending on how elastic the housing market is*.

…

Economic theory tells us that who bears the cost will depend on the relative elasticity of demand. If home buyers are relatively inelastic, because of the unique amenities of QLDC, then home buyers will absorb the cost. If the price increase is too much and buyer demand reduces (that is the demand is elastic), then developers and landowners will exit the market, delay developments or lower prices, slowing housing supply or reducing the price of land."

244. We understand supply and demand to be inelastic when quantity supplied/demanded is relatively unresponsive to changes in price, and to be elastic when quantities are more responsive to changes in price.

245. We understand Mr Eaqub to be saying that housing demand is inelastic (as evidenced by the shortage of housing) and therefore the imposition of the financial contribution will push up house prices unless land supply is also inelastic, and that land supply will be inelastic when there is a large and competitive land market and ample greenfield zoned and infrastructure enabled land is available. Mr Eaqub also stated that any impact will be short-term if imposed uniformly and consistently over a broad class of land.[351]

246. Mr Colegrave used classic supply and demand curves to illustrate the effect of the imposition of the financial contribution (the tax) on the housing market. These showed that the imposition of the financial contribution on his generic supply curve resulted in an increase in

350 Section 32 Report Appendix 3g Economic Assessment p 25

351 Section 32 Report Appendix 3g Economic Assessment p 25

price and a decrease in the volume of housing.[352] He considered that his analysis showed imposing the financial contribution would address housing affordability by increasing house prices.[353] In summary, he stated that the Variation would result in: [354]

> "*Increasing the risk, cost, and complexity of development, which will erode financial viability, reduce likely future supply, and place even greater pressure on district house prices and rental values*;"

247. Mr Osborne stated that:

> *"there is a market risk associated with what is essentially a tax on residential development"*[355]
>
> and
>
> "*there is a real risk that at least part of this tax will be paid through higher housing costs for the whole of QLD residents*".[356]

248. He was critical that the Variation provided no windfall gain for developers and that any potential for greater development through the UIV is currently uncertain and not uniformly applied.[357] He also considered that the Variation tax would make some medium value developments more marginal and so have a greater negative impact on the lower priced housing.[358] He agreed with Mr Eaqub that the short-term impacts will be much more pronounced than longer-term impacts.[359]

12.4.2 Discussion

249. We do not consider that the economists disagree on the economic theories of supply and demand. Mr Colegrave illustrated supply, demand and the effect of the tax on generic supply and demand curves, and covered the effect of elasticity in discussion with us, whereas Mr Eaqub applied the concept of the elasticity or otherwise of supply and demand in his analysis. Mr Colegrave considered the Variation in isolation, and opined that it provided no windfall gain or value uplift to be taxed, whereas Mr Eaqub brought in the wider market and assessed whether the land market is large and competitive and is greenfield zoned and whether infrastructure enabled land is "*ample*". Mr Osborne considered that the Variation provided no windfall gain and considered the effects of the UIV are uncertain.

250. This difference in approach was summarised in the Economist Joint Witness Statement:[360]

> "*The experts consider that the variation will result in either a decrease in residential supply or an increase in prices. SE (Eaqub) considers that this effect has been addressed by way of separate Council plan variations seeking to enable additional development entitlements whereas FC (Colegrave) and PO (Osborne) do not see or necessarily agree with that link. PO and FC additionally disagree with the principal of balancing or averaging out the consequences of this variation or other separate plan*

352 Statement of evidence in chief of Fraser Colegrave, paragraph 38-42
353 Statement of evidence in chief of Fraser Colegrave, paragraph 43
354 Statement of evidence in chief of Fraser Colegrave, paragraph 51(a)
355 Statement of evidence in chief of Philip Osborne, paragraph 58(d)
356 Statement of evidence in chief of Philip Osborne, paragraph 58(f)
357 Statement of evidence in chief of Philip Osborne, paragraph 58(f)
358 Statement of evidence in chief of Philip Osborne, paragraph 65(b)
359 Statement of evidence in chief of Philip Osborne, paragraph 66
360 Joint Witness Statement of Economic Experts dated 30 January 2024, paragraph 23(b)

changes or plan variations, and consider that its incremental effects should be viewed in isolation consistent with common economic practice, which is primarily concerned with effects "at the margin" where all other factors are held constant."

251. Messrs Eaqub and Osborne agreed the impact of the Variation would be greatest in the short-term and that increased supply would stabilise the market in the longer term. Mr Colegrave was silent on this point.

252. When addressing the question of where the burden of the financial contribution will fall, the economists were agreed that:[361]

"*The burden will initially fall on whomever triggers the contribution. The relative price elasticity of supply and demand will determine the extent to which the burden can be passed on and (via higher land or dwelling prices, or higher weekly rental values)* (sic).

The experts noted that this question has short-term and long-term aspects, and they are not necessarily the same. It is not always obvious amongst all of the parties involved in bringing a product to market and disposing of it, who is ultimately paying the required contribution in full or in part."

253. In essence, Messrs Colegrave and Osborne considered that the burden would fall initially on the developers, who would either reduce their activity (reducing housing supply) or pass the cost on to purchasers and so make housing even more unaffordable. They considered that the Variation should be seen on its own, and that it provides no additional development capacity or incentives to offset the cost of the financial contributions imposed.

254. In contrast, Mr Eaqub considered that if more land was enabled for development, the increased supply of land for development would result in the developers pushing the burden of the Variation back to the landowners. He looked at the wider QLDC programme to enable more housing land in meeting the requirements of the NPS-UD and considered that the increased land supply will result in some of the burden being pushed back to the landowners with little effect on land supply and only a moderate and short term impact on house prices.

The Developers

255. Without exception the developers were supportive of the aim and objectives of the Variation to address the acknowledged need for more affordable housing within the District. They were also uniformly of the view that the developer community were being treated as the problem when they were in fact part of the solution. Almost all developers explicitly stated that if the 5% tax was imposed that they would reduce their development activity within the District and/or increase the price of sections and houses to purchasers to cover the costs of the tax.[362] The statement of Ms Christie for Winton Land Limited was representative of this sentiment in saying:[363]

"The Variation imposes additional costs on developers, which will make the process more expensive for developers, but does not provide any corresponding incentive or benefit. This will not only discourage residential developments from being built (reducing supply and increasing the price) but is likely to result in the additional costs

361 Joint Witness Statement of Economic Experts dated 30 January 2024, paragraph 23(a)

362 E.g. Statement of evidence of Lauren Christie, paragraph 4.3; Statement of evidence of Kristan Stalker, paragraph 23

363 Statement of evidence of Lauren Christie, paragraph 4.6

being passed on to the purchasers of the property. This is precisely what the contribution is attempting to avoid. As notified, the Variation does not incentivise the development of land and will contribute to overall prices rising."

256. Mr Anderson, a property development consultant giving evidence for Ladies Mile Property Syndicate Ltd, stated that property development typically relied on debt funding, and that tighter development margins (due to the required financial contribution) would adversely impact project viability and access to suitable debt funding.[364] He also stated that non-premium apartment developments have tight margins, and the required 2% financial contribution could be the difference between a project proceeding or otherwise. Increased sales prices of the final product may be required for a project to be viable.

257. However, in discussions with us it appeared that the developers are more nuanced in their approach. Ms Christie told us that, when Winton bought a block in Northlake that had a known requirement to provide 20 lots to the QLCHT at a specified, below market price[365] it factored that into the price Winton paid to the landowner. Mr Anderson told us that once the provisions of the Variation were certain and embedded into the market, then in the long term the cost of the financial contributions might be pushed back to the landowners, but he considered that the long term might be as much as a generation. Mr Anderson and Mr Munro also made the point that 5% on the output of a development equates to a much higher impact on the purchase price of the land for that development, that this could mean the landowner taking a 15% cut to their expected sale price, and they suggested that this may cause the landowner to choose to landbank rather than sell, and so reduce supply of land for development.

258. Mr Dewe for Fulton Hogan Land Development Ltd stated:[366]

"*Our recently commenced development within the Northlake Special Zone includes a requirement to provide sites to QLDC or QLCHT, if so directed by QLDC, for affordable housing. We were aware of this requirement at the time we purchased the site and, as such, were able to factor this into our planning of the development*."

259. Before we draw any conclusions on the effect on the supply of land, we need to look at the question of whether there is Mr Eaqub's required "*ample*" supply of greenfield zoned and infrastructure ready land.

12.4.3 <u>The Supply of Land in QLD</u>

260. As discussed earlier, QLDC has produced two HBAs, for 2018[367] and 2021,[368] and is working on the HBA for 2024. Mr Colegrave also brought to our attention that there has been an update to the 2021 HBA prepared for the UIV.[369] As noted by Mr Colegrave, the 2023 update contains multiple scenarios, and it has been developed to test out the different options for urban intensification within the District. As such it is not directly comparable with the 2021 HBA, both because of the different analyses included and the updated baseline data and projections

364 Statement of evidence in chief of Hamish Anderson, paragraph 15-18
365 Statement of evidence of Lauren Christie, paragraph 3.2
366 Statement of evidence in chief of Gregory Dewe, paragraph 3.5
367 Housing Development Capacity Assessment 2017
368 Housing Development Capacity Assessment 2021
369 Queenstown Lakes District Intensification Economic Assessment, Intensification Plan Variation, 16 May 2023 (Update)

used. Mr Colegrave also pointed out that it only assesses zoned and commercially feasible development, taking no account of the infrastructure component required. We were not aware of this update prior to Mr Colegrave referring to it. Mr Colegrave did not refer to it in his evidence, but Mr Osborne did, stating that it:[370]

> "*demonstrated significant increases in commercially feasible capacity resulting from the proposed (urban) intensification (variation), in some cases at a rate of 100% greater than the identified baseline. … (and that it) also illustrated the potential for a massive shift in the feasible development potential towards more affordable building typologies such as terrace houses and apartments*."

261. We note that the 2023 update[371] (2023 Update) is not a new assessment for 2024, but an update for 2021 specifically tailored to the needs of the UIV. It does not provide the same short/medium/long term analysis of the two full HBAs. Rather, it is focused on providing input to the UIV, and so provides a baseline long term capacity assessment, and then the long term capacity under a series of different intensification scenarios. Appendix Two[372] to the 2023 Update identifies some changes that have been made from the 2021 HBA. These include using the PDP Decisions Version of the zoning provisions and the more intensive patterns of development enabled in some locations, updates to the construction costs as well as changes to the cost structure to reflect the greater levels of intensification that are enabled, and updates to sales prices.

262. In discussing the effects of the possible intensification provisions, the 2023 Update stated:[373]

> *"Notwithstanding the effects on urban form (covered below), the increased ability for the market to deliver a wider range of dwellings is likely to have a positive effect on housing affordability, at the city level, relative to the development patterns of new dwellings that would otherwise occur under the existing provisions."*

370 Statement of evidence in chief of Philip Osborne, paragraphs 28-29
371 Queenstown Lakes District Intensification Economic Assessment (Update), 16 May 2023
372 2023 Update Appendix Two
373 2023 Update p104

Summary of Queenstown District Urban Dwelling Growth Assessments From the Successive Assessments

			Short Term			Medium Term			Long Term		
			Infill and redevelopment	Greenfield	Total	Infill and redevelopment	Greenfield	Total	Infill and redevelopment	Greenfield	Total
1	2017[374]	Feasible Capacity	16,750	10,820	27,390	17,880	15,380	33,260	18,710	18,590	37,300
2	2021[375]	Feasible Capacity	11,831	13,613	25,443	12,847	19,279	32,125	13,064	38,310	51,373
3	2021[376]	Feasible, Infrastructure Ready Capacity[377]			2,575			8,593			19,721
4	2021[378]	Feasible Capacity RER[379]	881	1,513	2,394	2,942	5,596	8,537	6,451	12,783	19,234
5	2023[380]	Baseline Feasible Capacity							22,200	9,700	31,900

Notes

The 2017 estimates are the additional plan enabled, infrastructure serviced, commercially feasible capacity.[381]

The 2021 estimates show progressively the additional plan enabled, commercially feasible, then infrastructure ready, then reasonably expected to be realised.[382]

The 2023 estimates are feasible capacity, being additional dwellings enabled and potentially commercially feasible. They represent the pool of opportunity that developers might take up in line with the demand that eventuates.[383]

Infill and redevelopment are the maximum number that enabled by either adding additional dwellings to sites without removing any existing dwellings (infill) or removing existing dwellings and replacing with the number of dwellings enabled on the site.[384]

374 2017 HBA Tables 5.9 (short term, 5.12 (medium term),) 5.14 (long term)
375 2021 HBA Tables 6.1 (short term), 6.3 (medium term), 6.5 (long term)
376 2021 HBA Table 7.5
377 2021 HBA Table 7.5
378 2021 HBA Tables 8.1 (short term), 8.3 (medium term), 8.5 (long term)
379 RER= Reasonably Expected Realisable
380 2023 Update table 5.1 (no infrastructure constraints)
381 2017 HBA at 5.4
382 2021 HBA at 8.1
383 2023 Update at 3.3.2
384 See for example 2023 Update at 3.3.3

264. In the above table, we have summarised the results of the two HBAs and the 2023 Update. It shows how the estimates of housing capacity have changed through the development of the assessments. We note that the 2018 HBA was prepared in compliance with the 2016 NPS **Urban Development Capacity**, while the 2021 HBA was in compliance with the 2020 NPS-**Urban Development**. As noted above, the 2023 Update is not a HBA and therefore does not necessarily comply with the 2020 NPS-UD.

265. In the table, the capacity assessments from the different HBAs are not strictly comparable. The three rows from the 2021 HBA show progressively the plan enabled and commercially feasible land (Row 2), then the effects of the infrastructure constraints (Row 3), and finally what is reasonably expected to be realised (Row 4 RER). RER is the extent of dwelling capacity that is likely to actually be built if the demand is present in the market.[385] The 2023 Update does not provide sufficient information to explain the difference between the 2021 HBA Feasible Capacity (Row 2) and the 2023 Update Baseline Feasible Capacity (Row 5).

266. Mr Colegrave told us that the projected demand for new dwellings in the 2023 Update was considerably increased from that in the 2021 HBA. We note that the 2023 Update records the need for an additional 20,000 dwellings by 2051,[386] up from the 2021 estimate of 16,306 additional dwellings by 2050.[387] The additional dwellings required as identified in the 2023 Update (working from the 2021 HBA base) are as follows:[388]

2,600 by 2024

7,300 by 2031

20,000 by 2051

We note that these are cumulative, with the 20,000 by 2051 including the 2,600 and 7,300.

267. Below we have included Table 6-1 from the 2023 Update[389], which shows the expected housing demand compared to the housing capacity through to 2051 (the long term) under the baseline scenario (without any intensification under the UIV). We understand this captures the current expected supply and demand for housing without any further supply being made available. We note that the figures included are gross housing supply, not the net additional housing required. This is the 2023 Update to the 2021 equivalent produced in Mr Colegrave's evidence.[390]

268. This analysis shows that there is currently sufficient capacity to meet the expected demand at a total level in the short, medium and long term, although there is some mis-match in the required typologies, as indicated by the red shading. The table shows the total results under two different building scenarios, one where the developers seek to maximise profit, and the other where they seek to maximise the building yield. We note that the typologies for which there are deficient supply are those that are considered to be more affordable, attached terrace housing and apartments (the red shading).

385 2021 HBA at 8 p159

386 2023 Update Table 2-1

387 2021 HBA Table 2.21

388 2023 Update Table 2-1

389 2023 Update Table 6-1

390 Statement of evidence in chief of Fraser Colegrave Figure 11

Table 6-1: Comparison of Capacity and Projected Demand (Low Substitution Demand Scenario): Baseline Scenario

	Projected Demand				Capacity (Max Profit Allocation)[1]					Capacity less Demand					Additional Potential Development[2]			
	Detached	Attached/ Terrace[3]	Apartments[4]	TOTAL	Detached	Attached/Terrace[3]	Apartments[4]	TOTAL	TOTAL (Max Yield)	Detached	Attached/ Terrace[3]	Apartments[4]	TOTAL	TOTAL (Max Yield)	Detached	Attached/ Terrace[3]	Apartments[4]	TOTAL
Catchment																		
	Short-Term: 2024				**Short-Term: 2024**					**Short-Term: 2024**					**Short-Term: 2024**			
Arrowtown	1,300	200	40	**1,500**	1,700	200	40	**2,000**	**2,000**	500	20	-	**500**	**500**	40	400	-	**40**
Eastern/Frankton/Quail	3,500	500	100	**4,100**	4,700	500	1,800	**7,000**	**7,000**	1,200	- 30	1,600	**2,800**	**2,900**	500	2,000	-	**80**
Queenstown/Arthurs	3,900	800	200	**4,900**	8,400	1,800	1,600	**11,900**	**16,400**	4,600	1,000	1,400	**7,000**	**11,500**	800	5,200	5,100	**4,500**
Kelvin Heights/Southern Corridor	2,200	300	60	**2,500**	6,300	500	400	**7,200**	**7,400**	4,100	200	300	**4,700**	**4,900**	100	3,200	300	**200**
Wakatipu Small Township/Other	400	70	10	**500**	700	200	10	**900**	**900**	300	100	-	**400**	**400**	-	50	-	**20**
Wanaka/Hawea	7,100	1,000	200	**8,400**	19,700	1,300	1,000	**22,000**	**23,200**	12,600	200	800	**13,600**	**14,800**	1,100	12,000	500	**1,300**
Wanaka Small Township/Other	300	20	10	**300**	1,000	80	-	**1,100**	**1,100**	700	60	-	**800**	**800**	-	300	-	**-**
Total Urban Environment	**18,700**	**3,000**	**700**	**22,300**	**42,600**	**4,600**	**4,800**	**52,000**	**58,100**	**23,900**	**1,600**	**4,200**	**29,700**	**35,800**	**2,500**	**23,200**	**5,900**	**6,100**
	Medium-Term: 2031				**Medium-Term: 2031**					**Medium-Term: 2031**					**Medium-Term: 2031**			
Arrowtown	1,200	300	60	**1,500**	1,700	200	40	**2,000**	**2,000**	500	- 70	- 20	**500**	**500**	40	400	-	**40**
Eastern/Frankton/Quail	4,000	900	200	**5,200**	4,700	500	1,800	**7,000**	**7,000**	700	- 400	1,600	**1,800**	**1,900**	500	2,000	-	**80**
Queenstown/Arthurs	3,900	1,200	300	**5,300**	8,400	1,800	1,600	**11,900**	**16,400**	4,600	600	1,400	**6,500**	**11,100**	800	5,200	5,100	**4,500**
Kelvin Heights/Southern Corridor	3,300	400	90	**3,800**	6,300	500	400	**7,200**	**7,400**	3,000	100	300	**3,400**	**3,600**	100	3,200	300	**200**
Wakatipu Small Township/Other	500	100	30	**700**	700	200	10	**900**	**900**	200	50	- 20	**200**	**200**	-	50	-	**20**
Wanaka/Hawea	8,000	1,700	400	**10,000**	19,700	1,300	1,000	**22,000**	**23,200**	11,700	- 400	600	**11,900**	**13,200**	1,100	12,000	500	**1,300**
Wanaka Small Township/Other	400	70	10	**500**	1,000	80	-	**1,100**	**1,100**	600	20	- 10	**600**	**600**	-	300	-	**-**
Total Urban Environment	**21,200**	**4,700**	**1,000**	**27,000**	**42,600**	**4,600**	**4,800**	**52,000**	**58,100**	**21,300**	**- 100**	**3,800**	**25,000**	**31,100**	**2,500**	**23,200**	**5,900**	**6,100**
	Long-Term: 2051				**Long-Term: 2051**					**Long-Term: 2051**					**Long-Term: 2051**			
Arrowtown	1,100	400	80	**1,500**	1,700	200	40	**2,000**	**2,000**	700	- 200	- 40	**400**	**500**	40	400	-	**40**
Eastern/Frankton/Quail	5,400	2,100	400	**8,000**	4,700	500	1,800	**7,000**	**7,000**	- 700	- 1,600	1,300	- **1,000**	- **900**	500	2,000	-	**80**
Queenstown/Arthurs	4,000	2,100	400	**6,500**	8,400	1,800	1,600	**11,900**	**16,400**	4,400	- 300	1,200	**5,300**	**9,900**	800	5,200	5,100	**4,500**
Kelvin Heights/Southern Corridor	5,200	1,700	300	**7,200**	6,300	500	400	**7,200**	**7,400**	1,200	- 1,200	20	**30**	**300**	100	3,200	300	**200**
Wakatipu Small Township/Other	700	300	70	**1,100**	700	200	10	**900**	**900**	10	- 200	- 60	- **200**	- **200**	-	50	-	**20**
Wanaka/Hawea	10,100	3,600	800	**14,500**	19,700	1,300	1,000	**22,000**	**23,200**	9,600	- 2,400	200	**7,400**	**8,700**	1,100	12,000	500	**1,300**
Wanaka Small Township/Other	600	200	40	**800**	1,000	80	-	**1,100**	**1,100**	400	- 100	- 40	**300**	**300**	-	300	-	**-**
Total Urban Environment	**27,000**	**10,500**	**2,200**	**39,700**	**42,600**	**4,600**	**4,800**	**52,000**	**58,100**	**15,600**	**- 5,900**	**2,600**	**12,300**	**18,400**	**2,500**	**23,200**	**5,900**	**6,100**

Source: M.E QLDC Residential Intensification Capacity Model, 2022/2023.

Notes:

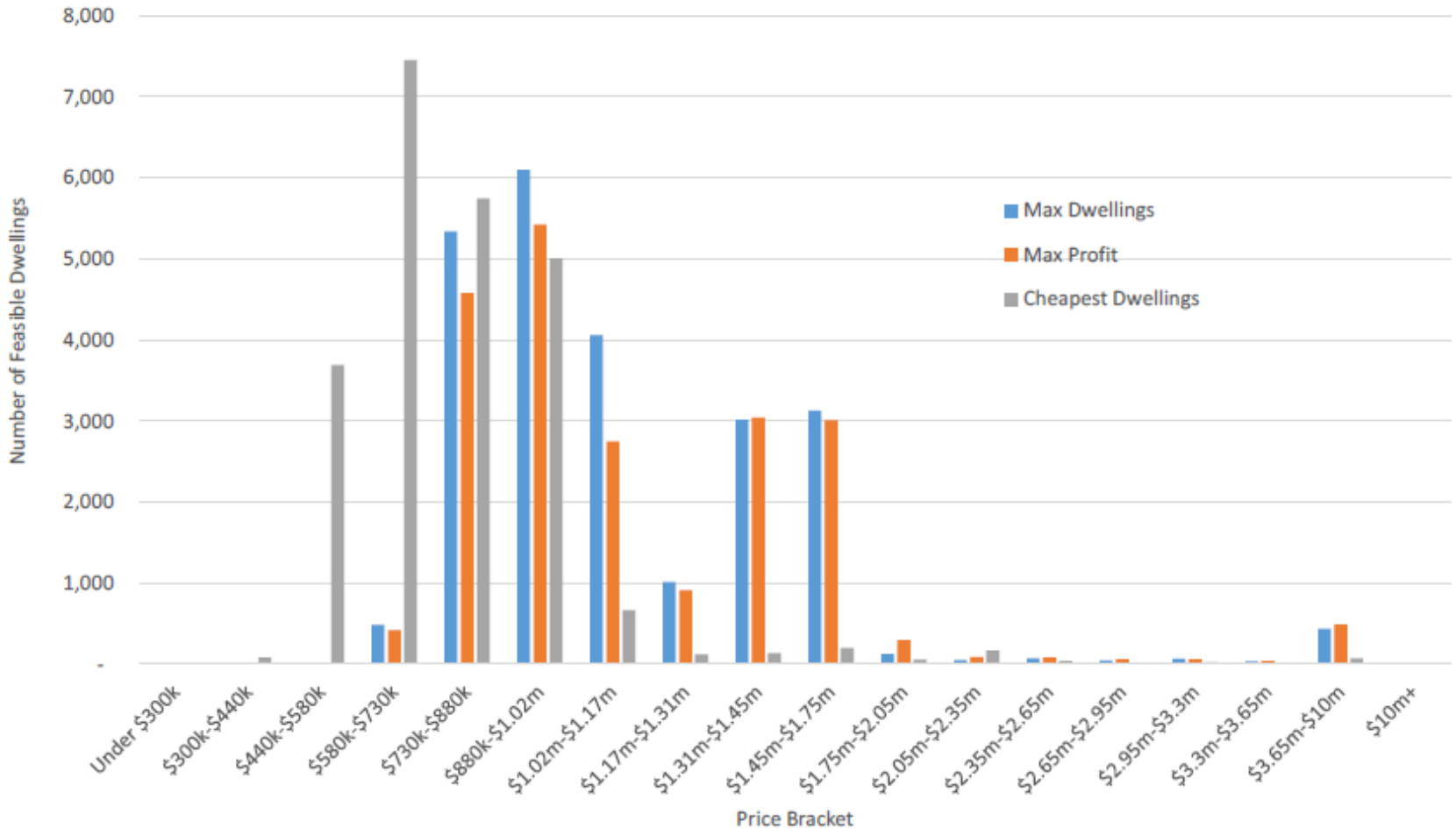
[1] These outputs reflect a parcel level allocation of capacity to the typology with the greatest estimated profit margin.

[2] These outputs show the difference between the highest profit margin allocation to the typology and the total potential capacity enabled under the typology. The typology outputs are not additive, with the 'Total' column providing the maximum potential additional capacity.

[3] This is a combination of the 'Attached' and 'Terraced Housing' typologies.

[4] These include vertically-attached apartments. Horizontally-attached apartments are included under the 'Attached/Terrace' typology.

Figure 5.4 – 2016 Commercially Feasible Dwellings by Price Bracket within Total UGBs



270. The 2018 HBA included an analysis looking at the development profile by value under three different building scenarios: profit maximisation, yield maximisation and lowest costs dwellings.[391] This was done in 2016 prices. The summary results are copied above (Figure 5.4).[392] They show that under the profit maximisation and yield maximisation scenarios there would be very few affordable houses constructed. This analysis was not repeated in the 2021 HBA.

271. We endeavoured to discuss this with Mr Colegrave (the only expert who said that the housing forecasts were within their competency), but he had not looked at this and did not have it available. He cautioned reliance upon the 2018 HBA as so much had changed since then and the demand in particular had turned out to be so much higher than anticipated in the 2018 HBA. We acknowledge that, but note that this analysis was not related to the demand projections. We consider that this analysis from the 2018 HBA supports the results highlighted in the 2023 Update Table 6-1 above, in that building under profit maximisation and yield maximisation scenarios will produce a shortfall of affordable housing typologies.

12.5 Discussion and Findings on The Economy

272. Although predicting the future demand for housing in the District has its challenges, both the 2018 and 2021 HBAs and the 2023 Update showed that there was sufficient capacity currently provided for in the District to accommodate the then projected demand for housing. QLDC has programmes in progress to increase still further the future housing supply through the Ladies Mile variation and the UIV. While the specific outcomes of these are uncertain, that they are being progressed by the Council is significant and relevant. The Council is taking action to significantly increase the supply of housing in the District over that which is already provided for and included in the capacity assessed to date. Through the two proposed variations we have mentioned, the Council is also seeking to increase the provision of the more affordable typologies. These are under the umbrella of the Joint Housing Action Plan (JHAP) and are the continuation of a two-decade long focus on housing and affordable housing by the Council.

273. This Variation sits within the wider landscape of the Council's broader housing strategy to provide a significantly increased supply of land for housing development. We find that increasing the supply of housing capacity and enabling and encouraging more affordable typologies will not necessarily provide more affordable housing. More supply in the Queenstown Lakes market, on its own, will not produce more affordable houses. Sections and houses, even if within the affordable zone on first sale by the developers, do not stay affordable in the Queenstown Lakes market. Earlier in our report, we referred to the Bridesdale development as an example of this. Without some form of retention mechanism, the stock of affordable houses in the District will not increase until at least the long term.

274. As we noted earlier in our report, we were not given any estimates of the number of affordable dwellings that the Variation will produce. We acknowledge that there is variability in the number of sections and houses brought to the market each year, and that this makes predicting the flow of financial contributions under the Variation on a year-by-year basis a fraught exercise. However, as Mr Eaqub told us, the demand in the District is strong.

---

391 See 2017 HBA at 5, pp184ff

392 2017 HBA Figure 5.4

275. The evidence from all three economists and the developer witnesses was clear that there is a potential for the Variation to cause an increase in the price of existing and future dwellings on the open market. We find that this is likely to occur, but if a significant increase in supply from the Council variations eventuates, this is likely to be limited to Mr Eaqub's 0%-1%. Even if the full 2.2% as found in international studies eventuates, as alluded to by Mr Eaqub, this is likely to be subsumed within the ongoing increase in market prices that is occurring anyway. The economists agreed that any price increase from the Variation would be a one-off, short-term effect, and we accept that.

276. While there may be some short-term reassessment of current projects if a transition policy is not included given the strength of demand in the District, we do not expect there to be any significant curtailment of housing supply arising from the Variation. Any market adjustment will be in the market price rather than the quantity supplied. We discuss transitional arrangements later in our report.

277. We accept that there will be administrative costs arising from the Variation, and that there is the potential for development to be diverted from QLD to districts that do not implement an inclusionary housing requirement. Given the strength of demand in the District, and low level of attention to these costs by all three economists, we do not consider they are likely to be determinative.

278. In response to the submitters' view that more supply is the answer to the provision of affordable housing, the evidence from the HBAs and the 2023 Update is clear that enabling supply considerably in excess of that required still does not address the shortfall in affordable housing. Increasing supply may be necessary, but it is not sufficient. We find that more supply of itself will not address the shortfall in affordable housing.

13 DISCUSSION OF THE ISSUES

13.1 Does the Variation fall within the scope of the RMA?

279. One of the central issues raised by submitters is whether the Variation falls within the scope of the RMA, or, in other words, whether the RMA confers the necessary jurisdiction, irrespective of the merits of the Variation. As will be discussed, however, it is the assessment of the merits of the Variation, in accordance with the relevant statutory scheme, that will ultimately be determinative in forming our recommendations.

280. The Council's legal position on the issue of *vires* is set out in its opening legal submissions, and can be summarised as follows:[393]

(a) Addressing the issue of housing affordability has long been a function of territorial authorities. Section 31(1)(aa) of the RMA, inserted in 2017, requires a territorial authority to ensure that there is sufficient development capacity in respect of housing.

(b) An inclusionary housing policy affects the capacity of land for urban development by effectively increasing the amount of land available for affordable housing. Including inclusionary housing in a district plan is a mechanism for ensuring a district has sufficient development capacity and, therefore, is consistent with the functions of a territorial authority.

[393] Opening legal submissions for Council dated 23 February 2024, paragraphs 2.1 – 2.6.

(c) Inclusionary housing is consistent with the provisions in Part 2 of the RMA, and falls within the definition of "sustainable management". In short, the Council reasons that as inclusionary housing attempts to address the undersupply of housing for low-income and low-wealth households that results from the previously less-constrained development of land, it falls within the definition of sustainable management.

(d) The Variation gives effect to the NPS-UD, and in particular Policy 1, which requires planning decisions that "*contribute to well-functioning urban environments, which are urban environments that, as a minimum … have or enable a variety of homes that … meet the needs, in terms of type, price and location of different households*". Inclusionary housing can be used as a tool to provide homes of different types and prices and, accordingly is a mechanism for giving effect to the NPS-UD.

(e) Providing the plan provisions proposed by the Variation are valid (on their merits), financial contributions are a legitimate means to implement an inclusionary housing policy. [Our emphasis]

281. Having reviewed the case law and legal submissions on behalf of the Council and submitters, we have approached the vires issue by considering first, Council's functions and powers under s31(1) and ss 72 to 77 of the RMA, and secondly, the method proposed in the Variation (rules), which impose financial contributions under s108.

13.1.1 Council's functions and powers under s31(1) and ss72 to 77 of the RMA

282. The Council's ability to include a rule requiring affordable housing contributions within a district plan must be within the scope of the Council's functions as set out in s31 of the RMA, with reference to the overall purpose of the Act in Part 2. In *Western Bay of Plenty District Council v Muir* the High Court cautioned against construing a council's functions under s31 broadly:[394]

> *Whilst of course the purpose of the Act is sustainable management of natural and physical resources and, as a consequence, rules must be necessary to achieve the purpose of the Act, simply because such a rule might be directed towards that purpose does not of itself make the rule lawful if the rule itself is ultra vires.*

283. The functions of a territorial authority, provided in s31(1), are set out as follows:

> **31 Functions of territorial authorities under this Act**
> (1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:
> (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:
> (aa) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district:
> (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—

394 *Western Bay of Plenty District Council v Muir* [2000] NZRMA 353 at [27].

(i) the avoidance or mitigation of natural hazards; and
(ii) [Repealed]
(iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:
(iii) the maintenance of indigenous biological diversity:

(c) [Repealed]
(d) the control of the emission of noise and the mitigation of the effects of noise:
(e) the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:
(f) any other functions specified in this Act.

284. Section 31(1)(aa) was inserted into the RMA in 2017, and relevantly requires a territorial authority to "*ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district*". [Our emphasis]

285. The terms "business land" and "development capacity", as they apply in s31, are defined in s30(5) as follows:

> **business land** means land that is zoned for business use in an urban environment, including, for example, land in the following zones:
> (a) business and business parks:
> (b) centres, to the extent that this zone allows business uses:
> (c) commercial:
> (d) industrial:
> (e) mixed use, to the extent that this zone allows business uses:
> (f) retail
>
> **development capacity**, in relation to housing and business land in urban areas, means the capacity of land for urban development, based on—
> (a) the zoning, objectives, policies, rules, and overlays that apply to the land under the relevant proposed and operative regional policy statements, regional plans, and district plans; and
> (b) the capacity required to meet—
> (i) the expected short and medium term requirements; and
> (ii) the long term requirements; and
> (c) the provision of adequate development infrastructure to support the development of the land

286. We note that the definition of "development capacity" originally proposed in the Bill was amended following the Report of the Select Committee, which commented as follows:[395]

> *We recommend amending the definition of development capacity in clause 11(4), new section 30(5) of the RMA. Our amendments would clarify that this term only applies to urban areas, and that sufficient development capacity must be provided to meet short-term and medium-term demand, in addition to long-term demand.*

287. The Select Committee further noted that the amendments to the definition of "development capacity" were intended to "*align with the proposed functions and definitions in the National Policy Statement on Urban Development Capacity 2016*".[396]

395 Resource Legislation Amendment Bill 2015 (101-2) (Select Committee Report at 3).

396 Resource Legislation Amendment Bill 2015 (101-2) (Select Committee Report at 3).

288. While "business land" is defined in s30(5), the word "housing" is not. Whether the phrase "housing and business land" means "housing, and business land" or "housing land and business land" was discussed at the hearing. We address this in more detail below.

289. Whether 'affordable housing' is a matter that can be addressed within the scope of the RMA, that is, whether the Act confers the necessary jurisdiction (regardless of the merits), was addressed as a preliminary question of law by the Environment Court in *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council* ("*Infinity*").[397] In brief, the Council proposed, through PC24, to introduce affordable housing into the policies of the district plan so that affordable housing would become a relevant matter with respect to proposed plan changes, as well as in the consideration of resource consent applications.[398]

290. In terms of method, PC24 as notified proposed to introduce a regime requiring financial contributions for affordable housing. However, before a financial contribution could be imposed, a case-by-case assessment of the impact of a specific subdivision and development on the supply of affordable housing was necessary. In his opening submissions at 4.2 to 4.3, Mr Whittington, for the Council, set out the basis for PC24 as follows:[399]

> *Speaking generally, PC24 applied to activity that was not anticipated in the district plan, which would generate demand for affordable housing. All plan changes, discretionary activities or non-complying activities had to be assessed to determine their impact on the supply of affordable housing. Only the element of the development over and above that anticipated by the district plan had to be assessed. For example, a plan change to "upzone" from the rural residential zone to the low-density residential zone could discount those houses provided for in the rural residential zone from an affordable housing requirements assessment. If the assessment found that any plan change, discretionary activity or non-complying activity would generate a demand for affordable housing over a certain threshold, action would be required to mitigate the effect of the development on housing affordability*. [Our emphasis].

291. Ms Baker-Galloway submitted that *Infinity* was *"a fact-specific judgment in the context of PC24"* which is distinguishable "*in important ways*" from the Variation. In particular, PC24 required that "*an impact on the affordable housing market be demonstrated, which in turn required specific assessment of the effects of a development on the supply of, and demand for, affordable housing*". The method of assessment was prescribed in Appendix 11, which she described as "*a formulaic assessment of the generated demand for affordable housing from particular expected land or building uses. If a development established no adverse effects on affordable housing demand (i.e., less than one household) then no contributions were required*".[400]

292. Although PC24 was very different from this Variation in terms of its scope and application, the *approach* of both the Environment Court and, on appeal, the High Court to the matter of *vires* is nonetheless apposite.[401]

---

397 It should be noted that although leave to appeal to the Court of Appeal was subsequently granted by the High Court, the appeal did not proceed, as the Council withdrew the proposed plan change.

398 *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council* [2010] NZEnvC 234, paragraph [1].

399 Citing *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council* HC Invercargill CIV-2010-425-365, 14 February 2011

400 Synopsis of Legal submissions for Glendhu Bay Trustees Limited and others, dated 1 March 2024, Appendix, paragraph 20.

401 *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council*, CIV-2010-425-000365, HC, dated 14 February 2011, paragraph [38].

293. In the High Court, Chisholm J agreed with the Environment Court that the logical '*starting point*' is s72 of the RMA.[402] Section 72 specifically relates to district plans and specifies that the purpose of such plans "*is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act*". Chisholm J stated that the statutory purpose effectively comprises two components of relevance to the case at hand: the functions of territorial authorities under s31(1)(a) and (b), and the purpose of the Act under Part 2, particularly s5. His Honour noted the comments of the Court in *NZ Rail Ltd v Marlborough District Council* that there is:[403] *"… a deliberate openness about the language, its meanings and its connotations which … is intended to allow the application of policy in a general and broad way*", observing that he could not see any justification for reading down the scope of the functions that a literal reading of s31(1)(a) and (b) would indicate.

294. In relation to s31(1)(a) and (b), the High Court concluded as follows:

> *[41] A literal reading of s 31(1)(a) indicates that one of the functions of a territorial authority is to establish objectives, policies and methods to achieve integrated management of the effects of the use or development of land within its district for the purpose of giving effect to the Act. It goes without saying that there must be a link between the effects of the use or development of the land and the objectives, policies and methods that are established to achieve integrated management. Moreover, that the purpose must be to give effect to the Act.*
>
> *[42] On its face, and without going into the merits, PC24 appears to fit within the framework of the function described in s31(1)(a). It concerns a perceived effect of the future development of land within the district. However, the requirement to provide affordable housing will only arise if the development is construed as having an impact on the issue of affordable housing. Thus the requisite link between the effects and the instrument used to achieve integrated management exist. And for reasons that will follow, its purpose is to give effect to the Act.*
>
> *[43] Similar conclusions can be reached with reference to s31(1)(b). Under that paragraph the functions of territorial authorities include the control of any actual or potential effects of the use or development of land. This wide function reflects the sustainable management regime established by the Act. I do not think that the four statutory examples included in para (b) detract from the breadth of that function. Consequently, if the use or development of land within the Queenstown Lakes district has the effect, or potential effect, of pushing up land prices and thereby impacting on affordable housing within the district, the Council has the power to control those effects through its district plan, subject, of course, to the plan ultimately withstanding scrutiny on its merits.*
> (Our emphasis)

295. For those reasons, Chisholm J agreed with the findings of the Environment Court that PC24 was within the scope of the functions of the territorial authorities specified in s31, holding that "*the first component of s 72 is satisfied*".[404]

296. The High Court went on to consider what it termed "*the second component of s 72*", which concerns s5 of the RMA. Chisholm J held that 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,

---

402 *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council*, CIV-2010-425-000365, HC dated 14 February 2011, paragraph [38].

403 *NZ Rail Ltd v Marlborough District Council* [1994] NZRMA 70 (HC), paragraph 86.

404 *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council*, CIV-2010-425-000365, HC dated 14 February 2011, paragraph [44] .

and that the concept of social or economic wellbeing is "*obviously wide enough to include affordable housing and/or community housing*".[405]

297. Finally, the High Court considered whether any other sections of the RMA might materially impact its conclusions in relation to s72, noting that ss74(1) and 74(3) were prima facie relevant.[406] Chisholm J agreed with the Environment Court's findings concerning s74(1), commenting that "*whether the Council's s 32 analysis can withstand scrutiny can only be properly determined at a substantive hearing*".[407]

298. In the Council's submission, *Infinity* is "helpful" because "*it puts beyond argument any suggestion that housing affordability is not a resource management issue, or that inclusionary housing is ultra vires the RMA. The issue is whether it is justifiable under s 32 in the particular circumstances of the district"*. In relation to the High Court's findings in relation to s31(1)(a) set out above, Mr Whittington submitted that there is a clear 'link' between the effects of the use or development of land and the objectives, policies and methods of the proposed inclusionary housing provisions, which he explained as follows:[408]

> *"The link may therefore be seen as expressed in the Council's opening submissions at [2.3]. The Council is seeking to prevent the occurrence of, or at least to mitigate, the past, current and future effects of the development of land (the undersupply of affordable housing) on the economic conditions (unresponsive housing supply) which affect the availability of housing by requiring a proportion of housing constructed to be provided on an affordable basis."*

299. In his closing submissions, Mr Whittington submitted that notwithstanding the existence of a '*link*', demonstrating a '*link*' is not necessary. He reasoned as follows:

> *"2.17 Section 76(1) provides that rules may be included by a territorial authority for the purposes of carrying out its functions and achieving objectives and policies of the plan. Section 76(3) provides: "In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect".*
> *2.18 It is well established in the RMA context that" have regard to" means give genuine attention and thought. Notably s 76(3) does not say that rules may only be made to address adverse effects of a particular land use. The statutory language is permissive and does not require there to be an effects-based rationale or a link between the content of a rule or provision, and the effects that it seeks to manage or promote.*
> *2.19 This is even more clear in respect of financial contributions. The Environment Court has held that the purpose of financial contributions under the RMA is to compensate for remote effects where the exact degree of cause and effect is not known. Therefore the RMA enables contributions to be determined in accordance with the terms of the plan, to avoid having to assess, with impossible accuracy, proof of the causal relationship and scale of effects.*
> *2.20 Accordingly, for financial contributions under the RMA there is no requirement for there to be clear linkage between the subject matter of a provision and the effects that it addresses."*

300. Mr Whittington considered his conclusion to be reinforced by the subsequent introduction of s77E, which "*paints financial contributions in very broad terms: financial contributions may be*

---

405 *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council*, CIV-2010-425-000365, HC dated 14 February 2011, paragraph [46].

406 While s74(3) was not directly raised as an issue by either Council or submitters with respect to this Variation, many counsel pointed to the requirement of supporting competitive land and development markets through Objective 2 of the NPS-UD.

407 *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council*, CIV-2010-425-000365, HC dated 14 February 2011, paragraphs [48] – [49].

408 Council's closing legal submissions dated 28 March 2024, paragraph 2.15.

made for any class of activity other than a prohibited activity". He further argued that if any doubt remained as to whether inclusionary housing falls within the functions of territorial authorities under the RMA following the *Infinity* decisions, it has been settled by the enactment of s31(1)(aa), which was intended to improve housing affordability outcomes.[409]

301. Mr Whittington submitted that s31(1)(aa), which provides the Council with a function to "*ensure there is sufficient development capacity in respect of housing and business land to meet the needs of the District*", was "*clearly drafted with issues of housing affordability in mind*" and was designed to make it clear that improving housing affordability was a local authority function under the RMA.[410] In reaching this conclusion, he relied on the explanatory note to the Bill, which contained a heading titled "National Direction" under which the following commentary appeared:[411]

> *"… amend sections 30 and 31 of the RMA to make it a function of regional councils and territorial authorities to ensure sufficient residential and business development capacity to meet long-term demand. This is designed to enable better provision of residential and business development capacity and therefore improved housing affordability outcomes."* [Our emphasis]

302. Mr Whittington considered that it follows that a territorial authority must ensure that there is sufficient *development capacity* in respect of "housing" to meet the expected short, medium and long term capacity requirements for urban development, across the spectrum of typologies. In support of this submission, he drew our attention to the definition of "Development Capacity" set out in s30(5), as noted above, emphasising that capacity is required to meet the expected short, medium and long term requirements.

303. The gist of Mr Whittington's rationale is that market and/or regulatory failure in the QLD has resulted in limited capacity to meet the Council's requirement of ensuring that housing is provided and/or available for low-income and low-wealth citizens within its District, and that *"[B]y requiring developers to set aside a portion of new development for affordable housing, or make a contribution to this outcome, territorial authorities are (in practical terms) increasing the capacity of land which will become affordable housing*". He considered that s31(1)(aa) strengthens the outcome of the *Infinity* cases by providing Council with an explicit function to ensure that there is sufficient housing capacity to meet the needs of the District. In his closing submissions, Mr Whittington observed that he did not consider there to be any material distinction between the terms 'housing' or 'housing land' (i.e., the supply of land for housing) insofar as the Variation is concerned (ostensibly with regard to either s31(1)(aa) or the NPS-UD).[412]

304. Counsel for a number of submitters argued that the Variation does not address or mitigate an adverse effect that is associated with residential subdivision and development, and that in reality, the proposal is a form of "tax". It was submitted that the RMA is a planning and resource management statute, not an instrument for use by the Council to achieve its social policies. Although the Council has a clear function under the RMA to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the District, the RMA does not confer a power on councils to directly interfere in the housing market through taxes, unrelated to the environmental effects of activities, designed to achieve social distributional aims. Any financial contribution imposed under the RMA must, on the other hand, be clearly related to the environmental effects of activities.

---

409 Council's closing legal submissions dated 28 March 2024, paragraph 5.9.

410 Council's closing legal submissions dated 28 March 2024, paragraph 5.11.

411 Resource Legislation Amendment Bill 2015 (101-1) (explanatory note) at 3.

412 Council closing legal submissions dated 28 March 2024, paragraphs 3.2 – 3.5.

305. Expanding on this, Mr Matheson argued that the *Infinity* cases plainly demonstrate the need for a clear '*link'* between the requirement for a financial contribution and the effects of a particular activity that triggers the contribution. In contrast to PC24, which required an assessment of effects in terms of the demand for affordable housing created by the proposed development before a contribution could be imposed, the Variation proposes a "*blanket and automatic requirement for a financial contribution to be made*".[413] Accordingly, the necessary causal link between the effect of a *particular* proposed activity on housing affordability, and the requirement to make a financial contribution to assist with the provision of affordable housing, does not exist: *"[t]his demonstrates a lack of identified nexus between the rules and their purpose*".[414]

306. In a similar vein, Mr Gordon submitted that the methodology proposed in the Variation, which does not call for an assessment of the adverse effects of the proposal being consented to, is "*at odds with what the High Court deemed to be reasonable scope requirement for a financial contribution in the case of [Infinity]*".[415] He argued that:[416]

> *"… there has to be more than a s 5 sustainable purpose at play; there has [to be] evidence of a link between the proposal up for consent and the adverse effect that the financial contribution is seeking to mitigate. Without a site-by-site assessment methodology, there can be no evidence of an impact on the issue of affordable housing least of all, a negative impact.*
>
> *Where a residential activity is already permitted in a zone, the community has concluded that it will have benefits there rather than adverse effects. That conclusion cannot reasonably be undone and reversed by way of a Variation without evidence that the initial zoning decision was flawed."*

307. In drawing a comparison between PC24 and the Variation, Ms Baker-Galloway described the current proposal as "*a blunt instrument which seems to assume all brown and greenfield development in almost all zones creates an adverse effect on supply of affordable housing, and requires contribution accordingly*".[417] Accordingly, as the Variation targets activities that do not have a causal nexus to adverse effects being mitigated or offset, PC24 can be distinguished on its facts. For the same reasons, she argued that the proposal is *ultra vires* the RMA and contrary to the intent of s77E when read in light of s108AA and associated s108 case law on consent conditions.

308. Mr Ashton, for Remarkables Park Limited, submitted that s31(1)(aa) does not assist the Council with respect to the Variation, as it only addresses the extent to which housing is unaffordable *due to constrained land use*. If land for housing is constrained, the Council has the express authority and duty to establish or implement policies and methods that ensure there is sufficient development capacity of housing land to meet the demands of the District. He argued that as the Council "*takes the position that it has zoned sufficient housing land to meet the housing expected demands of the district",* any nexus between development and housing affordability cannot be said to relate to constrained land use.[418]

---

413 Legal submissions for Willowridge Developments and others dated 5 March 2024, paragraph 21.

414 Legal submissions for Willowridge Developments and others dated 5 March 2024, paragraph, paragraph 22.

415 Synopsis of submissions of Queenstown Central Limited dated 5 March 2024, paragraph 31.

416 Synopsis of submissions of Queenstown Central Limited dated 5 March 2024, paragraph 35.

417 Synopsis of legal submissions for Glendhu Bay Trustees Limited and others dated 1 March 2024, paragraph 20.

418 Submission #124 Remarkables Park Limited, paragraph 18.

13.1.2 Discussion

309. In reviewing the *vires* of the Variation, we will start with first principles. As this is a plan change application, ss72 to 77 of the Act are directly relevant.

310. In forming our conclusions below, we are mindful of Chisholm J's comments in *Infinity Investment Group Limited v Queenstown Lakes District Council*,[419] in which leave to appeal the central question in the High Court's decision in *Infinity* (HC), "*whether PC24 came within the scope of the RMA*", was granted. Chisholm J stated:[420]

> *"[22] I have no doubt that question (c) gives rise to a question of law of general or public importance. I said as much in my decision. There does not appear to be any authority, at least of any Superior Court, on the topic. Notwithstanding that the determinations have been in the context of a preliminary issue, PC24 itself provides a context for the vires issue to be determined. PC24 speaks for itself as to the mechanism that has been used and its intended purpose. Whether it should be upheld on the merits is an entirely different matter. … .*
>
> *[23] Turning to the question of public or general importance, it is difficult to avoid the conclusion that the lawfulness or otherwise of PC24, especially to the extent that it involves financial contributions (and I am using that terminology in a loose sense rather than in the technical sense under the RMA), will be of considerable interest to other territorial authorities. They are likely to be interested in how far they can go. In other words, the Court of Appeal decision is likely to be of considerable significance well beyond the Queenstown Lakes District.*
> *…*
> *[27] This is a relatively finely balanced matter, but in the end, I have been driven to the conclusion that now we are on the path of preliminary issues the sensible course is to grant leave for question (c) to be determined by the Court of Appeal."* [Our emphasis]

311. The appeal point in *Infinity* was very specific. Two other appeal points were not pursued by the appellant. In particular, we note that Chisholm J did not agree that the question of whether the RMA empowered territorial authorities to impose a subsidy or tax through a district plan could be appealed, as the High Court had made no finding on that point.[421] We note that as the Council withdrew PC24 for "political and economic reasons", the appeal granted (to the Court of Appeal) in *Infinity* did not proceed.[422]

312. After noting that Judge Whiting was satisfied that PC24 came within the statutory concept of sustainable management in s5, Chisholm J stated:[423]

> *"… 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 well-being. The concept of social or economic well-being is obviously wide enough to include affordable and/or community housing."*

---

419 *Infinity Investment Group Limited v Queenstown Lakes District Council* [2012] NZHC 750.

420 *Infinity Investment Group Limited v Queenstown Lakes District Council* [2012] NZHC 750, paragraphs [22] – [23].

421 *Infinity Investment Group Limited v Queenstown Lakes District Council* [2012] NZHC 750, paragraph [12]

422 Representations of Mr Gardner-Hopkins on behalf of Cardrona Village Limited and Kingston Flyer Limited, paragraphs 3 to 8.

423 *Infinity Investment Group Limited v Queenstown Lakes District Council* [2012] NZHC 750, paragraph [46].

313. It follows that a proposed plan change that addresses the issue of affordable housing (the Variation) will prima facie fall within the purpose of the Act under s5 of Part 2, and hence meet the 'second limb' of s72, provided that it is justifiable on its merits as a matter of evidence.

314. However, the first limb of s72, which concerns the functions of territorial authorities under s31, is more complex and challenging. There are two legal questions relevant to this assessment. First, the need for some sort of causal link between the effects of the use or development of land and the plan provisions sought to be imposed (s31(1)(a)). The High Court in *Infinity* held that there must be a such a link. Second, the need for a commensurate link between the use and development of land that has the effect, or potential effect, of adversely impacting on the supply of affordable housing within the District before the Council has the power to control these effects through the Plan (s31(1)(b)).

315. Although not directly referenced in the *Infinity* decisions, s76 of the RMA is also relevant to the consideration of the requirement for, and nature of, an effects-based link. This section of the RMA addresses district rules and relates the power to make rules back to council functions and the objectives and policies of the plan.[424] Importantly, s76(3) states:

> *"(3) In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect."*

316. In their legal submissions, counsel for the submitters in opposition barely mentioned this statutory requirement, and instead focused a large part of their submissions on ss108 and 108AA. However, s76(3) provides the basis for making a rule in a district plan, and it plainly requires *consideration* of effects. Mr Whittington's submission was that s76(3) of the Act does not say that rules may only be made to address the adverse effects of land use. Rather, the statutory language is permissive. He further submitted that no "effects-based" rationale or linkage is required.[425] Mr Mead made a similar point in his s32 Report.[426]

317. In directing the payment of financial contributions in the way the Council has proposed, the rule must have regard to the actual or potential effect of the activities in question (residential subdivision and development) and, in particular, any adverse effect of those activities. In other words, the Council must consider whether *residential subdivision and development* has caused, or has the potential to cause, an adverse effect on the provision of affordable housing in the District.

318. We also note that s76(4) provides that a rule may apply throughout a district or a part of the district and may include different provisions for parts of the district or different classes of activities arising from an activity. It can be general or specific.

319. Counsel for the submitters, relying on their interpretation of the findings in *Infinity*, have adopted a relatively narrow interpretation of the nature of the requisite link: Council's ability to provide affordable housing can only arise if a *proposed development* is construed as having an impact on the issue of affordable housing.[427] They appear to suggest that developers cannot

---

424 Section 76(1).

425 Closing legal submissions for the Council dated 28 March 2024, paragraphs 2.17-2.20, citing *Contact Energy Limited v Waikato Regional Council* (2007) 14 ELRNZ 128 (HC)

426 Section 32 report, paragraphs 9.6 and 9.7

427 See for example, Synopsis of submissions for Queenstown Central Limited dated 5 March 2024, paragraph 35; Legal submissions for Remarkables Park Limited dated 6 March 2024, paragraph 15;

be held responsible for any past, present or future failings to deliver affordable housing in the District.

320. The question is therefore: what is the scope and nature of the causal '*link*' required under s31? Is it broad, i.e., able to be satisfied at a plan level (Council's argument), or alternatively must it relate to the effects (on the environment) of specific residential subdivision and development proposals on the issue of affordable housing (the submitters' "*causal nexus*" approach)? Is a link required at all, given the provisions of s76(3)? How has s31(1)(aa) impacted this assessment, if at all?

321. *Infinity* was decided in the context of PC24, which inherently required a case-by-case assessment before a financial contribution could be imposed. Accordingly, the Courts were not required to turn their minds to a plan change that applied a 'blanket requirement' to residential subdivision and development proposals (as set out in the proposed Variation) to provide for affordable housing, and whether that meets the tests under s31. In that sense, the findings in *Infinity* are limited to their specific facts, and require careful interpretation if they are to be applied to any other plan change variation that addresses affordable housing.

322. The Council's position was that inclusionary housing is consistent with Part 2 of the Act, noting that s5 refers to "sustainable management", which in turn refers to managing physical and natural resources in a way and at a rate which enables "*people and communities to provide for their social, economic, and cultural well-being*." Mr Whittington submitted that the definition of sustainable management refers to "*adverse effects of activities on the environment*". Drawing on the words in the definitions of "*effect*" and "*environment*" and s5, he argued that it is open to the Council to:[428]

> "(a) *adopt an approach 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) which affect the availability of housing; or*
> (b) *adopt an approach 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 (increased house prices) which affect people and communities."*

323. Mr Whittington pointed to the broad elements of the definition of "effect" and subparagraph (d) of the definition of "environment", incorporating what he described as an element of reciprocity, referring to social, economic, and cultural conditions which affect the matters listed in subparagraphs (a) to (c) of the definition, and also including the economic, aesthetic and cultural conditions which are affected by those same matters. He also referred to the definition of "amenity values', submitting aesthetic considerations are an element of the environment.[429]

324. In a similar vein, we received evidence on the importance of planning to achieving social and public good. Mr Serjeant considered that affordable housing can be considered as a social good or a public good, but he preferred to consider it as a social good because "*it typically requires the intervention of governments.*"[430] Mr Serjeant noted the RMA and district and regional plans address a wide range of public and social goods, with public goods being

---

Synopsis of legal submissions for Glendhu Bay Trustees Limited and others dated 1 March 2024, paragraph 20.

428 Opening legal submissions for the Council dated 23 February 2024, paragraph 2.3

429 Opening legal submissions for the Council dated 23 February 2024, paragraphs 5.4-5.6

430 Statement of evidence of David Serjeant, paragraph 27

naturally present. These public goods can be restricted through planning rules and standards, which place limits on private rights that have the effect of protecting the resource, public good or social good, for the benefit of the wider society, or of the community at a local level. He also noted that rules and standards in plans address an adverse effect or the potential for an adverse effect, with the person responsible for the adverse effect being required to avoid, remedy or mitigate that adverse effect.[431] Mr Serjeant's evidence was that he was not aware of rules that did not exhibit these characteristics. Two examples he referred to that fell slightly outside these parameters still had public good characteristics, delivering a benefit for all of society.

325. Mr Serjeant's point was that the management of natural and physical resources under the RMA has been consistent over the past 30 or so years. The enhancement of positive effects was directed at ensuring that public good continued to be available for current and future generations. However, in his opinion the Council had approached the Variation on the wrong basis in deciding that it was "*reasonable*" for one sector of the housing and land development market to provide a remedy for the shortfall of housing in the QLD. Aside from noting that s32 of the Act did not include a "*reasonable*" test, Mr Serjeant considered the Council's approach was flawed and the method proposed was not the most appropriate way to achieve the objectives of the Variation.[432]

326. As we noted earlier, in his closing submissions for the Council, Mr Whittington emphasised that, drawing on the definitions of "*effect*" and "*environment*" (as set out above), the Variation demonstrates a clear link between the effects of the past, current and future effects of the use and development of land (the undersupply of affordable housing) on the economic conditions (unresponsive housing supply) that in turn affects the availability of housing. He concluded that inclusionary housing falls within the definition of sustainable management. The Variation, by way of response, requires a proportion of housing constructed to be provided on an affordable basis, and retained as affordable housing in perpetuity. In doing so, he essentially argued that the Variation takes an holistic or high level (District wide) approach to demonstrating the nature of the requisite link, as opposed to the case-by-case basis proposed in PC24 and that, in any event, s 31(1)(aa) now makes it clear that territorial authorities have the power to deal with market and/or regulatory failure with respect to the provision of affordable housing sufficient to meet the short, medium and long term needs of the District.

327. Submitters have raised concerns about the Council intervening in the market, submitting this is unlawful. This point also arose in the High Court's consideration of *Infinity*. On balance, and bearing in mind Mr Serjeant's evidence above in relation to the importance of planning in achieving social and public good, we agree with the Council that planning often requires some level of lawful intervention. It is clear that the market in QLD (without various forms of intervention) is not delivering affordable housing. As we note elsewhere in our report, the supply of land on its own, or the rezoning of land, has not delivered the required outcome in this District.

328. We have considered whether the submitters' approach to the first limb of s72 is too narrow a reading and could potentially hamstring a territorial authority's powers under s31(1) and (2) as these were intended to be conferred by Parliament. To limit a Council's powers under s72 in the manner described by various counsel for submitters could leave it with very little ability to deal with ostensible market or regulatory failure that culminates in a serious resource management issue for the District, in situations where Council has a statutory function to

431 Statement of evidence of David Serjeant, paragraphs 28-36

432 Statement of evidence of David Serjeant, paragraphs 36-38

address the issue, and where the purpose plainly falls within the definition of sustainable management. In that vein, there was no serious argument put to us that the QLD does not have a very real problem with the supply of affordable housing and that this issue has partly arisen as a result of market and/or regulatory failure. We further note that Chapter 4 of the PDP (Urban Development) already contains objectives and policies regarding affordable housing, and that there were no submissions arguing that these were inappropriate or *ultra vires*.

329. In terms of s76(3), we have considered the requirement for a rule in a plan to have regard to the actual or potential effect of the activities on the environment, and in particular, any adverse effect. As noted above, Mr Whittington submitted that the words "*effect*" and "*environment*" are very broadly defined in the RMA and that the Act does not limit rules to addressing the adverse effects of a particular land use. His submission relied on *Contact Energy Limited v Waikato Regional Council*,[433] in which Woodhouse J stated:

> *"[69] The RMA does not stipulate that every rule must have an effects-based rationale. … The directly relevant provisions of the RMA, moving from the most specific to the most general, are discussed in the following paragraphs.*
>
> *…*
>
> *[71]* [The Court set out section 68(3), which mirrors s 76(3).]
>
> *The Regional Council, and therefore the Environment Court on an appeal, must have regard to effects on the environment, and any adverse effects in particular. This does not mean the rule must have an effects-based rationale.*
>
> *[72] Section 68(3) is in any event part only of the statutory direction to Regional Councils as to how they should go about formulating regional plans. Section 63(1) provides: "The purpose of the preparation, implementation, and administration of regional plans is to assist a regional council to carry out any of its functions in order to achieve the purpose of this Act".*
>
> *[73] If a rule can be said to have an underlying rationale, it is what is stipulated in s 63(1). This takes the analysis to its most general - s 5 which sets out the purpose of the RMA …. Plainly this requires consideration of a great deal more than effects on the environment, let alone effects on "the receiving environment" as it was put in submissions for Contact."* [Our emphasis]

330. We do not consider *Contact Energy* to be good legal authority for the submission Mr Whittington has made. *Contact Energy* was specific on its facts. It concerned consideration of a quantitative threshold determining the point at which activity status changed from discretionary to non-complying. The Environment Court had determined that the activity had adverse effects which needed to be controlled by consent and that larger forms of the activity should be non-complying. The High Court's reference to there being no need for an effects-based rationale related to that point and cannot be read any wider than that. The statutory provisions we have referred to are clear in their intent.

331. Accordingly, we are not persuaded by Mr Whittington's submission that notwithstanding the High Court's findings in *Infinity*, there is no requirement for a '*link*' between the effects of the use and development of land and the objectives, policies and methods that are established to achieve integrated management under s72. In our view, s76(3) does not support his argument, as it does not provide a basis for side-stepping or distinguishing the tests set out in *Infinity*. However, nothing turns on this finding.

---

433 *Contact Energy Limited v Waikato Regional Council* 14 ELRNZ 128, paragraphs [69] to [73].

332. Much of the criticism of the Variation by submitters in opposition stems from their argument that there is an insufficient nexus between the "*development proposals*" and any adverse effect on affordable housing and that, accordingly, the Variation is, in essence, a tax designed to achieve social redistribution outcomes.[434]

333. We have carefully considered these points, and the submissions of counsel for submitters in relation to the scope of s31(1)(aa). We note again the words of the High Court in *Infinity*:[435]

> "*However, the requirement to provide affordable housing will only arise if the development is construed as having an impact on the issue of affordable housing (in terms of an assessment under Appendix 11). Thus the requisite link between the effects and the instrument used to achieve integrated management exist*". [our emphasis]

334. We accept the submitters' point that development capacity means land zoned for housing and does not include the provision of housing (Council's preferred interpretation).

335. We also accept the submissions of counsel for submitters that as there was no substantive hearing to determine the appeal,[436] the findings of the High Court in *Infinity* must be approached in that context and therefore be treated with some caution. We agree with the submission of Ms Tree on behalf of Metlifecare that "… *the Court did not make a determination on this issue [the imposition of financial contributions to support affordable housing] and instead inquired about whether the Plan Change performed a resource management purpose*". However, the Court's findings on the s31 test, which was concerned with whether PC24 "performed a resource management purpose", remains instructive. Accordingly, we note that our findings below, to the extent that these rely on the judgments in *Infinity*, must be read in that light.

336. Based on our analysis above, we have concluded that:

(a) A causal link or logical connection is required between the effects of the use or development of land and the plan provisions sought to be introduced; and

(b) The adverse effect on the environment that may be considered is not limited to sufficient capacity of land for residential housing – particularly in districts where increasing the supply of land has not solved the issues with provision of affordable housing.

337. Whether the method proposed is the correct one, or the terms of the rule are lawful, are different questions.

338. In summary, we accept Mr Whittington's submissions that, insofar as the s31 test is concerned, there is a sufficient link between the effects of the past, current and future effects of the use and development of land (the undersupply of affordable housing) on the economic conditions

---

434 See, for example, representations on behalf of Cardrona Village Limited and Kingston Flyer Limited at 34.

435 *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council*, CIV-2010-425-000365, HC dated 14 February 2011, paragraph [42]

436 Submissions for Fulton Hogan Land Development Limited dated 4 March 2024, paragraphs 3.4 - 3.5; Submission #147 Metlifecare, paragraph 1.5.

(unresponsive housing supply) that in turn affects the availability of affordable housing. As held by the High Court in *Infinity*, the concept of social or economic well-being in s5 RMA is wide enough to include affordable and/or community housing. There is no legal impediment to the Council's ability to plan to achieve necessary social and public good outcomes *where these are related to the effects on the environment of activities*. In reaching this conclusion, we are mindful of the Court's findings in *Infinity* that:[437] "*… if the use or development of land within the Queenstown Lakes district has the effect or potential effect of pushing up land prices and thereby impacting on affordable housing within the district, the Council has the power to control those effects through its district plan, subject, of course, to the plan ultimately withstanding scrutiny on its merits*". As has been submitted by a number of counsel, it is the s32 test that therefore becomes critical in terms of the overall assessment.

339. Although the effects-link is expressed in much broader terms than that of PC24 considered in *Infinity*, it does not follow that the necessary link must be confined to a specific development proposal (in that case in relation to a windfall gain) for it to satisfy the first limb of the test under s31, particularly when the Court's findings on s31(1)(b) are taken into consideration.[438] As Mr Gordon noted, referring to paragraphs [41] to [43] of the High Court judgment in *Infinity*, "*the link between cause and effect in PC24 was so obvious that Chisholm J did not examine it in any detail*".[439] We were not persuaded by the submissions of counsel for the submitters that such a narrow interpretation is a necessary pre-condition, notwithstanding that it may appear, *prima facie*, to be more acceptable on the merits.

340. We deal with the issue of whether the Variation is a form of tax in our discussion of s108 below and in section 13.5.

341. As discussed in section 13.4 of our report, we have concluded that the provision of affordable housing falls within the requirements of a well-functioning urban environment under the NPS-UD and, in that regard, the Variation gives effect to the NPS-UD (which was introduced post *Infinity*). We also found that the underlying concepts sought to be achieved by the Variation are generally consistent with and give effect to the NPS-UD (other than those matters identified, primarily in relation to iwi).

342. A number of counsel for submitters in opposition argued that the NPS-UD provides a '*complete answer*' to the issue of housing affordability. Mr Matheson submitted that the purpose of the RMA had been given effect to by the NPS-UD and that if the NPS-UD "*did not work*" in QLD, the NPS-UD should be amended. He stated: "*You cannot use Part 2 to impose an outcome that is contrary to, or undermines, the NPS-UD*."[440] In a similar vein, Ms Hill on behalf of Qianlong Limited and others, stated that "*s 31(1)(aa) and the NPS-UD provide a clear and complete response to the issue of affordable housing by a supply and competition based response*".[441] We do not consider that either s31(1)(aa) or the provisions of the NPS-UD, which are largely enabling, limit the ability of councils to address effects on affordable housing using other methods available under the RMA *in addition* to increasing the supply of land, particularly where market failure remains an extant issue. In earlier sections of our report we summarised the supply of land for housing in QLD, and found that more supply in the Queenstown Lakes

437 *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council*, CIV-2010-425-000365, HC dated 14 February 2011, paragraph [43].

438 *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council*, CIV-2010-425-000365, HC dated 14 February 2011, paragraph [43].

439 Synopsis of submissions for Queenstown Central Limited dated 5 March 2024, paragraph 34.

440 Counsel's notes – Mr Matheson dated 6 March 2024, paragraph 10.

441 Legal submissions for Quinlong Limited and others dated 1 March 2024, paragraph [40].

market, on its own, will not produce more affordable houses. As discussed elsewhere in our report, the Variation is neither contrary to, nor does it undermine the NPS-UD. However, from the evidence before us, it is plain that the NPS-UD is a necessary but not sufficient response to the issue of affordable housing within the QLD.

343. In conclusion, for the reasons set out above, we consider that the Variation falls within the scope of s31, albeit in a very different context to that of PC24. Whether the Variation is ultimately considered to be *vires* will be subject to an assessment of the merits under s32, and the provisions of s108 with respect to the method proposed, that of a financial contribution.

13.2 Section 108 of the RMA

13.2.1 <u>The ability to impose financial contributions under Section 108 of the RMA</u>

344. In order to give effect to the strategic objectives and policies of the Variation, the Council proposes to introduce rules to require, as a financial contribution, the transfer of money or land for subdivision and development activities that involve a residential component.

345. In considering whether the proposed rules relate to a resource management purpose (in the context of PC24), Judge Whiting referred to the judgment in *Nugent Consultants Ltd v Auckland City Council*,[442] in which the Court found as follows:[443]

> *"In summary, a rule in a proposed district plan has to be necessary in achieving the purpose of the Act, being the sustainable management of natural and physical resources as those terms are defined; it has to assist the territorial authority to carry out its function of control of actual or potential effects of the use, development or protection of land in order to achieve the purpose of the Act; it has to be the most appropriate means of exercising that function; and it has to have a purpose of achieving the objectives and policies of the plan."*

346. Earlier in our report, we set out the relevant parts of ss77E and 108. Where appropriate, we refer to those provisions again in this part of our report.

347. The RMA empowers local authorities to require financial contributions by way of a condition in a resource consent. Section 77E, introduced in 2021 to clarify any previous uncertainty regarding the financial contribution regime, confers a power on consent authorities to make rules about financial contributions for all activity classes (including permitted activities), other than prohibited activities. Section 77E(2), which largely mirrors s108(10) in all material respects, specifies that 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 financial contribution will be determined; and
> (c) when the financial contribution will be required.

348. Section 108(1) provides that, subject to section 108AA and any regulations, a resource consent may be granted on any condition that the consent authority considers appropriate, including any condition of a kind referred to in subsection (2). Subsection (2) states that a resource consent may include one or more of a list of conditions, which relevantly includes:

---

442 *Nugent Consultants Limited v Auckland City Council* [1996] NZRMA 481 at 484.

443 *Infinity Investment Group Holdings Limited v Queenstown Lakes District Council* [2010] NZEnvC 234, paragraph [26].

(a) subject to subsection (10), a condition requiring that a financial contribution be made.

349. Financial contributions may be conditions in a plan applying to an activity, or imposed as conditions on a resource consent in accordance with a relevant plan.[444]

350. Section 108(10) places limitations on the power conferred in s108(2)(a) as follows:

> A consent authority must not include a condition and a resource consent requiring a financial contribution unless:
> (a) the condition is imposed in accordance with the purposes specified in the plan or proposed plan (including the purpose of ensuring positive effects on the environment to offset any adverse effect); and
> (b) the level of contribution is determined in the manner described in the plan or proposed plan.

351. Accordingly, financial contributions may be imposed for purposes other than mitigating adverse effects, provided that the purposes are specified in the plan or proposed plan (s108(10)(a)). However, as noted in *Cable Bay Wine Limited v Auckland City Council*,[445] the power conferred under s108(1) is not unfettered:

> *"This broadly expressed discretion is subject to general administrative law limits on the exercise of public powers. In respect of the imposition of resource consent conditions, there are three limits:*
> *(a) conditions must be imposed for a planning purpose;*
> *(b) conditions must fairly and reasonably relate to the proposed activities; and*
> *(c) conditions may not be so unreasonable that no reasonable consent authority could have imposed them."*

352. In support of his reasoning in *Cable Bay*, Campbell J relied on the leading authorities: *Newbury District Council v The Secretary of State for the Environment* (HL),[446] and *Waitakere City Council v Estate Homes Ltd* (SC).[447] It is worth setting out the relevant paragraphs in *Estate Homes* as follows:[448]

> *"[61]… the Council was acting under s 108(2)(c). In order for that requirement to be validly imposed it had to meet any relevant statutory stipulations, and also general common law requirements that control the exercise of public powers. Under these general requirements of administrative law, conditions must be imposed for a planning purpose, rather than one outside of the purposes of the empowering legislation, however desirable it may be in terms of the wider public interest. The conditions must also fairly and reasonably relate to the permitted development and may not be unreasonable.*
> *…*
>
> *[64] The majority in the Court of Appeal appears to have decided that, in combination, s 104 and common law principles required that there be a causal link between conditions that might be imposed and effects of the proposed subdivision. We see nothing, however, in the requirement under s 104 to have regard to effects on the environment that would restrict imposition of conditions of consent to circumstances where they would ameliorate the effects of the proposed*

444 Under s108(2) of the RMA, as per submission #147 for Metlifecare, paragraph 2.2.
445 *Cable Bay Wine Limited v Auckland Council* [2021] NZHC 2596, paragraph [88].
446 *Newbury District Council v The Secretary of State for the Environment* [1981] AC 578 (HL).
447 *Waitakere City Council v Estate Homes Limited* [2006] NZSC 112, [2007] 2 NZLR 149, paragraphs [61] and [66].
448 Ibid.

development. Such a narrow approach would be contrary to the breadth with which the power under s 108(c) to impose conditions is expressed.

…

[66] … We consider that the application of common law principles to New Zealand's statutory planning law does not require a greater connection between the proposed development and conditions of consent than they are logically connected to the development. This limit on the scope of the broadly expressed discretion to impose conditions under s 108 is simply that the Council must ensure that conditions it imposes are not unrelated to the subdivision. They must not for example relate to external or ulterior concerns. The limit does not require that the condition be required for the purpose of the subdivision. Such a relationship of causal connection may, of course, be required by the statute conferring the power to impose conditions, but s 108(2) does not do so."

353. We were also referred by several counsel for submitters to s108AA.[449] Broadly, s108AA requires conditions in a resource consent for an activity to meet certain requirements, as set out in s108AA(1)(a) to (c). However, s108AA(5) provides that "*nothing in this section affects section 108(2)(a) (which enables a resource consent to include a condition requiring a financial contribution)*". A number of legal submissions discussed the relevance of s108AA, and opined as to whether it 'broadened' or 'narrowed' the application of the *Newbury* test, which is based on generally accepted principles of administrative law (as set out above). As s108AA is not applicable to matters that fall within s108(2)(a), we concur with the submission of Ms Tree on behalf of Metlifecare, based on her reasoning, that the entire *Newbury* test will continue to apply.[450] Although we do not understand the Council to be relying on s108AA(1)(b)(ii),[451] we also accept the submission of Mr Minhinnick for Winton Land Limited that s108AA(5) does not exempt Council from the case law that has developed over many decades in relation to s108(1) and (2)(a),[452] which he suggested was helpfully summarised in the four-step process set out in *McNally v Manukau City Council*.[453] Indeed, this appears to have been acknowledged by Mr Whittington in his closing legal submissions for Council.[454]

354. The application of the powers in ss108(2)(a) and 108(10) with respect to the financial contributions proposed in PC24 was discussed in *Infinity* (HC).[455] Chisholm J accepted that the potential reach of these powers needed to be assessed against what he described as the "constraints" described by the Supreme Court in *Estate Homes*, which included the administrative law requirements that control the exercise of public powers. Importantly, His Honour noted that notwithstanding these constraints: "*Parliament has clearly entrusted territorial authorities with wide powers to impose financial and development contributions which, by their very nature, involve an element of subsidisation and might conceivably be regarded as a form of tax or charge*". Chisholm J was not persuaded by counsel for the appellants in that case that PC24 was prima facie beyond the range of purposes for which financial contributions could be lawfully imposed, but noted that this was a matter that would need to be determined by the Environment Court on its merits. He went on to opine that: "*In*

449 Section 108AA was inserted by s 147 of the Resource Legislation Amendment Act 2017. Section 146 of that Act amended s108 of the RMA, making s108 subject to s108AA (refer to *Cable Bay Wine Limited v Auckland Council* [2021] NZHC 2596, paragraph [96]).

450 Submission #147 for Metlifecare, paragraph 2.9.

451 As explained in the Closing Legal Submissions for Council, paragraphs 4.14 – 4.17.

452 Supplementary legal submissions on behalf of Winton Land Limited dated 8 March 2024, paragraph 4

453 *McNally v Manukau City Council* [2007] NZEnvC 76; [2008] NZRMA 523, paragraph [5], cited in *Tauranga City Council v Minister of Education* [2019] NZEnvC 32, paragraph [61].

454 Closing Legal Submissions for Council, paragraphs 4.11 – 4.13.

455 *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council*, CIV-2010-425-000365, HC dated 14 February 2011, paragraph [55].

any event I doubt that a conclusion to the effect that PC24 does not come within s108(1) would necessarily be fatal to the proposed change".[456]

355. We accept the point made by submitters that as the *Infinity* case was submitted back to the Environment Court for consideration on its merits, we cannot place any reliance on this part of the *Infinity* (HC) decision in considering the range of purposes for which a financial contribution could be lawfully imposed. It was simply not decided.

356. The High Court in *Infinity* also addressed the appellant's submission with regard to the "public law principle" that no tax or charge should be levied without the proper authority of Parliament, an argument that was also advanced by several legal counsel in this Variation.[457] Chisholm J held that:[458]

> *"If PC 24 is to be properly regarded as giving rise to a "power to levy" then it is my view that the express language that Parliament has used in the RMA shows that the statute must have intended an instrument like PC24 to have been within its scope (subject to scrutiny on the merits). In other words, it is included by necessary implication. Any other interpretation would undermine the full range of powers that Parliament intended to confer on territorial authorities in relation to district plans."* [Our emphasis]

357. Accordingly, we do not accept Ms Baker-Galloway's submission that a statutory power to levy (even if it was applicable) may only arise by express words, as this is plainly at odds with the High Court's determination above. On the contrary, the Court was satisfied that the range of powers conferred on a territorial authority prima facie enabled the provisions of PC24, subject to its scrutiny on the merits.

358. We expand on whether the imposition of a financial contribution constitutes a tax, and if so, its implications, later in this report. In summary, we have concluded that while financial contributions may bear the characteristics of a tax, provided the financial contributions required by the Variation are legally permitted under the RMA, which we prima facie accept subject to a full assessment of the merits of the proposed financial contribution regime under s32 and s108, then they are authorised by Parliament. If they are technically a tax, then they are a legitimate one. If they are not technically a tax, then the question is moot. It is not a question that we are required to decide.[459]

359. *Retro Developments Ltd v Auckland City Council*,[460] *McNally v Manukau City Council,*[461] and *Tauranga City Council v Minister of Education*[462] deal directly with the imposition of financial contributions under the RMA. In assessing the validity of the imposition of a financial contribution, the Courts adopted a version of the principles set out in *Newbury*, with the 'additional' overarching requirement that the condition must, overall, be fair and reasonable on its merits. The Court in *McNally* noted that the decision of the Supreme Court in *Estate Homes* had somewhat modified the *Newbury* principle (as it was previously understood to

---

456 *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council*, CIV-2010-425-000365, HC dated 14 February 2011, paragraph at [56].

457 Refer to the Synopsis of Legal Submissions for Glendhu Bay Trustees Limited and others dated 1 March 2024, Appendix 1 at 23 – 26.

458 *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council*, CIV-2010-425-000365, HC dated 14 February 2011, paragraphs [57] – [58].

459 We discuss the question of whether a financial contribution is a tax at section 13.5 below.

460 *Retro Developments Ltd v Auckland City Council* 10 ELRNZ 335, A038/04.

461 *McNally v Manukau City Council* [2007] NZEnvC 76; [2008] NZRMA 523, paragraph [5].

462 *Tauranga City Council v Minister of Education* [2019] NZEnvC 32, paragraph [61].

apply) of requiring a direct causal link, insofar as it affects conditions in general.[463] The Court in *McNally* went on to observe: "*As we shall see however, there is nothing to prevent a direct causal link between the proposal and the financial contribution being required by the terms of the plan itself. We also observe that the four steps [required to satisfy the Newbury test as now modified by Estate Homes] can overlap and, depending on the factual matrix, it is not always possible to clearly divide them*".[464]

360. As we noted above, s76(3) of the Act brings into play the question of the causal link in developing district plan rules.

13.2.2 Discussion

361. It is well established (and was accepted by all legal counsel), that the general principles of administrative law set out in *Newbury*, as modified by the Supreme Court in *Estate Homes*, apply to the exercise of the statutory power conferred on consent authorities by s108(1) to impose conditions of consent in planning decisions. These were recently summarised by the High Court in *Cable Bay* as:[465]

(a) Conditions must be imposed for a planning purpose;
(b) Conditions must fairly and reasonably relate to the proposed activities; and
(c) Conditions may not be so unreasonable that no reasonable consent authority could have imposed them.

362. Mr Whittington submitted that a condition imposing a financial contribution in accordance with a plan will always meet these limbs, because whether a financial contribution is justifiable as a matter of policy will have been determined at the plan-making stage: "*Whether it is a legitimate planning purpose, what activities it may reasonably relate to, and its inherent reasonableness will have been addressed*".[466] He supported his argument by referencing s108AA(1)(b)(ii) (although he incorrectly referred to (c)), stating that:[467]

> *"The exclusion reflects the fact that … there is no need for further debate at the resource consent stage as to the imposition of a financial contribution. Whether a financial contribution is justifiable, and if so, for what purpose it may be imposed, and how it may be determined, are methods to be debated at the plan making stage. If the plan provides for them, there is no further debate to be had. Any condition will plainly fairly and reasonably relate to the activity, because the plan will have already recognised that.*

363. With respect, Mr Whittington's argument appears to be somewhat misconceived insofar as this Variation is concerned. It is plain from *Infinity* that the determination of whether a variation to a plan is *vires* requires, ultimately, an examination of the merits of the method proposed in accordance with the statutory regime in s108 and the general principles of administrative law set out in the relevant case law, as discussed above. What Mr Whittington is proposing essentially bypasses this step, which cannot, as a matter of law, be correct. If the Variation was to be adopted (and became operative), then we accept that there would be no need for every resource consent decided in accordance with the plan to relitigate the legality of the financial contribution to be imposed.

---

463 *McNally v Manukau City Council* [2007] NZEnvC 76; [2008] NZRMA 523, paragraph [5].
464 Ibid.
465 *Cable Bay Wine Limited v Auckland Council* [2021] NZHC 2596, paragraph [88].
466 Closing Legal Submissions for Council dated 28 March 2024, paragraph 4.12.
467 Closing Legal Submissions for Council dated 28 March 2024, paragraph 4.16.

364. Accordingly, we have concluded that provided the method proposed in the Variation meets the tests set out s108(10) with respect to the imposition of a financial contribution, and does not breach the principles of administrative law as determined by relevant cases as discussed above, which essentially requires an examination of the merits, it will not be *ultra vires*. The relevant tests, as distilled from the statutory regime and relevant case law, can be summarised as follows:

(a) Whether the contribution has been imposed in accordance with the purposes specified in the plan or proposed plan (s108(10)(a)).
(b) Whether the level of contribution has been determined in a manner described in the plan (s108(10)(b)).
(c) Whether the *Newbury* test, as modified by *Estate Homes*, is satisfied; meaning that as with all consent conditions, a financial contribution must be imposed for a planning purpose and not an ulterior purpose, must fairly and reasonably relate to the permitted development and must not be so unreasonable that no reasonable planning authority could have imposed it. We note here the overlap with the requirements of s76(3) in making a district plan rule; and
(d) Whether the condition is fair and reasonable on its merits, that is fair or proportionate to both the residential developer community and the wider community as the result of a process of reason rather than arbitrary whim. In that sense, the condition must be fair to both the person required to pay the contribution and the community, and the condition must be proportionate.

365. We turn now to an application of these tests to the method proposed by the Variation (which is essentially an examination of the merits) as set out above.

13.2.3 The s108(1)(a) and (b) requirements: Has the contribution been imposed in accordance with the purposes specified in the plan or proposed plan, and has the level of contribution has been determined in a manner described in the plan?

366. We are satisfied, based on our reasoning above, that the financial contribution has been imposed in accordance with the purposes specified in the proposed plan, and that the Variation proposes a level of contribution that has been determined in an acceptable manner in terms of s108(10)(b). Accordingly, we consider that the financial contribution has been imposed for a planning purpose that is *logically connected to the development*, is not unrelated to the effects that flow from residential subdivision and development, and therefore not for an ulterior purpose.[468]

13.2.4 Does the imposition of the proposed condition fairly and reasonably relate to the development to which the consent relates?

367. Ms Tree on behalf of Metlifecare submitted:[469]

> *"2.11 A condition requiring a contribution of money or land for the purpose of affordable housing does not fairly and reasonably relate to a proposed subdivision or residential development:*
>
> *(a) a residential development will increase housing supply, it is not a cause of housing unaffordability (in fact the opposite applies as increased supply will increase housing affordability); and*
> *(b) there is no causal nexus between a proposed subdivision or residential development and any affordable housing that may be constructed by the financial contributions collected.*

468 *Waitakere City Council v Estate Homes Limited* [2006] NZSC 112, [2007] 2 NZLR 149, paragraph [66].
469 Submission #147 Metlifecare, paragraph 2.11.

2.12 Therefore, any condition imposed in reliance on the variation would not satisfy the Newbury test. "

368. Ms Tree's submission was echoed by a number of other counsel for submitters in opposition. It was generally argued that residential development is not a cause of housing unaffordability and that, accordingly, the proposed condition does not fairly and reasonably relate to residential development.

369. Ms Simons, counsel for Fulton Hogan, submitted that the Variation seeks to impose a tax on residential developments, via conditions of consent, to pay for housing that is not related to the developments. She argued that affordable housing is "*an external/ulterior concern insofar is the Council is seeking through the Variation to set price controls for such housing and tax developers to pay for it. In that respect, the variation is premised on the basis that developers receive "planning windfall gains" and should be compelled to return some of those gains to the community to provide affordable housing*".[470] In support of her arguments, Ms Simons drew our attention to the findings of the Independent Hearing Panel (IHP) on the proposed affordable housing provisions in the proposed Auckland Unitary Plan, which had planned the introduction of price controls in relation to a percentage of the dwellings consented to achieve affordable housing outcomes. The IHP concluded, inter alia, that price control mechanisms were "*not an appropriate method for redistributional assessments and policies*".[471]

370. Ms Simons also submitted that the Council had not shown the shortage of affordable housing in the District was only the result of action taken by the developers of residential land. She stated: "*It's complicated, multifaceted and cannot be linked/applied to individual developments*."[472]

371. Mr Whittington submitted that the IHP did not rule on the legal position; rather, it proceeded on the basis that such a proposal could be implemented but found that Auckland Council's evidence did not justify the proposal.[473] Whether the proposal was appropriate is a different question from whether it is legal, and *"comes down to the s 32 assessment"*. He noted that the IHP decision predated the NPS-UD, which directs councils to provide specific measures that deal with unaffordability in the short term by ensuring that dwellings are provided at different price points. Finally, he argued that "*there is nothing objectionable in a resource management policy being redistributional. Policies are redistributional, intentionally or otherwise, all the time*".[474] He noted 'reverse sensitivity' as an example of a landowner effectively subsidising the operation of infrastructure on adjacent land.

372. We accept Mr Whittington's submission on redistributional policies and consider the Council has the power to approach the provision of affordable housing this way. Although we have some sympathy with Ms Simons' argument, we are persuaded by Mr Whittington's submissions on this particular point.

373. Our discussion above in relation to the submitters' argument that the Variation is tantamount to the imposition of a "tax", which we consider to be prima facie legitimate under the RMA subject to our further assessment of the merits, is also relevant to this conclusion.

---

470 Legal submissions for Fulton Hogan Land Development Limited dated 4 March 2024, paragraph 4.7

471 Legal submissions for Fulton Hogan Land Development Limited dated 4 March 2024, paragraph 4.8

472 Legal submissions for Fulton Hogan Land Development Limited dated 4 March 2024, paragraph 4.8

473 Opening legal submissions of Council dated 23 February 2023, paragraph 8.

474 Opening legal submissions of Council dated 23 February 2023, paragraph 8.4(d)

374. All forms of development in the District, whether residential, commercial or industrial, will increase the demand for affordable housing to some extent. For example, the growth associated with the provision of residential housing (across all typologies) will increase the need for public servants, teachers, police officers, medical professionals and so on. The same can be said of development for commercial tourism purposes, which increases the need for service and hospitality workers who are largely at the lower-paid end of the wage spectrum. The evidence of the economists was that development under the current regime will not provide sufficient affordable housing until at least the long term.[475] The 2018 HBA concluded that development under normal profit maximising, or even maximising housing output, will not provide any significant affordable housing.[476] Residential development on a site that is not affordable in the Variation's terms precludes the development of affordable housing on that site for the foreseeable future. Mr Eaqub was clear in discussion with us that only through the Variation would there be **retained** affordable housing created.[477] Development for housing without the Variation will continue to fail to supply affordable housing through the short, medium and long term.

375. We have also had regard to the overseas experience with respect to inclusionary housing policies. As set out earlier in our report, Whistler in Canada and Aspen and Vail in Colorado, which have similar characteristics to QLD, are examples of this.[478] In Whistler, job creation alone generates the affordable housing or employee housing requirement, while in Aspen the contribution rules are targeted at residential development, and require that at least 30% of the increase in liveable space must be in affordable housing. Vail has a mix of both commercial and residential development requiring the provision of employee and/or affordable housing.

376. As discussed in Section 2 of this report, Mr Serjeant noted that in a 2021 paper surveying American programmes across three states (also referenced by Ms Lee), only 94 out of 685 programmes included *non-residential* development. Given that the market failure associated with affordable housing is occurring in the residential development sector, this is perhaps not surprising, and is analogous to the situation facing QLD. From the evidence, we can infer that the application of inclusionary housing policies that target the residential development sector in overseas jurisdictions is not uncommon.

377. We consider that, prima facie, the imposition of a financial contribution on residential development to provide for affordable housing does fairly and reasonably relate to the proposed development, notwithstanding that the supply of residential housing may in some circumstances form part of addressing the solution. Whether imposing the financial contribution on residential development *only* is fair or proportionate to both the residential development community and the wider community, however, is a separate question, which we now consider.

13.2.5 <u>Is the condition requiring a financial contribution for the purposes of affordable housing fair or proportionate to both the residential development community and the wider community as the result of a process of reason rather than arbitrary whim?</u>

378. Ms Tree, for Metlifecare, submitted that imposing an additional monetary or land cost to residential subdivision or development is not fair on the community, is disproportionate, and

475 Joint Witness Statement of Economic Experts dated 30 January 2024, paragraph 6.
476 2018 HBA at 5.5 pp 185 ff.
477 Recording 2, 27 February at 1:25:30.
478 Issues and Options at 5.1.

may result in worse outcomes. She argued that the additional cost of the financial contribution was significant for developers and could either affect the feasibility of some developments, which may not proceed as a consequence, or would come at a cost to the community by way of increased costs being passed on to purchasers. Ms Tree submitted that: "*a reduction in housing development will only increase the supply and demand issue in the district and further impact housing affordability for an even greater percentage of the community*".[479]

379. In a similar vein, Mr Ashton for Remarkables Park Limited submitted that:[480]

> "*While the need to develop affordable housing is an important priority for the Council, it is unreasonable to expect developers and their purchasers to shoulder the burden of the responsibility as a result of the increase of housing prices through the passing-on of costs – especially considering the likely outcome of such a tax would be a reduction in housing supply*".

380. In his legal submissions at the hearing, Mr Ashton further submitted that the Variation is inequitable, as it targets one sector of the community who are a key part of the solution to the problem (through the provision of housing supply).[481]

381. Other legal counsel for submitters in opposition argued that an assumption that all residential housing development contributes to unaffordable housing is beyond the scope of the broadly expressed direction to impose conditions under s108. Mr Gordon, for Queenstown Central Limited, pointed us to an example of high density development in the Frankton Flats B C2 land expressly consented by the Environment Court for an affordable product, and expressed concern that the Variation would amount to a form of "double-dipping" in such cases. In his view, a case-by case analysis of affordability impacts was required to avoid such unfair penalties.[482] Mr Gordon further submitted that where a residential activity is already permitted in a zone, the community has concluded that it will have benefits there rather than adverse effects. Imposing a financial contribution on permitted residential development would therefore be unreasonable, as it would increase housing costs contrary to community expectations.

382. Ms Wolt, for Trojan Helmet Limited, Boxer Hill Trust and Gibbston Valley Station Limited, submitted that:[483]

> "*Taxing residential developers and no other sector is not only misguided, but it is also unfair. Housing affordability is a community problem. The entire community should be called on to solve (or contribute to solving) it. Residential developers should not be singled out because they are perceived as having deep pockets or because they are the most lucrative source of funding, but these appear to be the underlying if not the only reasons they are targeted by the variation while no other sector is.*"

383. At the hearing, Mr Matheson argued that even if the mechanism proposed by Council was lawful, it would be ineffective and unfair and therefore inappropriate to request funding from

---

479 Submission #147 Metlifecare, paragraph 2.13.

480 Submission #124 Remarkables Park Limited, paragraph 28.

481 Legal submissions for Remarkables Park Limited dated 6 March 2024 paragraph 2.8.

482 Synopsis of submissions for Queenstown Central Limited dated 5 March 2024, paragraphs 22 to 26.

483 Synopsis of legal submissions for Trojan Helmet Limited, Boxer Hill Trust and Gibbston Valley Station Limited dated 5 March 2024, paragraph 4(e).

such a small sector of the community for a problem the causes of which are District wide, as are the benefits from resolving the problem.

384. Mr Gardner-Hopkins advanced an argument that if the purpose of the RMA is so broad that it permits the levying of a "tax" to require developers to contribute to the "social goal" of affordable housing, then financial contributions could have no limits.[484] An example given was the cost of living, where if the Council decided that this was a "social" issue, it could ostensibly require a contribution towards providing foodbanks or petrol vouchers. However, in our view, this submission is fanciful, as there is clearly no link between the effects of any development as such, and the imposition of a financial contribution.

385. The Council's s32 Report explained why the focus of the Variation has targeted residential development as follows:

> *"11.38 A focus on the residential sector will be more effective than seeking contributions from business activities. This is because of the greater certainty over level of contributions given residential growth patterns (compared to more variable business development cycles); history to date of contributions being sourced from residential development and the outcome of securing diverse neighbourhoods.*
>
> *11.39.There is an option that involves contributions from both the residential and non-residential sectors. For example, in Sydney, the inner city Green Square redevelopment area has a residential contribution of 3% of the total floor area that is to be used for residential uses, and 1% for non-residential floor area. In the context of QLD and the diverse pressures on affordability from various forms of residential development and the significant expansion of residential capacity signalled by the Spatial Plan, it is appropriate to target the residential sector.*
>
> *11.40.With a focus on the residential sector, a subsequent issue is what type of residential development should be subject to the requirement, such as residential development in the outer lying settlements (such as Glenorchy), rural-residential development and residential development in special zones. It is proposed that a contribution first and foremost be required from residential development within urban growth boundaries. Contributions will also be sought from residential development outside growth boundaries, but at a reduced rate to that applying to subdivision or development in urban growth boundaries. The focus on development within existing and future urban growth boundaries reflects the public commitment to the provision of trunk infrastructure networks to these areas, and consequent benefits to land values. A lesser contribution from other forms of residential development (such as residential development in resort zones) is appropriate as these developments also influence house prices and supply of affordable dwellings."*

386. It seems apparent from the s32 Report that the main reason for requiring financial contributions from residential development only was based on an argument of efficiency and effectiveness. In short, while the non-residential sector was considered, the history of obtaining contributions from the residential development sector, the diverse pressures on affordability from various forms of residential development, and the significant expansion of residential capacity signalled by the Spatial Plan, appear to be the primary justification for the Variation. Although business activities clearly contribute to the demand for affordable housing through demand for appropriately qualified workers and supporting service personnel, this appears to have been dismissed on the basis of uncertainty and hence effectiveness.

---

484 Representations on behalf of Cardrona Village Limited and Kingston Flyer Limited, paragraph 34.

387. Having considered the Council's position and the legal submissions on this matter, we were initially attracted to the strong and consistent arguments advanced by submitters that the outcome of the Variation is unfair to the residential development community, and/or to the community generally. While residential development is a contributor to the demand for affordable housing, it is plainly not the only one. Indeed, it is arguable that commercial development, in particular that associated with tourism, creates a proportionately greater need for jobs and associated affordable housing. Mr Minhinnick's submission for Winton Land Limited, which echoes the submissions of the majority of other counsel, summarises this reasoning very succinctly:[485]

> *"The Variation is also inequitable. At its core it is requiring one small sector of the Queenstown community to disproportionately provide a remedy for a shortfall in the stock of affordable housing. There are clear issues with the fairness of the residential development sector bearing the sole burden of the financial contribution provisions. The Variation completely ignores the demands on housing created by the tourism and business development sector. Imposing a mandatory tax solely on residential development is especially unfair when it is the residential development sector that is acting to provide supply, and therefore is part of the solution."*

388. We are also mindful of Ms Tree's contrary submission for Metlifecare that it is the wider community, rather than the residential development sector (by implication), that will bear the brunt of the Variation, through the passing on of increased housing costs exacerbated by a reduction in supply as a result of developments not proceeding.[486]

389. On closer examination of the evidence and legal submissions on this point, and after giving careful thought to Council's position, we have concluded that the submitters' arguments are inconclusive at best, and somewhat contradictory (as demonstrated by the various submissions set out above), and that consequently it is not possible to form a definitive finding in relation to this limb of the test for the following reasons.

390. First, we note that the wider community has, and does, make a contribution to the provision of affordable housing. QLDC provides administrative support and an annual grant from rating income to QLCHT ($50,000pa for three years 2021-2024),[487] which is proposed to be made a permanent budget line item in the 2024 LTP.[488] The Trust has also received $36m (in various forms) from central government.[489] In addition, the Council has made three substantial commitments of land and/or funds to the Trust for the provision of affordable housing.[490]

391. Accordingly, although the Variation is focused on the residential development sector, we do not accept that this is the only sector of the community contributing to the provision of affordable housing in the District. The wider community has made substantial contributions to the provision of affordable housing through the Council and central government, and the Council continues to do so.

---

485 Legal submissions on behalf of Winton Land Limited dated 5 March 2024, paragraph 3.16.

486 Submission #147 Metlifecare, paragraph 2.13.

487 Statement of evidence in chief of Amy Bowbyes, paragraph 3.8(d).

488 Statement of evidence in chief of Amy Bowbyes, paragraph 3.11.

489 Statement of evidence of Julie Scott, paragraph 19.

490 Statement of evidence in chief of Amy Bowbyes, paragraph 3.19.

392. Additionally, the evidence before us is that there is a potential for the Variation to result in increased prices for residential sections and new dwellings, in that the residential development community is likely to pass on the financial contribution to purchasers (by way of the purchase price) if it is unable to push the costs back to the landowners who stand to receive the windfall gains on planning uplift, rather than causing a reduction in supply. Although the financial contributions are to be levied on residential developers in the first instance, it is probable that the wider community will ultimately bear at least some of the cost.

393. It can be seen from this that the question of fairness and proportionality is much more nuanced than counsel for the submitters presented. Whether there are elements of the wider community that should bear still more of the burden (the tourism or commercial sector, or RVA, for example) is a much more finely balanced question. It is also possible that developers do not change their profit margins and pass on all the direct and indirect costs of the Variation to purchasers and/or push these back to landowners. If so, the residential development community may bear no cost over the life of projects, which would place an unfair burden on the community.

394. In light of the absence of any detailed submissions or evidence on this perspective, we cannot embark on a judgmental exercise as to the proportionality between the different elements of the community. Rather, on the basis of the evidence before us, particularly that of the economists and the residential developers, we conclude that the costs of the provision of affordable housing are being, and will continue to be, spread throughout the wider community to some degree and, conversely, that the final burden of the Variation will almost certainly not fall solely on the residential development community. To that extent, the question of fairness and proportionality becomes somewhat moot for the purposes of the *vires* assessment.

395. In conclusion, we do not have a sufficient evidential basis to conclude that the financial contribution is not fair or proportionate between the residential development community and the wider community. We therefore reject the submissions of the submitters in opposition, and do not find that the Variation is prima facie unlawful in this respect.

13.2.6 Overall conclusion on whether the Variation falls within the scope of the RMA

396. For the reasons given above, we are satisfied that the Variation falls within the scope of the Council's powers under s31 and ss72-77, does not *prima facie* fall foul of the provisions of s108 or the principles of administrative law established by the relevant cases, and is consistent with the purpose of sustainable management in Part 2 of the RMA. As counsel for both Council and submitters in opposition reminded us throughout their written submissions and at the hearing, it is the s32 analysis, which was referred to as the "engine room" of the RMA, that will be determinative. We turn to that now.

13.3 Does the Variation satisfy the section 32 tests?

13.3.1 Relevant case law

397. The specific wording of the relevant parts of section 32 was set out earlier in our decision. The objectives of the Variation are to be examined on the extent to which they are the most appropriate way to achieve the purpose of the Act.[491] The provisions themselves (policies, methods and rules) must examine whether they are the most appropriate way to achieve the objectives. This is to be done with reference to two matters set out in s32(1)(b) of the RMA –

[491] Sections 74(1) and 32(1)(a) RMA

identifying other reasonably practicable options for achieving the objectives and assessing the efficiency and effectiveness of the provisions in achieving the objectives.

398. The s32 assessment must include a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the implementation of the proposal.[492]

399. It is also mandatory to consider the efficiency of the proposed policies. Three components of efficiency must be assessed in this exercise:[493]
- The benefits and costs of the proposed provisions;
- The benefits and costs of the alternative; and
- The risks of acting or not acting.

400. The term "most appropriate" used in the legislation does not mean the superior method, but means the "most suitable."[494]

401. A s32(2) assessment of economic efficiency "*involves a comparison of the net social benefits of the objective in question with the social benefits of the best alternative (often but by no means necessarily, the status quo)*".[495]

402. The term "efficiency" has been held by the Courts to mean:[496]

> "*….the production of the required result with little or no waste. … The required result is to be identified by reference to the relevant planning provisions. Wastage includes adverse effects on the environment, as broadly defined under the RMA and as relevantly identified in the same planning provisions*."

403. The term "reasonably practicable" has been held to mean reasonably able to be done taking into account and weighing up all relevant matters including:[497]
a) The nature of the activity and its effects;
b) The sensitivity of the environment to adverse effects generally and to the identified effects of the activity in particular;
c) The likelihood of adverse effects occurring;
d) The financial implications and other effects on the environment of the option compared to other options;
e) The current state of knowledge of the activity, its effects, the likelihood of adverse effects and the availability of suitable ways to avoid or mitigate those effects;
f) The likelihood of success of the option; and
g) An allowance of some tolerance in such considerations.

---

492 Section 32(1)(c) RMA

493 Synopsis of submissions for Queenstown Central Limited dated 5 March 2024, paragraph 40, citing *Federated Farmers of New Zealand (Inc) v Mackenzie District Council* [2017] NZEnvC 53 at [457]

494 Synopsis of submissions for Glendhu Bay Trustees Limited and others dated 1 March 2024, paragraph 41, citing *Rational Transport Society Inc v New Zealand Transport Agency* [2012] NZRMA 298 at [45]

495 *Federated Farmers of New Zealand (Inc) v Mackenzie District Council* [2017] NZEnvC 53 at [458]

496 Legal submissions for Willowridge Developments and others dated 5 March 2024, paragraph 10(c) and footnote 5; citing *Federated farmers of New Zealand Inc v Bay of Plenty Regional Council* [2019] NZEnvC 136 at [331] which in turn relied on *Rogers v Christchurch City Council* [2019] NZEnvC 119 at [85]

497 Legal submissions for Willowridge Developments Limited, Universal Developments Limited and Metlifecare Limited dated 5 March 2024, paragraph 42, citing *Royal Forest & Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 051 at [46]-[53]

404. Mr Matheson submitted that s32 is the "engine room" of the RMA and it requires a rigorous assessment of any proposal. He stated:[498]

> "*While qualitative costs and benefits are important, some attempt must be made to assess the qualitative costs and benefits to some extent. The Council has failed to identify the benefits that will flow from this Variation – and more importantly, confirm that those benefits will be greater than would occur under the status quo. A section 32 assessment requires an assessment of options, including options* ***outside of the RMA****. There is a clear difference in the language between provisions (which are RMA provisions), and options, which will include the full suite of potential responses including those that can be undertaken pursuant to or enforced under other legislation*." (counsel's emphasis)

405. We were referred to *Swap Stockfoods Limited v Bay of Plenty Regional Council*[499] and Section 5.3.1 of the Independent Unitary Panel Overview of Recommendations (IHP - Auckland Unitary Plan) in support of these submissions. *Swap Stockfoods* addressed the management of dust in the Mount Maunganui Airshed to protect human health and the mauri of air. Aside from addressing options available under the RMA, the Court also referred to the possibility of non-RMA options being utilised.[500] The IHP's recommendation report addressed jurisdictional matters under the RMA and in other legislation. Referring to ss30 and 31 of the RMA, it noted that the requirement for a relationship between a plan provision and the functions of the Council listed in the Act "*places a limit on the extent to which the Council may properly make rules*."

406. Referring to ss68(3) and 76(3) of the Act, the IHP noted the requirement that, in making any rule, a council must have regard to the effect on the environment of the activity. The report also referred to the Council having a number of powers under other statutes outside the RMA which control what people can and cannot do. These include bylaws. It noted the importance of considering other regulatory methods when assessing proposed resource management methods.[501]

13.3.2 Section 32 Report

407. The Council's s32 Report dated 18 July 2022 set out the background to the housing affordability issue. The report set out a number of criteria to assist in identifying whether an objective was appropriate. These were:
- do the objectives address a resource management issue?
- do they achieve the purpose of the Act?
- do they assist the council to carry out its statutory functions?
- are they within the scope of higher-level documents? and
- are they clear in their intent?[502]

408. The existing relevant objectives in the ODP and PDP were assessed against these criteria. The report found that the objectives, as they stood at that time, lacked focus on the issue of

---

498 Counsel notes of Mr Matheson on behalf of Willowridge, Metlifecare and Universal dated 6 March 2024, paragraph 6

499 *Swap Stockfoods Limited v Bay of Plenty Regional Council* [2023] NZEnvC 001

500 At paragraphs [17]-[172]

501 IHP report to Auckland Council Overview of Recommendations, 22 July 2016, section 5.3.1

502 Section 32 report, paragraph 10.2

affordability and the two outcomes stated had not addressed the affordability issues.[503] A number of RMA and non-RMA options were then addressed. We address these in more detail below.

409. Earlier in our report we outlined the Variation provisions as notified. Those proposed additions to the PDP need to be considered in the context of the PDP as a whole.

410. Chapter 3 of the PDP sets out a number of strategic issues for the QLD. The first of these (related to the addition of 3.2.1.10 above) is:

> "Strategic Issue 1: Economic prosperity and equity, including strong and robust town centres, and the social and economic wellbeing and resilience of the District's communities may be challenged if the District's economic base lacks diversification and supporting infrastructure."

411. The unaffordability of housing is not listed as a strategic issue in Chapter 3. It arises under strategic objective SO 3.2.2 addressing the management of urban growth, through 3.2.2.1, as follows:

> "Urban development occurs in a logical manner so as to:
>
> …
>
> (vi) ensure a mix of housing opportunities including access to housing that is more affordable for residents to live in:"

412. As noted by Mr Smith in his evidence, the strategic objective in 3.2.1 is important to the District. In his opinion, the community should share the load of the provision of affordable housing to ensure the community can in fact achieve the objective of a "*prosperous, resilient and equitable economy*". The focus in the plan provisions should be broader than simply the land and housing supply market, and should, for example, include the business sector. He was one of many witnesses to make this point.[504]

413. Chapter 4 of the PDP addresses urban development. None of the planning provisions included within the Variation are to be added to Chapter 4. However, the planning context of Chapter 4 in the overall PDP framework is important. As explained by Mr Ferguson in his planning evidence, the strategic approach to urban growth management in the QLD is based on containment through the identification of Urban Growth Boundaries (UGBs) around urban areas, along with strategic objectives that promote compact, well designed and integrated urban form. Urban development outside UGBs is to be avoided. Mr Ferguson noted that UGB's encompass, at a minimum, sufficient feasible development capacity for urban development opportunities, consistent with the anticipated medium-term demand for housing and business land within QLD, assuming a mix of housing densities and form, and ensuring the ongoing availability of a competitive land supply for urban purposes.[505] In Mr Ferguson's opinion, planning controls such as site size, density, height and coverage arguably affect housing affordability.[506] Overall, Mr Ferguson did not consider the method of the financial contribution proposed through the Variation to be consistent with the objectives and policies of the PDP.

---

503 Section 32 report, paragraphs 10.5-10.7

504 Statement of evidence of Berin Smith, paragraphs 10-13

505 Statement of evidence in chief of Chris Ferguson, paragraphs 69 and 70, Policy 4.2.1.4 PDP

506 Statement of evidence in chief of Chris Ferguson, paragraphs 75(d) and 79

414. As regards Chapter 40, this is an entirely new chapter proposed to be inserted into the PDP to address inclusionary housing through this Variation.

415. Before moving to discuss the s32 tests in detail, we record again that there was little real opposition to the objectives, subject to some suggested amendments. While there were some comments made on policies, the real concern of submitters was more directed to methods and rules. It was noted by some experts that the Variation was aligned with other PDP provisions in Chapters 3 and 4, addressing housing affordability through a supply response.[507]

13.3.3 Section 32(1)(a) The extent to which the objective of the proposal is the most appropriate way to achieve the purpose of the Act

416. The Council's s32 Report set out the "key issue" for this proposal as follows:[508]

> "*The combination of multiple demands on housing resources; the need to protect valued landscape resources for their intrinsic and scenic values; and geographic constraints on urban growth mean that aspects of the district's housing market cannot function efficiently, with long term consequences for low to moderate income households needing access to affordable housing*."

417. The s32 Report noted that this issue related to s5 of the Act and the statutory requirement to manage natural and physical resources in a way and at a rate that provides for the well-being of people and communities while managing adverse effects on the environment. The s32 Report stated:[509]

> "*In short, the use or development of land within the Queenstown Lakes district has the effect, or potential effect, of pushing up land prices of scarce urban land thereby impacting on affordable housing within the district. The Council has the ability to control those effects through its district plan, subject, of course, to the plan ultimately withstanding scrutiny on its merits. The 'scope' to actively address housing affordability comes from sections 31, 72 and section 76*."

418. We note that the Council's statement of the "key issue" did not specifically refer to the effect of the development of residential land on housing affordability. Rather, it recorded a number of other factors that contributed to the issue.

419. The s32 Report stated that there was no formal requirement to consider a range of objectives and that the test '*most appropriate*' in section 32(1)(a) "*pertains to the appropriateness of the objective, rather than inferring any meaning of superiority*."[510]

420. The question of whether the objectives proposed achieve the purpose of the Act was not addressed in detail. Table 4 included a criterion related to the purpose of the Act. In relation to the proposed additional objective under Strategic Objective 3.2.2 and the new Chapter 40, it stated that the new provisions related directly to s5 of the Act and managing resources while enabling social and economic outcomes.

---

507 For example, Statement of evidence in chief of Chris Ferguson, paragraph 90, referring to PDP 3.2.2.1, 4.2.1.4a, 4.2.1.4b, 4.2.2.8

508 Section 32 report, paragraph 9.1

509 Section 32 report, paragraph 9.3

510 Section 32 report, paragraph 10.1

421. In his planning evidence for some submitters, Mr Serjeant told us:[511]

> "*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*."

422. We accept that statement. There is no question that affordable housing is related to the well-being of a community.

423. Related to this topic, submitters questioned whether the objectives proposed better support the identified issue than the provisions currently within the PDP. Mr Serjeant made some suggestions to improve Objective 3.2.1.10. These were intended to provide more focussed guidance on the issue and, it was suggested, would be the most appropriate way to achieve the purpose of the Act. Mr Serjeant proposed this wording:[512]

> *"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."*

424. Mr Serjeant's evidence was that if it was agreed that the objective to provide affordable housing was aspirational, then the objective should set a high, if not complete, level of remediation of the current state of affordability. The use of the words "*is achieved*" in the amendment he proposed was therefore important. In putting forward his proposed amendment, Mr Serjeant made this comment: [513]

> "*..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 the NPS-UD Policy 3.23 in relation to different types of low-income groups*."

425. Mr Serjeant also noted other inefficiencies, as he saw them, with the objectives and policies proposed, in particular the provision of housing in "*new and redeveloping residential areas*" when the policy preference of the Variation is to take financial contributions for spending elsewhere (noting that most of the contribution scenarios in Rule 40.6.1 envisage money not land). His evidence was that 99% of the overseas programmes he had considered in preparing his evidence preferred the provision of on-site affordable housing rather than an in lieu contribution.[514]

426. In response, Mr Mead accepted the intent of Mr Serjeant's suggested amendment to Objective 3.2.1.10 but he recommended a further change to the wording, so that Mr Serjeant's words "*is achieved*" were replaced with "*is attained over time*".[515] We agree with Mr Serjeant that if the affordable housing issue is as prevalent and urgent as the Council and QLCHT and others in support of the Variation say it is, then a solution should be found with urgency. The

---

511 Statement of evidence of David Serjeant, paragraph 26, supported by Mr Ferguson in his evidence at paragraph 88

512 Statement of evidence of David Serjeant, paragraph 63

513 Statement of evidence of David Serjeant, paragraph 64

514 Statement of evidence of David Serjeant, paragraph 66

515 Rebuttal evidence of David Mead, paragraph 10.1.

objective should set a high bar to address housing affordability across this community, not just for the select few who can meet the Variation criteria.

427. We consider that Objective 3.2.1.10, as proposed by Mr Mead, is not the most appropriate way to achieve the purpose of the Act. It does not set a high enough bar to achieve the objective of affordable housing across the QLD community and does not achieve the level of wellbeing that is warranted. In order to deliver affordable housing across the District with the level of urgency that is required, we are of the view that Objective 3.2.1.10 should set a high bar of achievement and not be directed at a less quantifiable attainment over a period of time.

428. There was no serious objection to proposed Objective 40.2.1. Had we recommended that the Variation be adopted, we would have included this version of the objective.

13.3.4 Section 32(1)(b)(i) – reasonably practicable options

429. We now turn to the evaluation required under s32(1)(b)(i). As noted above, the Council outlined a number of RMA and non-RMA options in its s32 Report. Submitters raised a number of reasonably practicable options they considered were available to the Council but which had, in their opinion, not been considered at all, or had not been fully considered. These included increasing the supply and/or intensification of housing in the district; the use of rates; measures to disincentivise or discourage the use of homes for RVA; incentivising and encouraging the provision of long-term rental accommodation and worker accommodation; and addressing the lack of infrastructure in the QLD to service the development.

430. We have added one further option, that of maintaining the status quo, or doing nothing, which was touched on in some of the evidence as an acceptable outcome to some submitters.

431. Our assessment below does not follow the Council's two option assessment set out in the s32 Report. It groups some topics together and also includes other options raised by submitters. Overall, we assess seven options to achieve the narrowly focused objectives of the provision of affordable housing choices for low to moderate income households.

Option 1 – Greater supply of zoning capacity/ voluntary agreements or adequate capacity and active intervention/ residential v non-residential

432. The Council's s32 Report considered whether RMA-based intervention (recognising that additional supply will not deliver affordable housing on its own[516]) should focus on a mandatory scheme or an incentive-based scheme. It noted that many US schemes include both. Incentives could include additional height or building coverage, or faster processing times. Mr Mead stated:[517]

> "*Incentives are complex to justify, given that they implicitly involve some form of trade-off between amenity and social goals relating to housing. Incentives that provide additional building height above zone standards, for example, suggest some form of impact on adjacent properties or the wider neighbourhood. Conversely, if there is no such impact, then the zone standards are likely too constraining. So, two points arise: Firstly, if the additional height is justified on effects grounds, then why should this benefit be confined to proposals that offer affordable dwellings? Secondly*

516 Section 32 Report, paragraph 11.12

517 Section 32 Report, paragraph 11.31

involving the affected parties (e.g. neighbours) in the consent process would inevitably reduce the effectiveness of any bonus."

433. In Mr Mead's view:[518]

> "*Mandatory requirements ensure that 'all players' are treated equally. Additional requirements are known upfront and can be factored into feasibility assessments. Known contribution rates also assist the Community Housing Sector (like the Queenstown Lakes Community Housing Trust) with their business planning.* "

434. Table 8 of the s32 Report then assessed the costs and benefits of the incentives vs mandatory schemes. We summarise this assessment as follows:
- Environmental Costs: Incentives would provide additional amenity impacts in brownfields where incentives are taken up. Mandatory requirements may result in increased density of development as developers compensate for extra requirement.
- Environmental Benefits: Incentives would lead to change in some neighbourhoods in terms of housing mix and character. Mandatory requirements could enable greenfields growth.
- Economic Costs: Incentives would mean contribution rates are likely to be less than a mandatory scheme and unpredictable. Mandatory requirements could affect the viability of developments especially brownfields, resulting in less housing production, but these effects will be transitory as market conditions adjust.
- Economic Benefits: Incentives would result in less risk of distortions to the development process and enable developers and house builders to incorporate affordable dwellings where it makes sense, given the bonus available. Mandatory requirements would be simpler to implement than a bonus scheme and provide more certainty over the contribution '*pipeline*'.
- Social and Cultural Costs: Incentives would potentially result in less involvement of third parties in the consent process. Mandatory requirements would favour some types of households who are eligible for affordable housing.
- Social and Cultural Benefits: Incentives would provide a bonus or incentive to high value areas where a mix of market rate and affordable dwellings may be beneficial. Mandatory requirements were more likely to help meet community needs and would broaden the range of housing choices.

435. Mr Mead briefly concluded that incentives were less efficient and less effective than mandatory requirements. This was not expanded upon in any level of detail.

436. The s32 Report then examined what was described as "*operational policy 2*", residential versus non-residential. We summarise that assessment as follows:
- Residential Environmental Costs: may be some pressure for unplanned residential areas so as to meet requirements and some spillover growth into Central Otago.
- Residential Environmental Benefits: contribution will flow from planned residential developments and new neighbourhoods and reduce pressure for unplanned growth to address affordability issues.
- Non-Residential Environmental Costs: may be pressure for business and industrial land to be used for affordable housing stock putting pressure on amount of business land available.

[518] Section 32 Report, paragraph 11.32

- Non-Residential Environmental Benefits: may lead to greater focus on brownfields redevelopment to help deliver affordable housing close to businesses.
- Residential Economic Costs: economic benefits accrue to business community through a more stable labour force, but they only contribute "*indirectly*".
- Residential Economic Benefits: residential land values more stable and experience greatest uplift when rezoning occurs. Business land uses face more variability in uplift and decline as patterns of work and consumption change.
- Non-Residential Economic Costs: likely to be high economic costs in determining appropriate contribution rates across businesses. May be limited to new business/ industrial growth due to restricted land supply and changing work practices.
- Non-Residential Economic Benefits: businesses are one of the main beneficiaries of affordable housing programmes.
- Residential Social/Cultural Benefits: housing may be some distance from services and facilities.
- Residential Social/Cultural Benefits: helps to deliver mixed residential communities.
- Non-Residential Social/Cultural Costs: delivery of affordable housing may be directed to areas where labour force pressures are high (such as seasonal workers).
- Non-Residential Social/Cultural Benefits: aids in creating more mixed use communities.

437. Mr Mead concluded that a focus on the residential sector would be more effective than seeking contributions from business activities, on the basis of:[519]

> "…*the greater certainty over level of contributions given residential growth patterns (compared to more variable business development cycles); history to date of contributions being sourced from residential development and the outcome of securing diverse neighbourhoods*."

438. Table 9 then set out a "*Zones Analysis*" and assessed those residential zones that should be subject to an affordable housing levy. These included nearly all of the existing residential zones, whether within the UGB or not. The only zones excluded were Rural Lifestyle (because its main purpose is landscape protection) and Jack's Point (subject to a separate agreement).

439. This assessment also examined the application of the contribution to other residential activities such as retirement villages, lodges, boarding houses and other forms of affordable housing. Some of these activities were then suggested as being excluded (refer our discussion of the notified Variation provisions earlier in our report).[520] The reasons for inclusion or exclusion were not expanded upon in any level of detail.

440. Much of the evidence for the developers raised the need for the Council to better incentivise development if this Variation is to proceed. One of the economists, Mr Osborne, drew our attention to a New Zealand academic paper that studied the effects of SHAs on housing affordability in Auckland and in so doing, referenced other academic work in this area. For the purposes of the study, the SHAs were regarded as voluntary inclusionary housing programmes because they sought to improve housing affordability through zoning areas for residential development and streamlining the resource consenting process. As the authors noted, the SHA programme was intended to motivate developers to deliver affordable housing and the faster consenting process implied a lower transaction cost for housing to enter the market. However, the authors noted the incentives were weak and the affordability requirement may

519 Section 32 Report, paragraph 11.38

520 Section 32 Report, paragraphs 11.42-11.44

not always have been binding on developers. They also noted that voluntary programmes were less diligent on monitoring and enforcement than mandatory programmes. Mandatory programmes were said to include a combination of regulatory relief or cost-offsetting measures such as density bonuses, flexible zoning standards, tax exemptions, fee waivers or deferrals, parking requirements, relaxation of design restrictions and alternatives to developing affordable units onsite. [521] The Auckland study stated:[522]

> "*Our findings indicate that the SHA programme caused price increases (inside SHAs) amounting to about 5% on dwelling prices and 4% on the price per square metre, and had no effect on the probability of affordable transactions to occur but actually increased the probability of costly transactions. These results cast doubt on the reliability of the SHAs as a housing policy aimed at improving housing affordability*."

441. The authors of that paper stressed the SHA programme in Auckland had relied on the fast-tracking of the consenting process to succeed rather than a clear and binding mandate to deliver affordable housing. With reference to Californian examples, the authors stated:[523]

> "*…an effective IZ programme is dependent not only on the structure of the programme, but also on the commitment of the public agencies responsible for its implementation and monitoring. That is, unless strict performance standards and procedures are established, relying on self-regulation does not boost affordable housing production. Thus, affordable housing and the performance of the programme are tied to the monitoring and adjustments introduced to improve the programme*."

442. To some extent, we consider this paper supports the Council's position that it should intervene in the market and it should include some form of mandatory requirement. As evident from the current lack of affordable housing delivered by developers in the District to date, self-regulation does not appear to be an appropriate method to deliver affordable housing.

443. In considering this first option, and in light of higher order statutory provisions, Mr Ferguson's evidence was that:[524]
- The proposed financial contribution regime would impact on the efficient operation of the land supply market by imposing further costs on subdivision and development. This was contrary to the NPS-UD;
- The provisions of the PORPS are more directive in addressing housing choice, quality and affordability through sufficiency of capacity;
- The PDP already seeks to address housing affordability through various provisions – 4.2.1.4a (mixing housing densities and form); 4.2.1.4b (ensuring the ongoing availability of a competitive land supply for urban purposes; SO3.2.2.1 (ensuring a mix of housing opportunities); and 4.2.2.8 (having regard to the extent planning controls addressing site size, density, height and coverage adversely affect housing affordability). This aligns well with the NPS-UD and the PORPS;
- The now proposed UIV will increase supply and housing choice; and

---

521 Mario A Fernandez, Gonzalo E. Sanchez and Santiago Bucaram (2021) *Price effects of the special housing areas in Auckland*, New Zealand Economic Papers, 55:1, 141-154; Statement of evidence of Phil Osborne, paragraphs 53 -58; Statement of supplementary evidence of Phil Osborne, paragraphs 1-3

522 At page 151

523 At page 152

524 Statement of evidence in chief of Chris Ferguson, paragraphs 95-98;

- There is evidence that the existing PDP policies are encouraging greater housing choice through density and reduced lot sizes. Mr Ferguson noted that Mr Osborne's evidence[525] had identified apartments and terraces as making up 50% of non-retirement village dwelling consents in 2023 (previously, in the 2010s, this amounted to only 10%).

444. Mr Ferguson considered that the use of voluntary agreements at the time of any uplift in plan enabled capacity would support proposed Objective 3.2.1.10 of the proposed Variation. He agreed with the Council's s32 assessment that a supply driven approach had potential environmental costs from the rezoning of rural land, along with potentially negative landscape impacts and pressure on the Council's infrastructure services, and was not therefore a good option. The PDP's approach to controlling growth through the use of UGBs was, in his opinion, a sound one. He also supported the Council's adoption of a Spatial Plan for the District. Overall, he was of the opinion that those parts of this option that provide for increased supply, including intensification and continued developer agreement at the time of uplift, rank highly and on an equal footing with non-RMA options. He considered them to be effective and efficient because they are aligned with higher order statutory provisions, they have relatively low transaction costs and, in the case of the agreements, have been demonstrated as being very efficient with a range of potential options to extend their use.[526]

445. Mr Thorne did not consider the Variation provisions to fit well within the planning context. He stated that generally, financial contributions are used as a compensatory measure to mitigate or offset the effects of development, and are an alternative mechanism to development contributions. In his opinion:[527]

> "*In this case however, the notion that new housing or sites for housing incurs a financial contribution to support additional housing is counterintuitive. … the IZ Variation effectively treats the creation of existing plan enabled residential land as though it were an adverse effect that warrants a financial contribution*."

446. He was concerned that the Council evaluation based on supply and intervention did not take account of how the supply of housing will be realised, in particular, what the supply would look like in terms of available new undeveloped allotment sizes and locations. He also considered the Council relied too heavily on the outcomes of the Ladies Mile and Urban Intensification Variations, assuming the UIV will succeed. He suggested a further option available would be to create further potential for a variety of housing at a variety of price points through additional flexibility in PDP provisions. This might include more flexibility in allotment sizes and greater densities.[528] Similar points were made by Mr Giddens in his evidence.[529]

447. The operations manager at Fulton Hogan Land Development Limited, Mr Dewe, considered modifications to the Variation could include enabling increased density where the Variation applies; more flexibility for comprehensive forms of housing such as multi-unit, duplex, terrace and apartment developments within greenfield areas; removal of barriers to brownfield housing developments through relaxing minimum lot sizes and increasing density; introducing provisions to enable a greater level of development to offset the 5% contribution required through the Variation and modifying the Variation so that it only applies to areas that are

525 Statement of evidence in chief of Philip Osborne, paragraph 20
526 Statement of evidence in chief of Chris Ferguson, paragraphs 101-103
527 Statement of evidence in chief of Daniel Thorne, paragraph 2.3
528 Statement of evidence in chief of Daniel Thorne, paragraphs 4.2-4.3
529 Statement of evidence of Brett Giddens, paragraph 6.5

rezoned or up-zoned after the date of the provisions becoming operative.[530] He was of the view that an ability to increase density within a development could act as an offset rather than the cost of the financial contribution being passed on to consumers. He acknowledged that delaying the Variation would delay the Council's response to the affordability issue in the QLD and, therefore, the most appropriate course was to modify the Variation to incorporate some of the amendments he had suggested. Like others, he did not consider the UIV to be the answer, given it was not at all linked to the Variation and was subject to a separate submission and hearing process.[531]

448. The detail of the amendments mentioned by Mr Dewe were outlined in Mr Thorne's planning evidence. These included:[532]

- A density of one residential unit per 300m^2 in the Low Density Residential zone as an average across the site and a building height of 8m;
- A maximum building height in the Medium Density Residential Zone commensurate with the UIV;
- Applications for consent under the Variation rules proceed without notification or limited notification; and
- That the activity status for non-compliance with the Variation financial contribution rules be a restricted discretionary activity with the matters of discretion being limited to the provision of affordable housing.

449. In his opinion, these would all "*help temper the significant costs of the proposal*." Mr Thorne noted that most of these points already formed part of the UIV and, in that regard, had been evaluated and were supported by the Council.[533]

450. In his legal submissions, Mr Matheson made a similar point about density. He shared with the Panel his own experience as counsel in a number of plan change processes throughout the country in recent months, where he has argued that a focus should be on enabling a range of housing types and housing choice. He submitted that the expectations of society must change in this regard and in districts like QLD, where landscape constraints further limit land availability, it is important for communities to accept more intensive forms of residential activities. As Mr Matheson put it:[534]

> "*If district plans start including rule packages providing for a range of housing options, the market will respond to those rules at the appropriate time. But there must be that option in the rules – if the minimum lot size is 700m^2, then land will be developed to that level of intensity. Every lot that is developed at a lower intensity precludes a future greater intensity of development, at least for the short to medium term (i.e. a significant opportunity cost).*

451. In his planning evidence for Willowridge and others, Mr Williams described the Council's approach as conflating zoned land and supply. Zoned land did not necessarily translate into housing supply. In his opinion:[535]

---

530 Statement of evidence of Gregory Dewes, paragraph 7.2

531 Statement of evidence of Gregory Dewes, paragraphs 7.4-7.5

532 Statement of evidence in chief of Daniel Thorne, paragraph 7.10

533 Statement of evidence in chief of Daniel Thorne, paragraph 7.11

534 Counsel notes of Mr Matheson on behalf of Willowridge, Metlifecare and Universal dated 6 March 2024, paragraph 4

535 Statement of evidence in chief of Tim Williams, paragraphs 47-48

"*…the option of greater supply is not about necessarily zoning more land but firstly accelerating the process and infrastructure to ensure the land that is already zoned is delivered as supply in the market. This requires District Plan provisions that assist to encourage that supply where it can most effectively contribute to affordable housing price points, namely infill and more dense forms of development*."

452. His points on the delivery of infrastructure were supported by Mr Hocking in his evidence for Universal Developments. Mr Hocking outlined the problems that lack of infrastructure has caused for his land development at Lake Hāwea. He suggested the Council redirect its focus from this planning process to providing the necessary infrastructure to enable developers to get sections to market.[536]

453. Similar points on changing planning rules to provide for greater development flexibility were made by Mr Anderson and Ms Hoogeveen for Ladies Mile Property Syndicate. They both also noted there should be greater provision of worker accommodation across a wider range of zones.[537]

454. For Remarkables Park Limited, Mr Porter considered the answer to the problem was to enhance development opportunities and encourage growth by addressing existing issues such as consent costs and delays. Like other developers, he considered the Variation would increase the price of new homes, impede the work of the private sector "*as the most effective and important provider of housing and affordable housing*" and push development to areas where costs are lower (which may be outside the District altogether).[538] Mr Porter did note that one option available to the Council is to defer or discount development contributions to developers offering to provide rental apartments (build-to-rent).[539]

455. Counsel for Remarkables Park Limited, Mr Ashton, suggested Council strengthen regulatory methods available to it such that it require delivery of more dense housing typologies. We also record Mr Ashton's submission that the private sector has a role to play in delivering affordable housing for the District.[540]

Discussion

456. The Council's approach is to target the development community and to mandate the financial contribution that has, until recently, been nominally voluntary. The contribution would be paid to the QLCHT or another approved community housing provider. The agreement with those providers would require that affordable housing be provided and retained. In those respects, the proposal aligns well with overseas examples. While we understand the Council's approach at a high strategic level, we are concerned with the method of delivery, and its associated rules.

457. We do not accept the arguments of submitters that enabling the building of more and more houses in the District necessarily assists housing affordability. If that were the case, the Variation and this hearing would not be required. There has been no shortage of the

536 Statement of evidence of Lane Hocking, paragraphs 16-21

537 Statement of evidence in chief of Hamish Anderson, paragraph 23; Statement of evidence of Hannah Hoogeveen, paragraph 3.10

538 Statement of evidence of Alastair Porter, paragraphs 5.1-5.3, 8.1-8.9

539 Statement of evidence of Alastair Porter, paragraph 8.8

540 Legal submissions for Remarkables Park Limited dated 6 March 2024; Responses to questioning from the Panel on 7 March 2024

construction of housing in QLD in recent years. The developers' position appears to be founded on an economic assumption that as more homes are built, the price of houses will reduce. That has clearly not occurred in this District.

458. Nor do we agree that rezoning more land is the answer. Significant parts of the District have been rezoned in recent years. There are environmental costs associated with these options, as noted by Mr Ferguson.

459. Even if Plan provisions were amended to enable greater density and intensification, there is no guarantee that developers will actually build affordable housing in those areas. Clearly, in many cases, that has not occurred to date, despite the open acknowledgement of developers in this hearing that they support the provision of affordable housing in the QLD. In the hearing, they were quick to explain why that building had not occurred on their development sites. Even if they did build to the increased densities, the evidence suggests this would not of itself create affordable housing, and that any housing that was affordable at first sale would not remain that way.

460. One of the difficulties in the Council's approach to its s32 assessment is that it has not assessed all of the options before it through a cost-benefit analysis. We address this in more detail below.

461. We consider that what is required is a much more direct focus on density, so that development that occurs in some zones can only occur at much higher densities. Those developments must also be required to deliver affordable housing. On the question of density, we agree with Mr Matheson that a significant mind shift is required in the District, to accept that residential development at higher densities is required if this problem is to be satisfactorily addressed. In particular, urban land should be better utilised for more intensive residential development. While the existing PDP provisions identified by Mr Ferguson go some way to addressing the issue of affordable housing in the District for the reasons he stated, they really only provide a foundation. They are more focused on supply than affordable typologies. We consider the PDP needs to be further amended, to be far more directive in addressing affordable housing and also requiring the delivery of affordable typologies that may be both purchased and rented. This outcome may not be quite what developers sought. But as we have said already, there is little benefit in allowing more housing and more zoning, if the affordable housing is not delivered. Incentivisation works two ways, with some benefit to developers with more development opportunity in specified areas but, more importantly, that opportunity being provided by the Council on the basis that affordable typologies are delivered to the community, without the need for negotiated agreements and the uncertainty that may bring. However, we note that even then, affordable typologies and higher density do not necessarily lead to retained affordable housing.

462. We do not consider it appropriate for the Panel to recommend amendments to the PDP to address these matters. As noted by some parties appearing before us, any amendments to the PDP requires a full consideration of how any amendments would align with the other parts of the PDP. Regard should also be had to the outcomes sought through the Ladies Mile and Urban Intensification Variations. The introduction of the Spatial Plan and the Ladies Mile and Urban Intensification Variations may, in time, deliver more intense development of sites, which may deliver a more affordable housing product. However, those processes are themselves more focused on increasing supply of housing, not necessarily affordable housing. Those processes have some distance to travel, and cannot be relied upon in delivering an

affordable housing outcome here. We are therefore unable to put any real weight on those processes, other than to note that the Council is advancing these initiatives.

463. While the Council did turn its mind to Option 1, it recognised that additional supply, while necessary, will not deliver affordable housing by itself.[541] The economic evidence before us supported that conclusion.

464. Overall, we do not consider the assessment the Council undertook fully considered the more directive approach that could be achieved through the planning framework. As Mr Thorne stated, this approach is being progressed (at least in part) through the Ladies Mile and Urban Intensification Variations. However, notification of these variations post-dated the s32 assessment by nearly a year or more,[542] and the assessment itself did not fully canvas this more directive approach. Further, no cost-benefit analysis was undertaken of this option.

Option 2 – Rates

465. As a territorial authority constituted under the Local Government Act 2002, the Council must, amongst other things, "*promote the social, economic, environmental, and cultural well-being of communities in the present and for the future*."[543] It may prescribe methods of setting fees and charges for services performed by the Council.

466. The ability to set rates arises through the Local Government (Rating) Act 2002 (Rating Act). As noted by the Supreme Court in *Auckland Council v C P Group Limited*, section 3 of the Rating Act makes it clear that the purpose of the Act is to promote the purpose of local government set out in the LGA 2002 by:[544]

"

(a) providing local authorities with flexible powers to set, assess and collect rates to fund local government activities:

(b) ensuring that rates are set in accordance with decisions that are made in a transparent and consultative manner:

(c) *providing for processes and information to enable ratepayers to identify and understand their liability for rates."*

467. Section 5(1) of the Rating Act defines "*activity*" as "*good or service provided by, or on behalf of"* the local authority or a council-controlled organisation. It includes providing facilities and amenities, making a grant and the *"performance of regulatory and other governmental functions*". As the Supreme Court has noted:[545]

> *"[33] Section 17 provides that for the purposes of s 16, categories of rateable land are categories identified in the funding impact statement of the local authority as categories for setting the targeted rate and defined in terms of one or more of the matters listed in sch 2. <u>The statutory scheme for targeted rating therefore allows a local authority to define categories of rateable land for targeted rating using a broad range of matters such as the use to which the land is put, the area of land within each rating unit, location, and any of the annual, capital or land values. Further, the</u>*

---

541 Section 32 Report, paragraphs 11.12

542 The Section 32 Report is dated 22 July 2022, while Ladies Mile was notified on 27 April 2023 and the Urban Intensification Variation was notified on 24 August 2023

543 Section 10(1)(b) Local Government Act 2002

544 *Auckland Council v C P Group Limited* [2003] NZSC 53, paragraph [31]

545 *Auckland Council v C P Group Limited* [2003] NZSC 53, paragraph [33]

calculation of liability for a targeted rate must utilise both the factors identified in the authority's funding impact statement as matters to be used to calculate the liability and those listed in sch 3. Again the flexibility afforded to the local authority is apparent from the factors in sch 3. These factors include the annual, capital, or land values of the rating unit; its area of land; and the area of floor space of buildings within the rating unit." (our emphasis)

468. Section 7 of the Rating Act states that all land is rateable unless that Act or another Act says that it is not. Through s13 of the Rating Act, a Council may set a general rate. Section 16(1) provides that a Council can set a targeted rate for one or more activities or groups of activities if they are identified in its funding statement (i.e. the Long Term Plan) as activities or groups of activities for which a targeted rate may be set. Section 16(2) enables a Council to set a targeted rate in relation to all rateable land within its district or one or more categories of rateable land identified under section 17 of the Act. Section 17 refers to Schedule 2 of the Act.

469. Schedule 2 of the Rating Act was amended in December 2023[546] as part of reforms of the resource management system. It reads as follows:

Schedule 2
Matters that may be used to define categories of rateable land

1. The use to which the land is put.
2. The activities that are permitted, controlled, or discretionary for the area in which the land is situated, and the rules to which the land is subject under an operative district plan or regional plan under the Resource Management Act 1991.
3. The activities that are proposed to be permitted, controlled, or discretionary activities, and the proposed rules for the area in which the land is situated under a proposed district plan or proposed regional plan under the Resource Management Act 199, but only if-
   a) no submissions in opposition have been made under clause 6 of Schedule 1 of that Act on those proposed activities or rules, and the time for making submissions has expired; or
   b) all submissions in opposition, and any appeals, have been determined, withdrawn, or dismissed.
4. The area of land within each rating unit.
5. The provision or availability to the land of a service provided by, or on behalf of, the local authority.
6. Where the land is situated.
7. The annual value of the land.
8. The capital value of the land.
9. The land value of the land.

470. Section 23(1) of the Rating Act requires that rates are set by resolution of the local authority. They must relate to a full or partial financial year and "*be set in accordance with the relevant provisions of the local authority's long-term plan and funding impact statement for that financial year*".

471. As Ms Rusher submitted, a council may impose a rate where there is a rational connection between the cost of funding a policy or activity and the generators of demand for that activity or policy. The Supreme Court has upheld a council's targeted rate on hotels, stating there did

546 Section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68)

not need to be a close connection between the activity rated for and the benefits received by the person paying the targeted rate.[547]

472. The Council's s32 Report noted that targeted rates could be levied, but that they are costly to administer. It also noted that targeted rates must be directed at the provision of a specific service or activity, meaning the Council would need to develop a programme of works that could justify the rate. Any such rate would apply to existing and new houses.[548]

473. In response to submissions opposing the Variation, Mr Mead's s42A Report stated that the Council had investigated the use of rates and/or development contributions during preparation of the Variation, referring to Attachment 3 to the s32 Report. Attachment 3 comprised advice from Mr Whittington to the Council dated 7 July 2021. In this advice, Mr Whittington recorded the matters he had been asked to consider – whether housing affordability could be addressed via general or targeted rates under the Rating Act, by development contributions under the LGA, through bylaws, or through partnership arrangements with central government.

474. Mr Whittington's advice was that rates are a powerful local authority funding tool, enabling local government with "*flexible powers to set, assess, and collect rates to fund local government activities*"[549] and that it is the dominant revenue stream for local authorities' income, and one over which local authorities have the most control and certainty. He also noted it is difficult for parties to challenge local authority rating decisions and that "*Courts will not interfere with a local authority rating decision unless the decision is found to be unreasonable, irrational or perverse in defiance of logic, such that Parliament could not have contemplated the decision being made by an elected Council*."[550] Mr Whittington stated that the provision of affordable and social housing by local government was supported by the Local Government (Community Wellbeing) Amendment Act 2019 which restored the promotion of "*social, economic, environment, and cultural wellbeing*" to the statutory purpose of local government.

475. Mr Whittington addressed the ability for the Council to use either a general or targeted rate to address affordable housing in the District. He noted this might comprise some delivery of something like pensioner housing, or the Council using a proportion of its rates to build, or to subsidise developers through contracts to build, housing in the affordable housing bracket.[551] On the question of using general rates, he referred to a report prepared by Morrison Low, which had identified "*significant challenges*" facing local authorities in rating increases, including "*grave affordability issues with rates for some population groups*".[552] Apparently on that basis, Mr Whittington advised the Council:[553]

---

547 Legal submissions for Tim Allan and others, paragraph 39, *Auckland Council v C P Group Limited,* paragraphs [62], [65] and [121]

548 Section 32 Report, Table 6. While the method in Table 6 referred to both general and targeted rates, only targeted rates appear to have been assessed in the table.

549 Whittington legal advice dated 7 July 2021, paragraph 6, referring to s3 Rating Act.

550 Whittington legal advice dated 7 July 2021, citing *Wellington City Council v Woolworths New Zealand (No 2)* [1996] 2 NZLR 537 (CA)

551 A point noted by Mr Thorne in his evidence, who held the opinion that the ability to develop smaller sites, resulting in smaller dwellings, or the ability to fast track infrastructure, can assist with the delivery of more affordable housing – Evidence of Daniel Thorne, paragraph 4.8

552 Whittington legal advice dated 7 July 2021, paragraphs 8-9, referring a report Costs and Funding of Local Government Report, Morrison Low for Department of Internal Affairs (July 2018)

553 At paragraph 9

"*Against this background an increase in general rates to fund the provision of affordable housing (or compensate developers for lost profit on affordable housing) may not be palatable politically*."

476. Mr Whittington advised the Council that he considered the difficulty with a targeted rate approach is that it is not clear to whom the Council would apply a targeted rate (i.e. to what land, this was important to Schedule 2 of the Rating Act) and that simply applying it to residential land would not assist housing affordability "*and the costs would likely be passed on by developers*". He noted that, alternatively, the Council could seek to apply a targeted rate to industrial and commercial land on the basis that it generates employment, and in turn, the need for affordable housing.[554]

477. In deciding the options available to it in addressing housing affordability, the Council also received advice from Hill Young Cooper, specifically Mr Mead. On the matter of rates, Mr Mead noted a local government activity could include the construction and management of affordable housing. However, he cautioned that a risk of the rate option was that provision for affordable housing may not be seen as a '*core'* function of Council and the revenue stream may be reduced or curtailed (referencing the 3 year rate cycle). In his opinion, a degree of uncertainty over future revenue streams would result, which may limit the extent to which the Council and/or the QLCHT could borrow to fund capital projects.[555]

478. It is apparent from the above that the Council did seek advice on the use of rates as a mechanism to address affordable housing. However, it is not at all clear what the Council specifically decided in rejecting that option.

479. In opening the Council's case at the hearing, Mr Whittington dismissed the suggestion of submitters that rating was a reasonably practicable option. He submitted the Council's politicians had been advised of the availability of rating as an alternative option but had nevertheless chosen to notify the Variation. No further information was provided then (or since) as to why the option was rejected. Mr Whittington accepted that a rating option was open to evaluation by the Panel. In doing so, he noted that we do not have to assess alternatives and rank them, rather we must decide if the Variation proposed is the most efficient and effective and appropriate way to achieve the objective(s).[556] In answering questions on targeted rates, Mr Whittington accepted that Council could rate land to fund the QLCHT, but there would be different costs and benefits.

480. In his economic evidence, Mr Eaqub considered inclusionary housing to be the most economically efficient way to achieve the delivery of affordable housing in this District, stating:[557]

"*Inclusionary Housing is a single mechanism for proportionate affordable housing levied on those who receive or have received planning windfall gains, within a wider set of tools to enable supply. Rates is a general tool, levied on every resident, for which there are many competing uses. I would note that local authorities around the country are experiencing significant increases in rates to keep up with delivery of existing services and commitments, without adding even more demands on it*."

554 At paragraphs 10 and 11

555 Hill Young Cooper, Affordable Housing and Queenstown Lakes Proposed District Plan, Issues and Options, June 2021, section 6.1.1

556 Hearing day 1 27 February 2024

557 Statement of evidence in chief of Shamubeel Eaqub, paragraph 5.9

481. Mr Osborne challenged this evidence, stating it to be untenable economically for two reasons. First, Mr Eaqub's approach was based on targeting one sector of the community, the developers, to pay a greater "*tax*" than the community as a whole, when the development community was part of the solution. Second, the housing development market in QLD had seen cost increases that far outweigh rates increases and have been fundamental in impacting the District's housing affordability.[558]

482. Mr Eaqub was clear to us that he had been tasked with assessing inclusionary housing against the counterfactual of no inclusionary housing provisions. He had not been asked to assess a rating option, and, until one was detailed, he could not assess it.[559]

483. Through the s42A Report, Mr Mead's position was that it may be possible to impose a general or targeted rate for housing purposes, but either option would need to identify the activity that the rates revenue was funding via the long-term plan. He referred to the evidence of Ms Bowbyes regarding the manner in which infrastructure is funded in the District and "*the very real constraints on the ability of the council to increase rates over and above what it has already signalled as being necessary to cover 'basic' infrastructure which urban growth and redevelopment relies upon*."[560] He also stated that while RMA-based methods are an important source of the funding to the QLCHT, the scale of the affordability issues facing the District means that other sources of funding for the QLCHT will be required, irrespective of the level of funding generated through the Variation.[561]

484. In his Rebuttal evidence, Mr Mead made only one comment on the option of rates, noting that a targeted or general rate imposes an annual, ongoing cost on households and (potentially) businesses. While the cost would be spread over a wider base than the proposed financial contribution, it would likely impact all low income households in the District and was less likely to be factored into land prices than a financial contribution.[562] He otherwise deferred to Ms Bowbyes' evidence. Mr Mead's Reply evidence did not address the topic at all.

485. The focus of Ms Bowbyes' evidence in chief was the history of affordable housing issues in the District and the steps the Council has taken over many years to try to address it. Like Mr Mead, Ms Bowbyes referred to the s32 Report[563] as evidence of the Council's consideration of the rating option, and pointed us to Mr Eaqub's evidence. Ms Bowbyes' Rebuttal evidence helpfully provided information on how some rating is currently used in the District in addressing housing need. She stated that the Council currently uses rates to fund a $50,000 grant to the QLCHT and significant portions of rates are used to fund infrastructure upgrades that support urban growth in the District. She otherwise referred again to the success of the practice that had occurred in QLD since 2013 of affordable housing contributions being collected and administered by the Council through stakeholder deeds negotiated on private plan changes and through special housing area developments.[564] She also referred to the Councillors' support for inclusionary housing through the formal ratification of the Homes Strategy 2021 and the Joint Housing Action Plan 2023, both of which mandated inclusionary

558 Summary and Supplementary Evidence of Philip Osborne, paragraph 13
559 Hearing day 1 27 February 2024
560 Section 42A Report, paragraphs 7.9-7.10
561 Section 42A Report, paragraph 7.12
562 Rebuttal evidence of David Mead, paragraph 6.5
563 Section 32 Report, Attachments 3a and 3c
564 Rebuttal evidence of Amy Bowbyes, paragraphs 2.3-2.5

housing being pursued through changes to the PDP.[565] The same or similar points were made again in Ms Bowbyes' Reply evidence, where she referred to the Mayoral Housing Taskforce Report of 2017, telling us that this report identified actions using the rating tool as one option available to Council.[566] Ms Bowbyes also referred to the Mayoral Housing Taskforce Update Report dated September 2019.

486. Evidence and legal submissions for submitters on this option was extensive. Mr Tylden, one of the directors of Glenpanel Development Limited, suggested that if some form of taxation intervention is needed to address housing affordability in QLD, that should occur through a central government policy and/ or tax response. If a local government solution is to apply, then rating is the option available.[567]

487. Mr Yule, a previous President of Local Government New Zealand with considerable experience in the local government sector generally, briefly explained the options of general and targeted rates. He considered rating to be a viable option. He stressed that all of the funding options had not been analysed by the Council in concluding that the financial contribution option was the best option. He considered that an analysis of this nature "*would likely show that it is inequitable to charge a sector of the community (new home builders and developers) for a social problem that is not new, and which should be funded by the whole community with support from Central Government*." He told us that the Council had confirmed, in a response to a request made under the Local Government Official Information and Meetings Act, that a rating funding analysis does not exist.[568]

488. Mr Ferguson noted that the rating option provides the most flexible option to Council as it enables direct investment by QLDC into the provision of affordable housing or its ability to enter into partnerships with community housing organisations such as QLCHT to deliver affordable housing. He suggested this option could also be combined with the Council's Option 1: land supply mechanisms. He did not consider any additional administrative cost associated with the rates option to be significant, given the Council already has an established system to set and collect rates. The only additional task that would arise here was the allocation of the funding. He noted that this administrative cost would be considerably less than that required to administer the financial contributions regime proposed through the Variation. He also noted that the financial contribution approach would act as a constraint to intensification opportunities.[569]

489. Ms Hoogeveen went so far as to suggest rates could specifically target RVA, even those that meet permitted activity standards, given there appears to be a direct adverse effect on the supply of long term rental accommodation as the result of the volume of short term residential visitor accommodation. She considered this would be an appropriate focus given that correlation.[570]

490. Mr Glover also raised the option of rating. Mr Glover was familiar with funding of affordable housing in Aspen, Colorado, another tourist destination. He provided evidence confirming

---

565 Rebuttal evidence of Amy Bowbyes, paragraphs 2.6-2.8

566 Reply evidence of Amy Bowbyes, paragraphs 4.1-4.2

567 Statement of evidence of Mark Tylden, paragraph 28

568 Statement of evidence of Lawrence Yule, paragraphs 14-20; Summary and Supplementary Statement of evidence of Lawrence Yule, paragraphs 7-9

569 Statement of evidence in chief of Chris Ferguson, paragraphs 105-115

570 Statement of evidence in chief of Hannah Hoogeveen for Ladies Mile Partnership Syndicate Limited, paragraph 3.10

that Aspen has been addressing housing affordability since 1977 and that affordable housing is funded by fees related to employee generation arising from a development activity, along with local sales taxes and local taxes on real estate transactions.

491. In his evidence, Mr Porter noted the Council had not taken the option of rates to the community for consultation, therefore the "political palatability' of it was untested. He considered the Council appeared to have approached consultation on the Variation with a closed mind as to alternative options.[571] He also stated:[572]

> "*To the extent that a lack of affordable housing is a problem for society generally, then there is a rationale for identified sectors of the rating base part funding the cost of provision. A more sophisticated rating approach would be to incentivise businesses to support private provision of staff housing or pay higher use commercial rates (as it is generally businesses that create employment and add to the demand for worker accommodation, and it is businesses that would stand to gain from any reduced staff turnover associated with more affordable accommodation)*."

492. Counsel for opposing submitters were consistent in their submissions that the rating option had not been explored and was discounted early on because it was politically unpalatable. In questioning, Ms Simons described the Council's approach to s32 options as "*backfilling*" – the Council decided early on that it wished to pursue the Variation and in so doing, failed to adequately consider alternatives reasonably available to it. The Councillors' decision that increasing rates was not politically palatable was not relevant under s32.[573]

493. Ms Wolt made a similar point, with reference to s32:[574]

> "*In any case, "no political appetite" to consider the rating alternative does not equate with "not reasonably practicable" in terms of section 32(1)(b)(i)*."

Discussion

494. We have carefully read the s32 Report, the evidence, legal submissions and both Mayoral Taskforce reports referred to in Ms Bowbyes' evidence. On the last reference, we can find nothing in those reports to demonstrate that the rating option was openly and fully considered by the Council. Most of the focus in the reports is on strengthening the Council's relationship with QLCHT, the Secure Home programme, providing more land for development throughout the District, intensification of land use, addressing residential visitor accommodation and setting out further work to come (which includes this Variation). We have received no helpful information explaining why the rating option was dismissed by Councillors, apart from the suggestion that it was politically unpalatable.

495. Nor have we found any analysis of the costs and benefits of the rating option against the inclusionary housing option. As noted by Mr Yule, this analysis was simply not undertaken by the Council. That appears to be indisputable, given the Council's confirmation of this to Mr Yule.

---

571 Statement of evidence of Alastair Porter, paragraph 8.10

572 Statement of evidence of Alastair Porter, paragraph 8.11

573 Panel questioning on 5 March 2024

574 Synopsis of submissions for Trojan Helmet Limited, Boxer Hill Trust and Gibbston Valley Station dated 5 March 2024, paragraph 4(d)

496. As noted in evidence for some submitters, any rating option does not necessarily require the funding from rates to be passed on to the QLCHT. A comprehensive assessment should have identified the various means by which this option could deliver tangible benefits to the community. For example, it is possible for the Council to contract developers itself to build affordable housing or to build the housing itself, using collected rates from the whole community. That option does not appear to have been seriously considered by the Council.

497. We do not consider Mr Mead's opinion about lack of certainty of revenue streams to be a valid reason to discount the rating option. The same argument could be applied to the financial contribution payments proposed to be gathered through this Variation. Developers were very candid in telling us that if the Variation is approved, they may well choose to develop elsewhere or in much more limited form, or to delay development. As the funding for the provision of affordable housing proposed through the Variation derives from the development of land in QLD, it appears to us that the same risk of uncertainty about revenue streams applies.

498. Nor do we accept that Schedule 2 of the Rating Act limits the options open to the Council. It may be possible, for example, for the Council to apply a targeted rate to land used for commercial or tourism purposes, or to RVA (which is considered further below). It seems to us that those forms of land use are easily identifiable throughout the District and would fall within the terms of sub-paragraph 1 of Schedule 2.

499. Overall, we have no reliable evidence on the Council's deliberations on the merits or otherwise of Option 2. The Council had ample opportunity to put this information before the Panel, but did not do so. On the information placed before us, we find that the rating option was not given full and proper consideration by the Council.

500. Further, we find that the Council's s32 assessment is defective as it did not include a financial assessment of the rates option, or any cost-benefit analysis of this option against other options on the table. As this goes to the heart of a cost and benefit analysis under s32 of the Act, the assessment fails the s32 tests. We discuss this further below.

501. We consider rating to be a reasonably practicable option. It could also be combined with other options. Through Ms Hill's legal submissions, we have been made aware of rates being considered by the Council more recently. At Council's Planning and Strategy Meeting in February 2024, a number of slides were tabled and (presumably) considered, addressing the housing affordability problem.[575] These confirmed that options before the Council going forward could include:

- Changes to tenancy legislation;
- Stronger short-term letting controls which could include stronger restrictions and/or a levy for using the whole house for short-term letting, requiring registration of short-term letting houses. The slides specifically noted "*Legislative change would help us limit short-term letting*";
- Investigating higher rates/levy for underutilised land, short-term letting, or empty homes to boost housing supply and help fund housing initiatives;
- Charging a visitor levy (in 2019, over 80% of the local population supported a 5% levy on visitor accommodation to help pay for services and infrastructure used by visitors). The number of visitor arrivals to the year ended June 2023 was 3.3 million;

[575] Attachment B to Legal Submissions for Qianlong Limited and others

- Inclusionary housing, which could be boosted by continued government support and national enabling legislation;
- Local businesses providing worker accommodation and/or directly providing housing for staff.

502. Some of these options overlap with other options addressed in our report. We can make no further comment on the matters raised at the February 2024 meeting, given those matters were not part of the Council's Variation assessment.

Option 3 – More control over RVA

503. We now turn to the option of the Council taking measures to address the problems caused by RVA in QLD. This issue was raised by almost all parties. There is no dispute that RVA affects not only the price of housing but the availability of long term rentals in QLD. Ms Bowbyes provided comprehensive evidence on this topic (as outlined in earlier sections of our decision). Mr Eaqub also discussed RVA issues within his economic evidence, noting that previous census data showed 28% of homes in QLD were vacant homes (second and/or holiday homes) and short stay accommodation (providing an example that as at the end of October 2023, over 1800 properties in QLD were listed on Air BnB). Mr Eaqub also noted comments made by interviewees in the SIA of tenancy laws disincentivising landlords to rent their properties long term. Many SIA respondents commented on the negative impact of short term letting in the District. According to Mr Eaqub, there was a 49% reduction in rental listings in the District in the period December 2021 to December 2022.[576] As we address below, Mr Colegrave provided more up to date figures.

504. The RVA problem was also addressed by Mr Mead in his report to the Council on options to address housing affordability in 2021. He noted then that economic evidence provided during the district plan review process found that in the 16 month period, October 2016-February 2018, Air BnB activity in QLD was estimated to have grown by anything up to 85%. Much of that growth had occurred in Low Density Residential zones.[577]

505. The Planning JWS recorded that while there were a number of factors at play in QLD driving demand for housing, short term rentals were "*a particularly important and relevant problem in terms of this district.*" However, they considered there was no ability to quantify that impact.[578]

506. Mr Colegrave's evidence was that the root causes of affordability in the District included the extremely high land prices coupled with elevated construction costs. These were exacerbated by the impacts of short term rentals, which reduce the pool of homes otherwise available for long term rental. On his calculation, 23% of the District's dwellings are currently listed on Air BnB, versus only 2.3% nationally.[579] Mr Colegrave referred us to a report by Benje Patterson[580] which identified the high number of holiday homes in the District and the impact of short term rentals on the insufficient number of long term rentals. The Patterson report included these findings:

---

576 Statement of evidence in chief of Shamubeel Eaqub, paragraphs 4.5-4.7

577 Hill Young Cooper, Affordable Housing and Queenstown Lakes Proposed District Plan, Issues and Options, June 2021, section3.5, page 12

578 Joint Witness Statement of Planning Experts, Questions 1 and 3

579 Statement of evidence in chief of Fraser Colegrave, paragraph 25

580 Benje Patterson, Queenstown-Lakes labour market snapshot to December 2022, referred to in the Statement of evidence in chief of Fraser Colegrave at paragraph 65

a. There were fewer long term rentals in the District in late 2022 than one year prior;
b. There was a 49% drop in District long term rental listings on TradeMe during the year ended December 2022;
c. In the same year, Air BnB listings flourished;
d. Short term rentals and unoccupied holiday homes were likely the key causes of the lack of long term rentals for workers.

507. Mr Colegrave's own analysis in preparing his evidence for this hearing stated that by the end of 2023, the number of Air BnB listed homes in the District had increased from 3,181 to 4,447, an increase of 40% in just one year.[581]

508. Mr Osborne agreed that the number of vacant homes in the QLD added to the housing pressure and unaffordability. He noted that only 25% of the housing stock (over the 5 years to 2018) growth contributed to rental stock. On a more positive note, he was of the opinion that the result of the Environment Court appeals on the RVA plan change, addressed by Ms Bowbyes in her evidence, had the potential to better manage short-term rentals.[582]

509. Earlier in our report, we referred to the statements made in the Economist JWS about the impact of RVA on this District.

510. In his evidence, Mr Giddens noted that if Air BnB and other short term rentals were at fault, that problem had not been addressed in the Variation. In his view, the Council had not considered any regulation of RVA and visitor accommodation in its assessment.[583]

511. Mr Porter raised the possibility of the Council being more proactive in this space and introducing measures to charge commercial rates and more for the use of entire dwellings or apartments as Air BnB style accommodation (where the entire dwelling is used for short term rental). He noted that compliant short term rental operators already pay a rate targeted at tourism promotion that is passed on to Destination Queenstown. In the same way, a targeted rate could be passed on to the QLCHT.[584] Mr Porter noted several times in his evidence that a shortage of rental accommodation is the real problem in the District and that he would like to see the QLCHT give immediate priority to acquiring and providing affordable rental accommodation rather than its current focus on delivery of home ownership to a small number of residents. He stated:[585]

> "*It is the current unmet demand for rental accommodation that is the critical issue. Assisting residents into ownership involved a transfer of wealth to the individual recipients and this should be of a much lower priority now, while there is a rental affordability crisis that affects the wider community. If other measures to increase the pool of affordable rental accommodation prove to be successful then the Housing Trust could, at a future date, readjust its priorities and consider whether to retain these rental units for rental or convert a portion to ownership*."

581 Statement of evidence in chief of Fraser Colegrave, paragraph 68
582 Statement of evidence in chief of Philip Osborne, paragraph 38
583 Statement of evidence in chief of Brett Giddens, paragraph 6.10
584 Statement of evidence of Alastair Porter, paragraph 8.13
585 Statement of evidence of Alastair Porter, paragraph 8.12

Discussion

512. There is no dispute that RVA is a primary cause of housing unaffordability within QLD. We acknowledge that, at a planning level, the Council has already taken steps to try to address the effects of the extensive RVA within QLD. The PDP process did not deliver the outcomes first intended by the Council. The Council is hopeful the data on RVA within the District will improve as a result of the registration process now required. However, that will take some time.

513. We find that the Council did partly consider Option 3. Ms Bowbyes' evidence certainly clarified the problems encountered in progressing the RVA variation to the PDP. We noted above the matters put before the recent Council Planning and Strategy Meeting in February 2024, where RVA was very much the focus of the agenda.

514. Having said that, we do not consider the Council gave full consideration to other, more direct remedies that may be available to address the RVA problem in preparing this particular Variation. For example, one option may be to introduce a targeted commercial rate on RVA properties. Another may be to ban the use of properties being used for RVA in some zones. In our view, simply requiring RVA property owners to register their RVA property with the Council will do little to address the affordable housing problem. We accept the registration will provide the Council with some data. However, we consider other more immediate measures are required to directly address the provision of affordable housing.

515. As we understand it, any wider taxation options are outside the Council's control and would most likely require the input of central government. We particularly note the point made in the Planning JWS that "*part of the observed behaviour in the Queenstown residential property market (like others) is likely to be influenced by government policy to not tax capital gains realised on property investment*."[586] We also refer to the slides presented to the Council's Planning and Strategy Meeting in February 2024, which specifically included the desire for central government intervention. We respectfully suggest that this be pursued with vigour.

516. We agree with Mr Porter's comments about the need for a better focus on the delivery of affordable rental accommodation. If RVA activity is disincentivised, more long-term rental accommodation should become available on the market.

Option 4 – Development contributions

517. The fourth option considered by the Council was that of providing funding for affordable housing through development contributions. Mr Whittington's advice to the Council was that this option was not legally available. Mr Mead gave similar advice in his 2021 report, stating affordable housing was not within the definitions of community or network infrastructure in the Council's Long Term Plan, therefore the Council had no power to require any development contributions.[587]

518. Submitters made similar points. However, we note Mr Yule's evidence that the Council's reason for dismissing the development contribution option on this basis did not appear to be

586 Joint Witness Statement of Planning Experts, answers to Question 13

587 At section 6.1.2

consistent with its decision to advance the Variation on the basis of the payment of a financial contribution, which he considered suffers from the same legal difficulty.[588]

Discussion

519. We find that that Option 4 may be a reasonably practicable option that the Council could explore further. For example, if the definitions in the Council's Long Term Plan are problematic, the Council could consider how they could be amended to address any shortcomings, following due process.

Option 5 – The use of bylaws

520. The fifth option considered by the Council was the use of bylaws. Mr Whittington briefly advised that he did not consider a bylaw regulating the provision of affordable housing would fit with existing topics or matters for which bylaws are allowed.[589] Submitters did not particularly address this option in their evidence.

521. We accept this option may not be available to the Council for the reasons expressed by Mr Whittington.

Option 6 – Partnering with other parties

522. The sixth option considered by the Council was the possibility of partnering with central government or iwi to provide affordable housing in the District. Mr Whittington noted in his 2021 legal advice that as little had been done at central government level to action possible steps under recently introduced legislation, this option was not suggested as a way forward, but the Council was advised to keep a watching brief.[590]

523. Some submitters noted that previous New Zealand governments have provided housing for those in need and that the solution to the affordable housing issue in QLD rested with central government. They also suggested that Council should be lobbying central government for assistance instead of trying to fund the outcome locally.[591]

524. Mr Dippie stated that with the introduction of this proposed inclusionary housing regime:[592]

> "…*the QLCHT would effectively become the sole provider of affordable housing in the District with a very narrow product and a very narrow sector of eligible recipients. Inclusionary zoning will not address the rental or seasonal worker housing problem, which in my view is the real problem in the District*."

525. He went on to say that in his view, QLCHT was only part of the solution. It should not carry the burden of providing all affordable housing for the District. Providing land to the QLCHT through the Variation would come at "*an overall cost burden to the District and in fact exacerbate the problem by reducing housing supply and increasing market prices*." Mr Dippie

---

588 Statement of evidence in chief of Lawrence Yule, paragraph 21; Summary/ supplementary statement of evidence of Lawrence Yule, paragraph 12

589 At paragraphs 23-25

590 At paragraphs 26-30

591 For example, Statement of evidence of Alistair Munro, page 1

592 Statement of evidence of Allan Dippie, paragraph 37

considered central government needed to play a role in resolving the housing affordability issue.[593]

526. Mr Farrell[594] briefly mentioned the possibility of international investment as an option to address the housing affordability issue and noted that central government is currently looking at this. We have no further information before us addressing this possible option and make no further comment.

Discussion

527. We find the Council's assessment of Option 6 to have been inadequate.

528. We consider partnering with central government and/or iwi to be reasonably practicable options. There was limited evidence before us on the topic. Certainly, on the evidence we did receive, having reviewed the s32 assessment, we find that the Council did not appear to turn its mind to the possible range of options it could pursue under this head. These could include:

- central government introducing specific tax measures to address RVA in the District, and/or assisting in the delivery of affordable housing in other ways, through central government funding mechanisms. This may or may not involve Kainga Ora;
- the Council itself partnering with developers and/or iwi to ensure the delivery of affordable housing in the District by making available Council-owned land for development and/or agreeing to develop land owned by iwi and other organisations. These arrangements could include entering into an agreement requiring the delivery and retention of affordable housing. This option could occur in tandem with other options already discussed and would not rely on rates (see our discussion of Option 1);
- the Council itself delivering affordable housing, with or without central government assistance;
- charging some form of tourist/visitor tax and using those funds to assist in the provision of affordable housing.

Additional reasonably practicable option – Maintaining the status quo

529. Most of the evidence from developers confirmed their support for the Council's attempt to address unaffordable housing within its District. Generally, they also expressed support for the methods that have been used to date in requiring payment of a contribution to affordable housing needs as part of a resource consent or private plan change process. They were content for that process to continue.

530. Through the planning expert witness conferencing, it was agreed that Ms Bowbyes would provide information setting out the SHA developments and plan changes that have provided affordable housing contributions. These were included in Ms Bowbyes' Rebuttal evidence. A total of 12 plan changes and 9 SHAs were identified as having contributed.[595] Ms Bowbyes' primary evidence had already provided a breakdown of some contributions, noting for example the larger contributions (Shotover Country 44 lots; Tory, Frankton 42 lots; Longview, Hāwea 58 lots, Hanley's Farm 80 lots; Jopp St, Arrowtown (land contributed by Council), 68 lots). Other contributions were much less (for example 2018 Northlake, 2 lots; 2021 Hikuwai Stage 1, 6 lots; Allenby Farms, future contribution 3 lots).[596]

---

593 Statement of evidence of Allan Dippie, paragraphs 38-39

594 Speaking notes of Ben Farrell, paragraph 9e

595 Rebuttal evidence of Amy Bowbyes, paragraphs 3.11-3.14 and Appendix 1

596 Statement of evidence in chief of Amy Bowbyes, paragraph 3.10 and Figure 1

531. There was no dispute between the parties that the regime used to date has worked well. While it has not provided the level of certainty about funding that the Council and QLCHT would like to see in the delivery of affordable housing, it has in fact delivered a steady stream of either land or money to the QLCHT that has been used in the affordable housing programme. As explained by Ms Scott, the retention mechanism has also delivered benefits, as the housing resulting from the negotiated settlements will be retained by the QLCHT in the longer term. That benefit addresses the historical problem of housing being delivered through SHAs or other private developments increasing in value at each sale point, and putting the properties beyond reach of those who need them.

532. We agree that the retention mechanism is a clear benefit. However, while the status quo has delivered results, it will not necessarily continue to do so given the fact that so much upzoning of land has now occurred, or is in an enablement process (for example, Ladies Mile and the UIV), and there will be limited opportunity for the Council to capture a "voluntary" contribution from developers in the manner that has occurred previously. We understand that to be one of the reasons for the Council proceeding with the Variation, to ensure some form of contribution continues. That said, we also recognise that in order for the contribution to be paid, developers must seek resource consents to develop. That is the trigger for the payment. Without land or monetary contributions from developers, no funding will be provided to QLCHT through the financial contribution regime.

533. In light of the uncertainties, we do not consider maintaining the status quo to be a reasonably practicable option available to the Council.

Conclusion – s32(1)(b)(i) assessment

534. Our assessment under s32(1)(b)(i) is that there are a number of reasonably practicable options before the Council that have not been assessed, or which have been inadequately assessed. The Council's assessment does not satisfy s32(1)(b)(i) of the Act.

13.3.5 Effective and efficient provisions s32(1)(b)(ii) RMA

535. As we have already noted, there was general support from submitters for the Council's housing affordability objective. Whether this objective was achieved through the District Plan, rating methodology, or other means, was covered extensively in evidence.

536. The question of whether the Variation provisions are efficient and effective overlaps to some extent with our discussion of the reasonably practicable options. Mr Mead's evidence was that the Variation was an effective and efficient method of achieving affordable housing objectives. He pointed to the success of the QLCHT since its establishment and the support of planning-based provisions, to drive the method of delivery of stock of affordable housing and its retention in the community for the needs of present and future generations. In doing so, he noted that market-based subdivisions and developments that have offered an affordable housing component (but with no allocation or retention mechanism) have rapidly increased in value consistent with wider market trends, resulting in affordability benefits being rapidly diminished.[597] We did not understand submitters in opposition to seriously challenge these general statements. They accepted that the QLCHT had delivered affordable housing, but did not accept that the proposed method of imposing a mandatory financial contribution going forward was appropriate.

[597] Rebuttal evidence of David Mead, paragraphs 8.1 and 8.2

537. Mr Eaqub stated that he considered inclusionary housing was the most economically efficient way to achieve the Variation's objective, being a single mechanism "*for proportionate affordable housing levied on those who receive or have received planning windfall gains, within a wider set of tools to enable supply*."[598] In comparing the options of rates and inclusionary housing, Mr Eaqub stated:[599]

> "*I do not consider rates to be a credible or appropriate tool to provide affordable housing in the district. Instead, Inclusionary Housing is more appropriate as it is targeted at those who benefit from planning gains, and linking it to housing supply – that is, when the planning gain is crystallised - makes it an efficient mechanism to capture a small portion of the planning windfall gains to direct towards affordable housing*." (our emphasis)

538. This statement essentially summarises the foundation of the Council's strategic approach. It is based on taking a financial contribution from those who the Council considers are making money from planning uplift, without considering other sections of the community. We discussed in our Economics section the planning uplift and when this is expected to occur.

539. In our discussion of section 108 of the RMA, we addressed the matters of fairness and equity that arise from charging one sector of the community for a social problem they may not have caused. Certainly, there is no evidence before us confirming that the affordable housing problem fairly and squarely lies only at the feet of developers. There are many factors at play. In considering the efficiency and effectiveness of the Variation provisions, we must consider whether other options could deliver a better result. The economists for submitters discussed this in their evidence, Mr Osborne noting that the whole QLD community benefits socially and economically from affordable housing and, in his opinion, the costs of providing it should lie with the whole community.[600]

540. Legal submissions also addressed this point, and the question of whether the Variation can (and should) encapsulate the "voluntary" arrangements that have been in place for many years. On the second point, Mr Matheson's submission was that it was not appropriate to bring the "voluntary" arrangements into the Variation due to the lack of a link between the adverse effect (lack of housing) and the activity on which the contribution is to be charged.[601]

541. Ms Baker-Galloway submitted the financial contribution requirements are not an efficient and effective way to deliver on the proposed objective because the Variation would provide a further disincentive for land supply, will exacerbate unaffordability by increasing the price of affected land and would carry high administration costs.[602] She also noted the Council's s32 assessment failed to acknowledge that the financial contribution mechanism "*does not directly and with certainty provide for the outcome of delivering affordable housing. The transfer of*

---

598 Statement of evidence in chief of Shamubeel Eaqub, paragraph 5.9. We note a number of submitters criticised the Council's approach to planning gains as unfair and inequitable, Ms Hill going so far as to call this approach a "shift of wealth".

599 Statement of evidence in chief of Shamubeel Eaqub, paragraph 5.10

600 Statement of evidence in chief of Philip Osborne, paragraph 56

601 For example, Legal Submissions for Willowridge, Metlifecare and Universal dated 5 March 2024, paragraphs 21-22; Counsel notes of Mr Matheson on behalf of Willowridge, Metlifecare and Universal dated 6 March 2024, paragraph 8

602 Synopsis of submissions for Glendhu Bay Trustees Limited and others dated 1 March 2024, paragraphs 44 and 45

wealth to the Council, then (likely) to the Trust, does not directly translate to an increased supply of land for affordable housing, nor affordable homes to market." She made the point that no attempt had been made to quantify the likely scale of revenue to be gathered and the level of housing affordability that could be delivered.[603]

542. Planners for opposing submitters considered the proposed rules to be inefficient in achieving the housing affordability objective on the basis that it will discourage supply and reduce competitiveness.[604] In his evidence, Mr Serjeant stated:[605]

> "*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*."

543. The economists, other than Mr Eaqub, considered the tax being imposed on developers would aggravate the housing affordability issue rather than resolve it.[606] We have addressed this point elsewhere in our report.

544. Developers were clear in their evidence that if the Variation was approved, additional housing would, in their opinion, come at an increased cost to the majority of buyers. The cost associated with the impact of the contribution to be paid would be factored into the feasibility of projects. For Metlifecare, Ms van Kampen put it this way:[607]

> "*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*."

545. Similar points were made by Mr Dippie and Mr Hocking.

546. In terms of effectiveness, criticisms made of the Variation related primarily to the introduction of a tax, that, it was argued, would make all other housing in the QLD more expensive and less affordable.[608] Development could also be deferred, or not proceed at all.[609] As Mr Hocking put it, "'*Choosing' to develop in the District is very different to 'needing' to develop in the District*."[610]

547. Planners engaged by submitters noted that the Variation did not address important components of the relevant factors of RVA and holiday home ownership, which are clearly impacting on housing affordability. Nor did it provide for rental accommodation. It was more

---

603 At paragraphs 64 and 66

604 For example, Statement of evidence in chief of Tim Williams, paragraph 60

605 Statement of evidence of David Serjeant, paragraph 56

606 Statement of evidence in chief of Fraser Colgrave, paragraphs 41 and 50

607 Statement of evidence of Michelle van Kampen, paragraphs 5.7-5.8

608 For example, Statement of evidence in chief of Fraser Colegrave

609 For example, Statement of evidence of Allan Dippie, paragraphs 13-32; Statement of evidence of Lane Hocking, paragraphs 22-26

610 Statement of evidence of Lane Hocking, paragraph 24

focused on home ownership. In their opinion, more dense housing options were the answer.[611] We refer to our earlier discussion of these points under Options 1 and 3.

548. Ms Hoogeveen made the point that the QLCHT provides for approximately 0.6% of the QLD housing stock. This was a very small portion of the market. In a similar vein to Mr Serjeant, she considered housing affordability should be addressed at a much wider level such that all housing in the District becomes less expensive. This approach would enable the objective in its entirety to be achieved (i.e. assist all of those needing housing) and would assist those who sit outside the QLCHT's criteria for assistance, but are still considered to have a "low or moderate" income, to find housing.[612] Mr Ferguson considered the rating option to be highly effective and efficient, and the financial contribution regime ineffective and inefficient because it will disincentivise land supply and increase the price of affected land, exacerbating unaffordability. He also considered that aspects of Option 1 outlined above ranked highly and on an equal footing with non-RMA options because they align with higher order planning provisions, transaction costs are relatively low, the affordable housing agreements already used had been very efficient with a range of future options to extend their use, and increased housing choice in the District was expected to put downward pressure on the price of housing.[613]

549. Mr Matheson submitted that the Council had not demonstrated that the proposed provisions would be effective and that the Variation was not as efficient as other reasonably practicable alternatives. He noted that "*if the provisions are not equitable and fair, then they will not be effective and are not appropriate*."[614]

Conclusion – s32(1)(b)(ii) assessment

550. Under s32(1)(b)(ii), we cannot find that the Variation is the most efficient and effective means of delivering affordable housing to QLD. This is due in large part to the inadequate assessment of the reasonably practicable alternative options for providing funding for the delivery of affordable housing (options 2 (rating) and 4 (development contributions)), and/or providing affordable housing (option 1 (plan provisions) and option 6 (partnering with other agencies)), or for directly addressing a primary cause of the shortage of rental housing in the District, being the proliferation of RVA (option 3). Given the lack of adequate assessment, we do not have the evidence to assess the efficiency and effectiveness of those options, and the submissions and evidence of the various submitters indicate that they may well be equally or more efficient than the provisions of the Variation.

13.3.6 <u>The risk of acting or not acting: s32(2)(c) RMA</u>

551. We heard from various witnesses that the Variation would impact on the cost and delivery of housing across the District. We addressed this in earlier sections of our report.

552. The risk of acting or not acting requires assessment if there is uncertain or insufficient information about the subject matter of the proposed provisions. Mr Gordon submitted that s32(2)(c) is engaged here "*because there is a lack of reliable information and real uncertainty about the extent of Queenstown's housing affordability problem and what measures are*

611 For example, Statement of evidence in chief of Tim Williams, paragraphs 62-66

612 Statement of evidence in chief of Hannah Hoogeveen for Ladies Mile Property Syndicate Limited, paragraph 3.8

613 Statement of evidence in chief of Chris Ferguson, paragraphs 103 and 108

614 Legal submissions for Willowridge, Universal and Metlifecare dated 5 March 2024, paragraph 10(c)

needed to fix it. The requisite level of detail appears to be absent both from the assessment reports and the Council's evidence."[615] Mr Gordon also submitted:[616]

> "*The Joint Witness Statement of the economic experts confirmed that the extent of the affordable housing problem in Queenstown could not be quantified. Nor could they say whether affordable homes were not being created or whether subsequent market effects made them unaffordable. The true extent of the problem or what is required to ameliorate it remains uncertain*".

553. Mr Gordon also referred to the evidence of Ms Bowbyes on managing the effects of RVA, those changes having recently come into effect but it being too early to assess their impact. He submitted that this created a further level of uncertainty about whether those initiatives, and others, are addressing housing affordability and to what extent.

554. Mr Gordon submitted that given these uncertainties, the Council should have undertaken a s32(2)(c) assessment on the risk of acting or not acting, but it did not.[617] We do not accept Mr Gordon's submission on this point. The Council's assessment under this head is set out at paragraphs 11.76-11.78 of the s32 Report. The s32 Report noted that there is a degree of uncertainty about the potential response of the subdivision and house building sector to the financial contribution requirement. The Report noted that the evidence to date was that:[618]

- There are substantial risks to the social, economic and environmental values of the District if no further action is taken;
- The 2021 HBA calculated that if no specific action is taken, the number of non-owner households facing rental stress will climb from 2,350 to 7,000 by 2050;
- There are risks with any new contribution provision, which may include negative reactions from some of the development community and could delay or defer development projects;
- Experience to date with SHAs and private plan changes showed a degree of acceptance of the need for some form of contribution if the District is to continue to grow and prosper in a sustainable manner;
- The QLCHT and the development of home ownership package showed there is a place to implement any contribution requirement.

555. Submitters raised the level of uncertainty in a slightly different way, for example, pointing to a lack of economic cost and benefit analysis as a concern. Mr Thorne's planning evidence was that there is a greater risk of acting than not acting. He did not consider the Variation provisions were required to manage activities that otherwise left unchecked may result in adverse effects on the environment. He pointed to Mr Eaqub's evidence as confirming the Council had not addressed, or sought to clarify or accurately identify, the costs of the proposal.[619]

556. Similarly, Mr Ferguson considered the risk of not proceeding with the Variation is low. In support of that opinion, he made the following points (summary only):[620]

---

615 Synopsis of submissions for Queenstown Central Limited dated 5 March 2024, paragraph 43

616 At paragraph 44

617 At paragraphs 44(b) and 45

618 Section 32 Report, paragraphs 11.76-11.78

619 Statement of evidence in chief of Daniel Thorne, paragraph 7.8, referring to Evidence in chief of Shamubeel Eaqub, paragraph 5.26

620 Statement of evidence in chief of Chris Ferguson, paragraph 145

a) The PDP provisions already provide much of the relief required to encourage housing, such as establishing housing bottom lines, expanding supply and providing greater housing choice within urban areas. There is evidence of greater housing choice starting to impact building outcomes;
b) The UIV process is underway;
c) The Variation will increase a range of economic costs that could decrease supply, increase prices and result in inequitable distribution of costs;
d) Economic costs will impact on housing delivery, and in so doing, conflict with the NPS-UD; and
e) The Council has not quantified the economic benefits of the Variation, being its preferred option other than in relation to PDP Volume B (unreviewed land). Volume A PDP landowners will be disincentivised to develop.

557. Mr Brabant made this submission for Ladies Mile Property Syndicate Limited Partnership (LMPS):[621]

> "*In my submission the risks of acting as Council propose outweigh the risks of not acting. If this Variation does not pass the legislative hurdles it faces, then it can and should be declined. This is not a scenario where a "something is better than nothing" approach validly applies because LMPS says the choice is not between (limited) benefit and the status quo. Rather I say the evidence established that this Variation is likely to generate a net adverse outcome. In addition this Variation does not represent a singular opportunity to engage with the issue with no further opportunity for Council to revisit an appropriate approach – the choice before you should not be cast as a binary one*."

Conclusion – s32(1)(c) RMA assessment

558. In the Economics section of our report, we accepted the evidence of the economists and developers that there is a potential for the Variation to cause an increase in the price of existing and future dwellings on the open market. However, we also noted that if the significant increase in supply from the UIV and the Ladies Mile Variation eventuates, this is likely to be of low impact. We also agreed with the economists that any price increase from the Variation would be a one-off, short-term effect.

559. Nevertheless, under s32(2)(c), based on the evidence before us, and the inadequacy of some of that evidence in assessing alternative practicable options, we find that the risks of acting on this Variation outweigh the risks of not acting. There are a range of options available to the Council which can be implemented on their own or as part of a package of measures. We note that in her Rebuttal evidence, Ms Bowbyes listed various Council initiatives underway to address housing affordability and noted that the Variation is "*<u>an</u> appropriate mechanism*" to address what she described as a resource management issue. She made it clear that the Variation is part of a package of work the Council is undertaking to address housing affordability.[622] On that note, we do not consider it fair to describe Ms Bowbyes' evidence as "*equivocal at best*" as submitted by Mr Gordon, nor that Ms Bowbyes "*appears more enthusiastic about the range of methods available to the Council than the Proposal itself*" following expert witness conferencing.[623] We would expect that expert witness conferencing

621 Legal submissions for Ladies Mile Property Syndicate Limited Partnership dated 5 March 2024, paragraph 38
622 Rebuttal evidence of Amy Bowbyes, paragraphs 2.7-2.8
623 Synopsis of submissions for Millbrook Country Club Limited dated 5 March 2024, paragraph 34

assisted all planners, including Ms Bowbyes, to reflect on the range of methods available and how they might be combined.

560. We accept Mr Ferguson's evidence that there are a number of reasonably practicable options to address the objective, which involve a package of regulatory and non-regulatory methods. Mr Ferguson's preferred option was:[624]

> "*..to utilise local government rating to provide an avenue for funding of the trust and a range of regulatory responses that include a continued focus on land supply, a greater focus on the statutory instruments to ensure the delivery of land at more affordable process points, including supply thought the intensification variation, and formulating policy orientated at capturing policy uplift*."

561. For the reasons stated in our report, we do not accept all of that statement, but we are firmly of the view 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 alone.

13.4 Does the IH variation give effect to the NPS-UD?

562. The NPS-UD provisions include a focus on the demand for affordable housing and the supply of land for affordable housing. The references to different groups within the community recognises that the market is not uniform, but is made up of different groups, including different income groups. It is explicit that low-income households are one of those different groups.[625] Earlier in our report we set out the relevant provisions of the NPS-UD, including Clause 3.23. The requirement of clause 3.23 is that the HBA must include the assessment of the expected demand of the different groups in the community, specifically including rental and low-income households, and makes it clear that the demand of low-moderate households is potentially separate and distinct from other demand, and this separate demand must be assessed. The references to markets in Objective 2 and Policy 1(d) of the NPS-UD are plural.

563. Having assessed the housing demand of low to moderate income households, clause 3.10 of the NPS-UD requires that the Council provide sufficient development capacity to meet that expected demand. In providing that capacity, Objective 2 and Policy 1 require that housing affordability is improved by supporting competitive land and development markets and limiting, as much as possible, adverse impacts on those markets. We note that it is recognised in Policy 1 that there is potentially a tension between providing for the demand of low to moderate income households, and the competitive operation of the land and development markets. Some adverse impacts on those markets may not be avoided, but the adverse impacts should be limited as much as possible.[626]

564. As noted throughout our report, it was uniformly accepted that QLD has a severe shortage of affordable housing. Implicit in this is that demand for housing by low to moderate income households is not being provided for. This was assessed by Mr Eaqub[627] and supported by the other economists[628] and they agreed that it will continue into at least the long term.[629] The

---

624 Summary and Supplementary evidence of Chris Ferguson, paragraph 6

625 NPS-UD 2020 Objective,2, Policy 1, 3.9 and 3.23

626 NPS-UD 2020 Policy 1(a)(d)

627 Section 32 Report Appendix 3g Economic Assessment at Section 2

628 Joint Witness Statement of Economic Experts dated 30 January 2024, paragraphs 3.2.1 (1) and (2)

629 Joint Witness Statement of Economic Experts dated 30 January 2024, paragraph 3.2.1 (6)

2021 HBA has assessed the demand[630] and development capacity[631] for low to moderate income households, and indicates a shortfall of housing in the affordable bands of 2,350 dwellings in 2020, rising to a shortfall of 2,980 dwellings by 2050.[632] It states:[633]

> *"Council planning and infrastructure would not be a reason for housing affordability in QLD worsening, and it could potentially improve*."

565. QLDC has assessed the demand for housing for low to moderate income households and found that the supply is inadequate. It also found that Council planning decisions are not the cause of the shortage, although the economists did consider historic planning requirements limiting more flexible housing solutions and densities to also be a contributor to the causes of the shortage, as we identified earlier in our report.[634] Given this, the NPS-UD requires that QLDC must provide at least sufficient *development capacity* to meet the demand from low to moderate income households. Although the Variation is part of that provision, it is not a complete response. While no-one provided an estimate of how many affordable dwellings would flow from the Variation, Mr Eaqub worked with 1,000 to 2050, while suggesting the total required may be more like 2,000, and the 2021 HBA as noted above suggests it may be closer to 3,000. We discussed this in more detail in the Economics section of our report.

566. This Variation is addressing the requirement at section 3.2(1) of the NPS-UD to provide capacity to meet the District's expected housing demand. It is not the complete answer, but it is part of the required provision.

567. The developer submitters and witnesses claimed that the Variation would be contrary to Objective 2 and Policy 1(d) of the NPS-UD as it would affect competitive land and development markets.[635] This point was not addressed at length by Messrs Osborne and Colegrave, at least in relation to the NPS-UD. Their comments were more directed at the higher level housing market. In his conclusion, Mr Osborne:[636]

- acknowledged the increasing unaffordability of housing in QLD, attributing this to RVA and non-resident demand;
- noted the historical undersupply of suitable dwellings to the market, as well as the suitability of land for development and associated infrastructure costs;
- noted QLDC plan changes were intended to meet the NPS-UD requirements;
- noted the mixed international literature on the effects of inclusionary housing on supply and price, and stated:

> *"Ultimately the proposed Variation represents a risk to the efficient and effective operation of the QLD housing market and the more recent changes to give effect to the NPS-UD, with significant uncertainty regarding the assessed economic effects."*

568. In his peer review of the s32 Report, Mr Colegrave concluded[637] that in targeting developers and landowners, there could be a reduction in the rate of new housing, and

630 2021 HBA at Table 2.19
631 2021 HBA Section 10. See Table 10.2
632 2021 HBA Section 10.p 192
633 2021 HBA Section 10.p 193
634 Joint Witness Statement of Economic Experts dated 30 January 2024, paragraph 3.2.1 (6)
635 For example, see Submission #132 Winton Land Limited, paragraph 20
636 Evidence in chief of Philip Osborne, paragraphs 68-70
637 Insight Economics Peer review at 7(1)

"If the policy reduces development viability, it may also affect the Council's ability to meet its obligations to provide "at least" sufficient capacity "at all times" under the NPS-UD."

569. He made the same statement in his evidence.[638]

570. Mr Eaqub was more focused on the housing market faced by low to moderate income households. He was of the opinion that the wider provision of new housing supply in response to the NPS-UD would require much wider enablement of housing through zoning and this would limit the ability to require affordable housing through private plan changes as had occurred to date.[639] He told us that the inclusionary housing policies should be adopted now to provide the ongoing delivery of affordable housing to the community. He stated:[640]

"Introduction of the NPS-UD means more housing supply will be enabled. But it also means that QLDC will lose its previous opportunities to negotiate on private plan changes for Inclusionary Housing. So, while overall national policy direction will enable greater overall housing supply, the mechanism previously used to gradually and progressively build up a stock of affordable housing will be lost.

Importantly, overall supply does not manifest itself through proportionate supply across all parts of the housing continuum. This is logical, with market forces allocating new supply to those with the most resources. The impact of lack of supply therefore affects those on lower income persons and households, which in the Queenstown-Lakes district captures people working in the main industries like retail and hospitality, and key workers such as nurses, teachers and police officers."

571. We find that the Variation's focus is on the housing market faced by low to moderate income households. We consider that it achieves the requirement of Objective 2 of the NPS-UD as it improves housing affordability by supporting competitive land and development markets. We do not consider the Variation has any impact on those markets and, in that regard, it satisfies Policy 1(a) and (d) of the NPS-UD. In addressing the needs of the housing market for low to moderate income households, there may be some short-term adverse impacts on the rest of the housing market, and a potential increase in house and section prices in particular, and in that regard the Variation may not meet Policy 1(d). However, that policy recognises that adverse impacts on the competitive operation of land and development markets may not be able to be avoided, and requires that they be limited as much as possible.

572. We understand the competitive operation of land and development markets to refer to how the players in the markets interact in the markets in response to price signals, as well as to the number of players and the level of activity in the markets. While we have identified potential for housing price increases arising from the Variation, we do not consider these to be an adverse impact in themselves. Even if the 2% maximum increase postulated by the economists eventuates, as Mr Eaqub told us, it is in a market that saw 7% price increases in the last year. Any adverse impact would be in response to any price increases or other aspects of the operation of the Variation. In particular, significant drops in the number of development operators, significant decreases in the number or size of development projects, or significant reductions in the availability of land for development would potentially be adverse impacts on the competitive operation of the markets.

638 Statement of evidence in chief of Fraser Colegrave, paragraph 51(b)

639 Statement of evidence in chief of Shamubeel Eaqub, paragraphs 2.2(d) and 5.2

640 Statement of evidence in chief of Shamubeel Eaqub, paragraphs 5.4-5.5

573. The economists agreed that there is the potential for the Variation to adversely impact the viability of development projects. Mr Eaqub reported an international study finding that the impact of inclusionary housing policies was on the price of land, not developer margins. He accepted that some international studies found that housing supply slowed under inclusionary housing policies, but that it depended on the stringency of the requirements. He noted the improvement in QLD's housing supply when the contribution was increased from 5% to 10% in the 2013 SHAs and concluded that the inclusionary housing policy did not have a discernible negative impact on housing supply. He acknowledged that there may be some disruption to existing land holdings.[641]

574. In his review of Mr Eaqub's part of the s32 Report, Mr Colegrave was critical of the s32 Report not properly considering the impact of the Variation on project viability.[642] He concluded:[643]

> *"In short, the authors admit that the policy could affect viability and that care needs to be taken to balance its impacts on future supply, but they then rely on overseas experience and the impacts of previous IZ policies in the district to draw, what in our opinion are irrelevant or unsupported conclusions about the likely effects of the current proposal."*

575. In his evidence, Mr Colegrave twice stated he expected the Variation to have unintended consequences, including:[644]

> *"Increasing the risk, cost, and complexity of development, which will erode financial viability, reduce likely future supply, and place even greater pressure on district house prices and rental values."*

576. Mr Colegrave suggested that if the Variation reduces development viability, it may also affect the Council's ability to meet the requirements of the NPS-UD to provide at least sufficient capacity at all times.[645] Mr Osborne concurred with this view.[646] He referenced a background paper to the Auckland Unitary Plan process and concluded that higher priced developments were less likely to be impacted by the Variation tax, while lower priced housing development could experience a greater impact. Mr Osborne concluded that international literature on inclusionary housing was mixed in terms of supply and price impacts. He was of the view that the Variation proposed a risk to the efficient and effective operation of the QLD housing market and there was "*significant uncertainty regarding the assessed economic benefits*".[647]

577. Witnesses for the development community indirectly addressed the potential effect of the Variation on the competitive operations of land and development markets and presented a common view within their individual statements of evidence. By way of example:

- In Submission #132, Winton Land Limited stated the Variation would increase or incentivise anti-competitive behaviours and the use of only the QLCHT as the vehicle to deliver affordable housing would preclude other affordable housing providers;
- In her evidence for Winton Land Limited, Ms Christie referred to the risk of undertaking residential developments and the calculations of margins in undertaking development. The costs included construction, consenting, plan change

641 Statement of evidence in chief of Shamubeel Eaqub, paragraphs 5.18-5.20
642 Insight Economics Peer review, sections 5.1-5.3
643 Insight Economics Peer Review, section 5.4
644 Statement of evidence in chief of Fraser Colegrave, paragraph 24, repeated at paragraph 51(a)
645 Insight Economics Peer Review, at 7(2) page 20; Statement of evidence in chief of Fraser Colegrave, paragraph 51(b)
646 Joint Witness Statement of Economic Experts, paragraph 24(3)(v)
647 Evidence in chief of Philip Osborne, paragraphs 65, 65(b) and 70

applications and processes, which may include Environment Court appeals. The Variation would impose additional costs on developers, making the development process more expensive, without any corresponding incentive or benefit.[648]

- Speaking on behalf of Maryhill Limited, Mr Stalker spoke of the additional cost to development, affecting viability, with the Variation having the potential to stall housing supply and increase the cost of developing land.[649]
- Mr Tylden, for Glenpanel Developments Limited, had specific concerns about his company's development plans for Flint Park, a proposed 370-odd dwelling development. The Variation would require 18 or so lots of that development to be transferred to QLDC as the required financial contribution. That would be a very significant cost (or loss) to the project. He did not agree that developers can simply absorb increased costs, noting that most developers must fund developments from banks or other funders and those funders tend to dictate the development margins.[650]
- Mr Ries, for Darby Partners Limited Partnership, considered the Variation could lead to one or a combination of three outcomes – the price paid by developers to purchase land must fall in order to compensate for reduced profitability; the price of developed residential sections must rise in order to create increased profits per residential section sold; or neither of those two options and there is instead less residential development.[651]
- Mr Dewe, for Fulton Hogan Land Development Limited, considered the Variation would result in fewer sections in QLD being developed or the remaining sections for sale increasing in price to offset the Variation cost.[652]
- Mr Dippie, for Willowridge Developments Limited, stated that the development potential of his company (over 5,000 residential units) was unlikely to be realised due to the difficult development environment in the District, citing infrastructure barriers, the lengthy consenting process and engineering approval requirements. The Variation would add another level of difficulty. The Variation had reduced Willowridge's appetite for residential projects and they, like other developers, have projects in other districts that they could choose to prioritise.[653]

13.4.1 Discussion

578. While the economists agreed that the Variation has the potential to have an adverse impact on the viability of development projects, none of them concluded that this would actually occur, or that it would amount to an adverse effect on the competitive operation of land and development markets in the District. Mr Eaqub considered that the adjustment will come through changes to the price of land, rather than developer margins, and that past experience with inclusionary housing in QLD has shown no discernible impact on housing supply. Mr Colegrave was critical of the Council's lack of assessment on development viability. Mr Osborne recognised that the process of finalising the Variation may affect the timing of some projects, that the impact of the Variation may result in more affordable housing typologies being at a competitive disadvantage compared to higher priced developments, and that the Variation represents a risk to the effective and efficient operation of the QLD housing market.

---

648 Statement of evidence of Lauren Christie, paragraphs 4.3 and 4.6

649 Statement of evidence of Kristan Slaker, paragraphs 22-23

650 Statement of evidence in chief of Mark Tylden, paragraphs 22-26

651 Statement of evidence of Theodore Ries, paragraph 9

652 Statement of evidence of Greg Dewe, paragraph 2.3

653 Statement of evidence of Allan Dippie, paragraphs 7, 11, 16-17

579. The developers approached the issue differently, expressing concern that the Variation will change the risk profile of projects and that maintaining the required margins will result in increased section and house prices. While there were suggestions that projects may be delayed or not proceed, or that developers might withdraw from the QLD market, they all ended with the conclusion that increased section and house prices more than reduced supply. Several developers, like Mr Tylden, expressed concern for current projects that could get caught by the financial contribution requirement mid-development, after having committed to land costs, and stated this could affect a project's viability.

580. All parties acknowledged the very high demand for housing in the District. While there could be some increases in section and house prices as the result of the Variation, we do not expect there to be any significant reduction in the number of developers active in the QLD market or any reduction in the supply of sections and houses. We acknowledge there could be an effect on projects that are caught mid-development. We discuss the request for a transition elsewhere in our report. We do not consider that there will be adverse impacts on the competitive operation of the land and development markets in the District. Within the scope of the Variation, the broad scale of application and the relatively low rate of the required financial contribution will act to limit any such impact. The Variation sits within the wider landscape of the Joint Housing Action Plan that is addressing the supply of land for housing. We find the Variation will limit as much as possible any adverse impacts on the competitive operation of the land and development markets in the District.

581. We now turn to the relevant NPS-UD objectives and policies and assess whether the Variation gives effect to those.

582. Objective 1: We find that the provision of affordable housing falls within the NPS-UD requirement to have a well-functioning urban environment in this District. There was no real disagreement on this from the parties we heard from, including the expert witnesses. We rely on the opinions expressed by the planning witnesses through the Planner JWS that affordable housing falls within the outcomes sought by this overarching objective.

583. Objective 2: We accept that a well-designed policy seeking to achieve housing affordability in the District can and should be supported by competitive land and development markets, with the relevant costs and benefits appropriately assigned (to the extent that they can be) through the District Plan process. We have considered this point in other sections of our report and find that the Variation is consistent with this objective.

584. Objective 5: We address iwi issues elsewhere in our report. We note here our disappointment at the lack of due consideration given by the Council to the points raised by iwi and acknowledge the assistance provided to us by Kāi Tahu and others in addressing these matters. Achieving this objective is clearly important. Had we recommended that the Variation proceed, we would have exempted the Hāwea/Wānaka Sticky Forest land from the Variation, for the reasons we give in our discussion on this issue below. We do not consider the Variation proposed by the Council is consistent with Objective 5.

585. Policy 1: We find that the wording of Policy 1 expands on Objective 1 and provides guidance (as a minimum) to what a well-functioning environment should be. These provisions reinforce the concept that affordable housing should be seen in a wider policy context. However, the proposed Variation only sought to address part of the matters set out in Policy 1, namely the provisions of affordable housing through the residential development process. It did not consider the wider picture of how affordable housing could be framed. As a result, we find

the Variation does give effect to Policy 1, while recognising that it is not a complete answer to the requirements of Policy 1.

586. Policy 2: This policy supports Objective 2 and addresses the need for the Council to provide sufficient development capacity to meet the District's housing demand over the long term.[654] In this regard, the Council's 2021 HBA has shown that there is sufficient supply of infrastructure-ready zoned residential land in the District, but that the supply of affordable housing is not sufficient. We find that the intent of the Variation is giving effect to Policy 2, while again not being a complete answer.

587. Policy 9: For the reasons outlined above in respect to Objective 5, we do not consider the Variation proposed by the Council is consistent with Policy 9.

588. Overall, we find that the provision of affordable housing falls within the requirements of a well-functioning urban environment under the NPS-UD and, in that regard, the Variation gives effect to the NPS-UD. We also find that the underlying concepts sought to be achieved by the Variation are generally consistent with and give effect to the NPS-UD, other than those matters we have identified.

589. Finally on the NPS-UD issue, we questioned several counsel as to whether we could have recourse to Part 2 of the Act in our consideration of the NPS-UD. Counsel were consistent in their answers that we could only have recourse to Part 2 if we found that the NPS-UD was incomplete, unclear or uncertain. We could not revert to Part 2 simply because, for example, we did not accept the policy direction stated in the NPS-UD. We agree with this approach. We do not consider the NPS-UD to be incomplete, unclear or uncertain and have had careful regard to the wording of the NPS-UD in making our recommendations.

13.5 Is the Financial Contribution a tax?

590. The economists used the '*tax lens*' as a tool to analyse the effects of the financial contributions on the market, and most developer witnesses and submitters referred to the financial contributions as a tax. Mr Oliver, a chartered accountant specialising in taxation policy and law appearing for Glenpanel Development Ltd, directly addressed the question as to whether the financial contribution required under the Variation amounts to a tax.[655]

591. In his evidence he stated that taxes could only be levied if authorised by Parliament[656] and drew the distinction between taxes and fees – taxes being compulsory and unrequited charges levied by government while fees are charges for services.[657] He drew heavily on international statistical agencies[658] classification of transactions[659], and on specific examples of how different transactions have been classified as a tax or fee.[660] In his evidence, despite an extensive discussion of international practice and the treatment of various transaction in the United Kingdom, he did not state how New Zealand classified development and financial contributions. After discussion with us at the hearing, he provided a supplementary statement

654 We interpret this as meaning the provision of housing (not land), which includes the provision of affordable housing
655 Statement of evidence in chief of Robin Oliver, paragraph 15
656 Statement of evidence in chief of Robin Oliver, paragraph 47
657 Statement of evidence in chief of Robin Oliver, paragraphs 23-27
658 United Nations and European System of National Accounts
659 Statement of evidence in chief of Robin Oliver, paragraphs 27 and 34
660 Statement of evidence in chief of Robin Oliver, paragraph 39

in which he identified that development and financial contributions are classified as capital transactions and not taxes in the New Zealand statistical system.[661]

592. In his evidence Mr Oliver stated that taxation is a prerogative of Parliament and this is guarded by the Office of the Auditor General and Parliament's Regulatory Review Committee.[662] He set out three perspectives on the NZ distinction between taxes and fees: - a general perspective, a constitutional perspective, and a revenue strategy perspective.[663] He then assessed the financial contribution requirement against his identified criteria – imposed by government, mandatory and unrequited – and concluded that against all criteria the financial contribution was a tax.[664] He finished by stating that as a tax on a narrowly defined activity (residential development) and targeted to funding one activity (affordable housing) it was inconsistent with the government's tax policy settings and revenue strategy.

593. We accept that the required financial contributions may have the hallmarks of a tax as claimed by Mr Oliver. However, we do not consider this is relevant to our consideration. If the financial contributions required by the Variation are legally permitted under the RMA, which we have addressed elsewhere in our report, then they are authorised by Parliament. If they are technically a tax then they are a legitimate one. If they are not technically a tax, then the question is moot. It is not a question that we are required to decide.

13.6 Points addressing the Variation provisions including scope

594. We outlined the notified version of the Variation earlier in our report and noted points made by submitters on some provisions in our s32 discussion.

595. Mr Mead told us that the Council had considered a range of possible models in formulating the Variation. He noted that a key metric was the contribution rate, which needed to be set at a level that addressed the housing supply issue, but not be at a rate that deters development. He noted that the proposed rate of 5% of new lots (land or monetary equivalent) was set by the Council following a range of feasibility testing, which was set out in the s32 Report. The required rate of 2% applying to development of residential units (where a contribution had not been provided at subdivision stage) had also been set following feasibility testing.[665]

596. Mr Mead also noted the importance of the proposed financial contribution scheme fitting with Council's growth management strategy. The contributions were intended to apply to both greenfields and brownfields developments. Council's Spatial Plan 2021 recognised the need for substantial infill and redevelopment, with less reliance over time on greenfields expansion. The Spatial Plan promotes a consolidated and mixed-use approach to accommodating future growth in the District, with the main areas of growth being around the existing urban areas of Queenstown, Wānaka and Hāwea. As noted earlier in our report, Ms Bowbyes stressed that the Variation is part of a package of work that the Council is undertaking to address housing affordability and that this strategic context was important.[666] This includes the separate UIV, which is intended to give effect to Policy 5 of the NPS-UD. This was notified in 2023.

---

661 Supplementary Statement of evidence of Robin Oliver, paragraphs 11-12

662 Statement of evidence in chief of Robin Oliver, paragraph 41

663 Statement of evidence in chief of Robin Oliver, paragraph 43-63

664 Statement of evidence in chief of Robin Oliver, paragraph 75

665 Section 42A Report, paragraphs 3.10-3.11

666 Rebuttal evidence of Amy Bowbyes, paragraph 2.8

597. Various suggestions were made by submitters in their submissions, further submissions and evidence about amendments to the proposed Variation. We outlined earlier in our report specific points made by some planning witnesses to improve the intent of the objectives and to set a higher bar to remedy the housing affordability problem, along with Mr Mead's response to some of those matters.

598. In response to points made by submitters, and to address questions of the Panel, the Council also made some suggestions for improvement. Given our final recommendation, we do not address the amendments in detail, but highlight the main topics that arose. Before doing so, we note that the tenor of the submissions in opposition was that the objectives and policies were largely supported, subject to some suggested refinements. Mr Serjeant in particular made some comment on the policies. The submitters in opposition did not support the proposed methods and rules and considered they would not deliver the stated objectives.

599. The first main topic concerned the relationship of the Chapter 40 rules included within the Variation with Volumes A and B of the District Plan. This point was raised by Mr Ferguson. Volume A comprises land that has been reviewed through the PDP plan review process (PDP). Volume B comprises land that to date has not been reviewed (ODP). In particular, Mr Ferguson opined that the exclusion of the Volume B land had not been considered in the s42A Report and that the confusion was compounded by statements on the Council's website (relating to the Variation) that listed 15 developments where the proposed financial contribution would not apply because of pre-existing agreements. Many of these areas had yet to be incorporated into the PDP.[667]

600. Mr Ferguson stated that without specific acknowledgement or explanation within the text of Chapter 1 and/or Chapter 40, he assumed that the rules within Chapter 40 would automatically apply to Volume B land once this was added into the PDP. At that time, those areas would not be exempt. Mr Ferguson made some suggested amendments to 40.4 of the Variation to try to clarify matters.[668]

601. In his rebuttal evidence, Mr Mead suggested the reference to 40.10.1 in Chapter 1 be deleted. He also suggested an amendment be made to the diagram in Volume 1 and Clause 1.1B(d). Mr Mead considered there was scope to make these changes. The same changes were included within his Reply evidence. These changes did not appear to resolve Mr Ferguson's concerns, given he continued to note this point as an outstanding matter in his summary evidence.[669] He did not elaborate on this further.

602. The second main topic concerned a link between the strategic and district wide objectives and policies. Mr Mead told us that the Chapter 40 objectives and policies sought to "*operationalise*" these strategic directions. Those polices did not directly address the concentration of the affordable housing to be funded by the financial contributions. In his opinion, it was important that there be a spread of affordable housing options, across the District, noting the QLCHT wished to see a mix of housing at a District-wide level rather than suburb-by-suburb. Chapter 40's objective had included the words "*in different locations*" to enable that spread. Mr Mead suggested some amendments to Policy 40.6.1.6 relating to contributions of land to guide better resolution of two highlighted competing outcomes (spatial distribution of affordable housing v quantity).[670]

---

667 Statement of evidence in chief of Chris Ferguson, paragraphs 38-42

668 Statement of evidence in chief of Chris Ferguson, paragraph 128

669 Summary and supplementary statement of evidence of Chris Ferguson, paragraph (d) on page 5

670 Reply evidence of David Mead, paragraphs 2.1-2.8

603. The third topic was the wording of Objective 3.2.1.10 and the points made by Mr Serjeant about setting a higher standard of remediation. Mr Mead accepted the points made but suggested a refinement to Mr Serjeant's wording.

604. The fourth topic was the method by which different mixes of land and money could be considered through the contribution. Mr Mead recommended that the standards in 40.6.1 change the non-compliance of standards to be a restricted discretionary activity rather than a discretionary activity as originally proposed. In that regard, he listed a number of matters to which discretion would be limited. He also recommended that a new non-notification clause be added. His opinion was that a non-provision of a financial contribution should remain a discretionary activity and potentially open to notification.[671]

605. The fifth topic concerned a delayed or staggered start to the need for financial contributions to be made. Mr Mead set out the reasons why he did not accept this was appropriate, in particular noting that the market had already had time to adjust to the prospect of the financial contribution being required, given the notice the Council had given the public about its intention to introduce this regime.[672] We discuss this matter further in section 13.7 of our report.

606. In his evidence, Mr Thorne raised a concern about the (possibly unintentional) exclusion of the Lower Density Suburban Zone from the Variation. This appeared to have arisen from exemption and clarifications in the s42A Report. Mr Thorne quoted Mr Mead's recommended amendments to Policy 40.2.1.4 and suggested more certainty and clarification was required as to the intent of this provision.[673] The amended provisions attached to Mr Mead's Rebuttal evidence made one suggested amendment to Policy 40.2.1.4, so that the policy referred to an <u>area</u> of land that already contained affordable housing or where previous agreements and affordable housing delivery with Council have satisfied the relevant objective and associated policies, rather than referring to a <u>zone</u>.

607. Otherwise, Mr Mead did not accept that the Variation needed to be amended other than in one regard, to particularly address the collection of financial contributions, in particular whether once transferred to the Council, land could be on-sold, with the proceeds used for affordable housing elsewhere in the QLD. The recommendation made in his Reply evidence was to further amend the purpose of Chapter 40 to refer to delivery of affordable housing by a range of community housing providers and to also record that contributions must be retained for affordable housing outcomes. In doing so, he noted that community housing providers need a degree of flexibility as to how they manage assets received.[674] In support of his position, he pointed to section 111 of the Act, the definition of affordable housing in the Plan (which includes mention of a retention mechanism), the purpose of the financial contribution required and the amended purpose of Chapter 40 as he recommended through his Rebuttal evidence.

608. Additionally, Mr Mead recommended amendments related to a method to address a situation where the calculation of the required contribution in the form of land results in a fractional lot. He recommended that the fraction be disregarded. Remaining parts of his evidence and

671 Reply evidence of David Mead paragraph 2.9-2.11
672 Reply evidence of David Mead, paragraphs 3.1-3.8
673 Evidence in chief of Daniel Thorne, paragraphs 6.1-6.4
674 Reply evidence of David Mead, paragraphs 4.1-4.7

revised Variation provisions addressed matters of detail related to the reference to the Statistics New Zealand construction cost index.

609. In general terms, the refinements discussed above appear to be an improvement to the Variation, and therefore prima facie appropriate, within the context of the evidence before us. However, given the recommendation and reasons set out in our report, we make no findings on these matters.

13.7 Transitional arrangements

610. It became apparent through the hearing that one of the concerns of the development community was that projects they had underway may be caught by the Variation when they had made commitments prior to the Variation coming into force. This concern was very clearly stated in the evidence of Mr Dewe for Fulton Hogan when he stated:[675]

> "*While I agree to an extent that private developers accept inclusionary requirements when they are known in advance and levied in a consistent way, the Variation is to be introduced after many developers have already bought land and paid for it on the basis of the ODP rules in place at the time of the purchase. These rules did not include the requirement to give away 5% of the development for free without any "planning gain" to offset this cost, and to my knowledge Council has not investigated what disruption the Variation is expected to cause to developers with existing landholdings*."

611. Mr Eaqub stressed the need for certainty of application for the Variation to be priced into the market. He told us that the Variation should be applied broadly and consistently so that everyone understands the rules, following which it would be priced into land purchases. He was clear that while there was still uncertainty about what the contribution provision will be and whether it will be imposed, the Variation would not be fully factored into market prices. He said that this would only happen once the policy is certain. [676]

612. Mr Eaqub told us that the Council had discussed forms of phase-ins, with properties currently under development being excluded,[677] and that in getting from now, with no Variation in place, to having the Variation in place, there was a degree of "*greyness*" in terms of the transition period. [678] He considered that a 4-year delay in implementation in the context of the long-term provision of a stock of affordable housing was better than no implementation. He stated that inclusionary housing requirements are accepted by developers when they are known in advance and applied consistently.[679]

613. Mr Mead addressed the question of a delayed or staggered implementation in his Reply evidence, and opined that this would allow those developments currently in pre-consenting to proceed without delay.[680] He considered that any transitional arrangement should benefit only projects if land is not transferred between parties and there is no planning uplift provided during the transitional period.[681] He considered that a staggered start raises complex drafting

675 Statement of evidence of Gregory Dewe, paragraph 2.6
676 Recording 3, 27 February at around 1:20
677 Recording 4, 27 February at around 0:40
678 Recording 3, 27 February at around 1:24
679 Statement of evidence in chief of Shamubeel Mr Eaqub, paragraph 5.16
680 Reply evidence of Mr Mead, paragraph 3.3
681 Reply evidence of Mr Mead, paragraph 3.6

issues.[682] Given the possibility of a wide-ranging appeal to Council's decision on the Variation, with the resultant delay in the Variation being given significant weight during consent processes,[683] despite having legal effect, and the pre-notification consultation, Mr Mead considered that the market had had time to factor in the Variation.[684]

614. We accept Mr Eaqub's point about the importance of certainty to the acceptance of inclusionary housing by the market. We also accept Mr Mead's point that the Variation has been well signalled, and consider that developers acting rationally will have taken the potential for the Variation to affect them into their risk analysis in making purchasing decisions. We discussed this earlier in our report. We accept Mr Mead's point around the effect of any appeals on the Variation impacting on developments in the interim. We note that the outcomes of the Ladies Mile and Urban Intensification variations, although unknown as to their detail, may well produce some planning uplift for developers holding affected land. We consider that the period from notification (if not pre-notification consultation) through to the resolution of any appeals effectively is a transitional period during which there would be no further provision of affordable housing, and that the significance of the shortage to the District is such that any further delay is unwarranted. Accordingly, we would not support any transitional delay.

13.8 Is the passing on of financial contributions to the QLCHT legally valid?

615. Pursuant to section 111 of the Act, where the Council has received a cash contribution under section 108(2)(a), it must deal with that money in reasonable accordance with the purpose for which the money was received. Section 111 does not impose a similar restriction to the contribution of land.

616. We explored with the parties the legality of the mechanism of a financial contribution being payable to the Council and the Council then passing on that contribution to a third party (the QLCHT or another community housing provider) to assist with the provision of affordable housing. In such a scenario, there is no direct link between the person required to pay the contribution and the beneficiary of the contribution. As some counsel pointed out, there is also no link between the contribution charged and the adverse effects of the activity the subject of the charge.[685]

617. As to the question of a land contribution, the evidence confirmed that while lots had been the subject of a contribution by some parties in the past, those lots were not always used for the construction of affordable housing on that same lot. Some were put onto the open market to raise further funding for QLCHT, to then be redirected into QLCHT's affordable housing initiatives. We discussed this approach with some parties who had previously donated lots to the QLCHT via the Council. Mr Goldsmith has been involved in many such exchanges and he confirmed that there was no real issue with the contributed lots being used in a way that the QLCHT considered appropriate. For example, in the case of the lots provided at Northlake, there was no expectation by the developer that the affordable housing to result from that land contribution would be located within the Northlake development. Mr Goldsmith's submission was that most developers considered their required contribution was fulfilled at the time it was made and they were not concerned about the accountability (to them specifically) of the

682 Reply evidence of Mr Mead, paragraph 3.7
683 Reply evidence of Mr Mead, paragraph 3.5
684 Reply evidence of Mr Mead, paragraph 3.8
685 For example, Counsel's notes for Willowridge, Metlifecare and Universal dated 6 March 2024, paragraph 3

QLCHT from then on. He acknowledged that the status quo process had worked well, with all parties wanting something from the process and outcomes being negotiated. Developers realised that if a private plan change was to be approved, a contribution would have to be made.[686]

618. Ms Baker-Galloway submitted that the Council did not appear to be legally precluded from transferring ratepayer money to a trust or third party by any enactment or the general law. She noted that this practice occurred in ways other than the payment to the QLCHT, for example the funding provided to the Wanaka Community House Charitable Trust for the development and maintenance of the Wanaka Community Hub. Ms Baker-Galloway also pointed to case law involving a commitment by Wellington Regional Council to provide ratepayer funding to a Trust for the development of the Wellington Regional Stadium. The Court of Appeal made no findings in that case that the transfer of ratepayer funds to the Trust was unlawful.[687] This case was consistent with a case in the Environment Court involving the payment by Contact Energy of financial contributions to compensate the community for adverse effects caused or contributed to by the proposed activities contemplated by the resource consents sought. The Court stated:[688]

> "*I agree that financial contributions cannot legally be directed to be paid straight to another party. What happens when they are in a consent authority's hands is up to it, subject to the constraints in section 110 and 111 of the Act*."

619. The Court also noted that a power to impose a financial contribution is qualified by s108(10), which requires the financial contribution to be imposed in accordance with the purposes specified in the Plan.[689] In that regard, the purpose stated in the Plan is important. It should ensure that the contribution is clearly directed at the delivery of affordable housing to the community.

620. While section 110 was relevant to that case, it is not relevant here. It applies to the refund of money and return of land when an activity that has been the subject of a financial contribution condition imposed on a resource consent does not proceed.

621. We find that there is a legal requirement for the financial contribution to first be paid to the Council. There is no legal impediment to the Council then transferring money to the QLCHT or another charitable provider, provided that money is used for the provision of affordable housing. The same restriction does not apply to the transfer of land. The Council and/or the QLCHT and other charitable housing providers are legally able to use land contributions in a manner they see fit. As explained by Mr Goldsmith and others, the general practice in the QLD to date has been to apply that land or the funding generated by its sale to the provision of affordable housing, given that is the very reason for the existence of QLCHT, and indeed the purpose of the proposed financial contribution stated in the Plan. We do not consider there is any legal requirement at that point to establish a link between effects and the contribution made.

---

686 Oral legal submissions and questioning of Counsel for Northlake Investments Limited, 5 March 2024

687 Synopsis of submissions for Glendhu Bay Trustees Limited and others dated 1 March 2024, paragraphs 96-99; *Commissioner of Inland Revenue v Wellington Regional Stadium Trust* CA164/04, 6 September 2005

688 *Central Otago District Council and others v Otago Regional Council* C204/2004, paragraph [31]

689 At [11] – [12]. The Court also noted the finding of Principal Judge Sheppard in *Nicoll Management Limited v Manukau City Council* A62/94 at page 18, that the "purposes" specified in a Plan refer to the purposes to which the contributions are to be applied.

13.9 Hāwea/Wānaka - Sticky Forest

622. Submissions were lodged by the Office for Māori Crown Relations – Te Arawhiti (Te Arawhiti) and Te Rununga o Ngāi Tahu, Aukaha (1997) Ltd and Te Ao Marama Inc. All submissions related to the land known as Sticky Forest in Wānaka.

623. Te Arawhiti sought that this land be excluded from the Variation and a specific exemption be included within Rule 40.6.1.3 with appropriate policy support. Counsel for Te Arawhiti, Ms Dixon, outlined the background to this land and the reasons for the relief now sought. Evidence was given by Ms King (background and context) and Ms Ellis (planning).

624. Te Rununga o Ngāi Tahu, Aukaha (1997) Ltd and Te Ao Marama Inc sought an exemption to rule 40.6.1(3) to apply to land identified in s129 of the Te Ture Whenua Māori Act 1993 and Sticky Forest. Ms Stevens and Ms Pull gave evidence for those parties.

625. Evidence was also lodged from two beneficial owners of the Sticky Forest site, Ms Rouse and Mr Bunker. Sadly, Mr Bunker passed away before the hearing commenced. Ms Rouse attended the hearing to speak to that evidence and to answer the Panel's questions.

626. As noted by Ms Dixon in her submissions, the intended owners of Sticky Forest are entitled to that land because their ancestors were rendered landless by historical breaches of the Treaty of Waitangi. Section 8 was therefore relevant. Ms Dixon submitted the Treaty principles of partnership, active protection, and redress are apt, particularly as future owners of the land in question are individuals rather than iwi, and at this time have no representative voice. The principle of partnership includes a duty to act in good faith. The principle of active protection requires the Crown to have a positive duty to protect Māori interests and taonga. Passive protection was not appropriate.[690]

627. The historical summary below, which does not do justice to the depth of the issues inherent in the matter, is sourced from the evidence of Ms Stevens.[691]

628. Between 1844 and 1864 the Crown purchased the bulk of the South Island from Ngāi Tahu, with the Deeds of Purchase making provision for the creation of reserves, schools and hospitals for Ngāi Tahu. Those provisions were not honoured by the Crown, and as a result the economic, social, environmental and cultural wellbeing of Ngāi Tahu people declined significantly. A Royal Commission in 1886 enquired as to the adequacy of the provision and the position of those supposedly provided for, and produced a damming report in 1887, recommending that land should be set aside to provide the schools and hospitals, and for the use and occupation of the people of Ngāi Tahu. The outcome of the investigations and process that followed the Royal Commission report was the passing of the South Island Landless Natives Act 1906 (SILNA).

629. Under SILNA, land was set aside for allocation to the identified landless individuals. Much of the land was allocated, but when SILNA was repealed in 1909 not all the blocks of land had been allocated, one of which is now known as the Hāwea/Wānaka block, being around 1658 acres located at the Neck between Lakes Wānaka and Hāwea. Under the 1997 Deed of Settlement between Ngāi Tahu and the Crown, and the resulting Ngāi Tahu Claims Settlement Act 1998, Sticky Forest was substituted for the Hāwea/Wānaka block as the block was under

690 Legal submissions for Te Arawhiti dated 26 February 2024, paragraphs 20-24

691 Statement of evidence of Tanya Stevens, paragraphs 20-51

long term pastoral lease and not available for allocation. Sticky Forest is set aside as substitute land for allocation to the successors of the original 57 beneficiaries as redress for the Crown's actions in the decades following the Deeds of Purchase until the 1997 Deed of Settlement.

630. The planners in conferencing agreed:[692]

> "*that this land has unique status and is different from other land in the district in terms of its history and purpose as SILNA*."

631. Sticky Forest is currently zoned Rural, and is covered in plantation forestry.[693] The northern part is within the Dublin Bay Outstanding Natural Landscape.[694] Mr Bunker and Ms Rouse currently have an appeal before the Environment Court, seeking to have part of the land rezoned for residential purposes.[695] None of the parties to that appeal have sought to retain the Rural zoning across the entire site, so some level of development will almost certainly be permitted once the appeal is finalised.[696] The land is currently available for public use for walking and biking using the trails among the trees, but this access is revocable by the future owners.[697]

632. The process of identifying the 2,000-plus successors is nearly complete.[698] When they receive the land, they will have the option to receive it as either Māori freehold land or general freehold land.[699] It is recognised that there are "*pervasive barriers*" to the use of collectively owned Māori land, including the diverse and dispersed ownership, complexity in decision-making, transaction and administration costs and the difficulty in obtaining finance.[700] Any imposition of costs arising from the Variation would be in addition to the already pervasive barriers that will affect the successors in utilising their land.[701]

633. Given the status of Sticky Forest as redress land under the Ngāi Tahu Deed of Settlement, that it is a partial answer to Ngāi Tahu's 1906

> "*cry to be provided with land", land that was promised "for the present and future wants" of the tribe*";[702]

and the difficulties the successors will face in utilising the potential of the land, the submitters consider imposing the requirements of the Variation on top would be "*perverse and unfair*".[703] They therefore seek to have Sticky Forest exempted from the provisions of the Variation.

634. In seeking the exemption, the submitters took support from the partially operative and proposed Otago Regional Policy Statements. The PORPS19 includes Policy 2.1.2 requiring QLDC to give effect to the Ngāi Tahu Claims Settlement Act 1998.[704] The PRPS21 includes

---

692 Joint Witness Statement of Planning Experts dated 8 February 2024, paragraph 3.1
693 Statement of evidence of Monique King, paragraph 28
694 Statement of evidence of Theo Bunker and Lorraine Rouse, paragraph 2.3
695 Statement of evidence of Monique King at 35, Statement of evidence of Theo Bunker and Lorraine Rouse, paragraph 2.5
696 Statement of evidence of Theo Bunker and Lorraine Rouse, paragraph 2.8
697 Statement of evidence of Monique King, paragraph 30
698 Statement of evidence of Monique King, paragraph 25
699 Statement of evidence of Monique King, paragraph 33
700 Statement of evidence of Monique King, paragraph 39-41
701 Statement of evidence of Monique King, paragraph 37
702 Dr Terry Ryan as quoted in the Statement of evidence of Theo Bunker and Lorraine Rouse, paragraph 3.6
703 Statement of evidence of Theo Bunker and Lorraine Rouse, paragraph at 3.8
704 Statement of evidence of Rachael Pull, paragraph 21

MW-P4 that Kāi Tahu are able to develop and use land and resources within native reserves to provide for their economic aspirations, and MW-P5 that district plans are amended to address resource management issues of significance to Kāi Tahu and to incorporate active protection of areas and resources recognised in the NTCSA.[705]

635. The QLDC PDP includes Objective 5.3.4, the sustainable use of Māori land, and the related policy 5.3.4.1 to enable Ngāi Tahu to protect, develop and use Māori land consistent with their economic aspirations.[706]

636. Ms Ellis considered that the district plan and regional policy statements, while providing some guidance, are lacking in not specifically referring to SILNA land, and so an assessment against Part 2 and s8 of the Act is appropriate. The legal submissions of Ms Dixon considered that s6(e) applied, although the relationship may be slightly different from the normal relationship of Māori to sites.[707]

637. After conferencing and the hearing, Mr Mead's position remained that the submitters concerns were best addressed by way of a policy giving discretion to decision makers to reduce or waive the financial contributions required under the Variation.[708] However, if we considered an exemption to be appropriate, he recommended that it be recorded in a specific policy referencing s8 of the RMA, and that it be clear that the exemption would only apply to the initial rezoning from rural to residential by the beneficial owners.[709]

638. In discussion with us, the submitters were concerned that if the policy exemption was limited to the beneficial owners and the first rezoning, if at some point the beneficial owners sold some land to developers, then the 5% financial contribution would fall on the developer, and that would be reflected in the price the beneficial owners would receive. This would be contrary to the nature of the land as redress land. They sought that the policy exemption should be absolute and without limitation.

13.9.1 Discussion and Findings

639. We acknowledge and thank Ms Rouse for her submission and statement to us, especially in continuing with the process in light of the recent passing of Mr Bunker. Given the unique status of the Hāwea/Wānaka-Sticky Forest block as substitute redress land, and the known barriers facing Māori in developing collectively owned land, we agree with the submitters that an exemption from the Variation would be appropriate.

640. Further, given the intention of the Variation is to push the impact of the financial contributions back to the landowners who benefit from the windfall gains arising from rezoning, we consider that any sunset clause that brings the land within the ambit of the Variation on some further rezoning or sale to developers, would potentially act to reduce the return to the successors and so act to reduce the redress that the land is intended to provide. Therefore, we agree with the submitters that the Hāwea/Wānaka-Sticky Forest block should be exempt from the Variation, that this exemption should be absolute for all time and that it should be recorded in the provisions of the Variation with appropriate reference to its status as redress land under

705 Statement of evidence of Rachael Pull, paragraph 22
706 Statement of evidence of Katrina Ellis, paragraph 31
707 Legal submissions for Te Arawhiti dated 26 February 2024, paragraph 28
708 Reply evidence of David Mead, paragraph 5.1-5.2
709 Reply evidence of David Mead, paragraph 5.3

the NTCSA and ss6(e) and 8 of the RMA. Had we recommended that the Variation proceed, we would have included provisions within the Variation provisions to this effect.

13.10 Should the Variation apply to Retirement Villages, Resort zoned land, Rural zoned land and Remarkables Park?

641. Some submitters challenged the application of the Variation to retirement villages and resort and rural zoned land and sought that such land be exempt. Remarkables Park also sought that it be exempt. The Council's assessment of the application of the financial contribution to different zones was set out at Table 9 of the s32 Report. This provided very brief reasoning on why a zone should be included, essentially based on whether the zone was within the urban growth boundary, its development potential, whether it included landscape protection and whether it was the subject of a separate agreement.

13.10.1 Retirement Villages

642. Submissions were lodged by Metlifecare Limited and the Retirement Villages Association,[710] opposing the Variation. Ms van Kampen, a Senior Development Manager at Metlifecare Limited, provided evidence for Metlifecare addressing reasons why she considered the Variation should not apply to retirement villages. We were told that Metlifecare was established in 1994. It owns and operates 37 retirement villages across New Zealand. A further 14 villages and 11 active developments or redevelopments are currently in the planning and consenting stage in other parts of the country. In this District, Metlifecare has entered into a contract to purchase a 5.42 hectare parcel of land within Three Parks in Wānaka. Resource consent has since been granted to develop a new retirement village, comprising 93 villas, a 30-bed care home and shared common facilities.[711]

643. Metlifecare supported the new strategic objectives and policies in the Variation but strongly opposed the requirement for the payment of a financial contribution. It raised similar points to other opposing submitters about the failure of the Variation to meet the purposes of the Act and the requirements of s32, along with other points generally challenging the lawfulness of the Variation. We addressed those legal matters earlier in our report.

644. In her evidence, Ms van Kampen told us that retirement villages provide a range of housing typologies, sizes and prices and allow residents moving into them to stay within their established communities, but to downsize to better meet their needs. They also provide health and social services and take pressure off the public system. In Ms van Kampen's opinion, the villages are part of the solution to housing supply and affordability in the District. They provide medium to high density living, free up housing stock and provide a range of housing options. She was of the view that the Variation would disincentivise this type of development and would exacerbate the affordability issues.

645. Ms van Kampen referred us to Statistics New Zealand forecasts stating that by 2035 there will be around 1.2 million people in New Zealand aged over 65. Over the next 25 years to 2048, the numbers aged 70 and over are forecast to triple.[712] The Retirement Villages Association

---

710 Retirement Villages Association, Submission #105, did not present evidence or legal submissions at the hearing

711 Statement of evidence in chief of Michelle van Kampen, paragraphs 3.1-3.3

712 Statement of evidence in chief of Michelle van Kampen, paragraph 4.5

submission noted the significant demand for retirement living and aged care in New Zealand, with demand already outstripping supply.[713]

646. While the Variation excludes managed care units within a retirement village or rest home, it does not exclude other forms of accommodation within retirement villages. The explanation for this in the s42A Report was that independent living units are essentially a form of residential development.[714] This was not accepted by Metlifecare, noting that retirement villages are not the same as typical residential development. They are financed differently, with operators having a long-term interest in villages and residents. They provide a wide range of facilities to support residential housing and also undertake general property maintenance. Ms van Kampen challenged the Council's "*planning windfall gains*" arguments, noting that the if the financial contribution was to be charged at the time of subdivision (Rule 40.6.1(1)), then the cost of that contribution would very likely be incorporated into the cost of the land and would influence the feasibility of the project. She suggested the same argument would apply to Rule 40.6.1(2). She provided a breakdown of possible cost scenarios to explain this further.[715]

647. Ms van Kampen's argument was that the cost at subdivision or on land development would need to be covered by increasing sales prices or, if that was unsustainable, abandoning the project. Like other developers, she stressed that retirement village operators would not invest in the District if it was more affordable to build elsewhere in the country. She noted that cost increases, or a lack of development, would worsen the supply and demand for housing in the District, including the supply of housing and care options for older residents. She sought that the Variation be declined, or, at a minimum, that it exclude all accommodation and care typologies within retirement villages from the Variation.[716]

648. In questioning by the Panel, Ms van Kampen again emphasised that feasibility of projects and profit margins were different for developers of retirement villages compared to private residential developers. Retirement villages were trying to break even. Therefore, she suggested, any imposition of a financial contribution would make a difference to feasibility. She did not accept the Council's argument that the cost impact on the land price was transactional, and said this cost would be passed on, as the landowner would need to recover its costs as well as the developer of the land.[717]

649. In questioning, Ms van Kampen did accept that the units can be sold more than once and that this assists with costs. But she highlighted the additional costs retirement village operators face in construction of villages, such as having to provide a high number of single level homes, the need to include lifts in some buildings and new regulatory requirements directed at insulation, windows and seismic design requirements.[718]

650. The Panel also queried whether the housing in the retirement villages Metlifecare developed were in fact "*affordable*". Ms van Kampen told us the village to be developed at Three Parks would be similar in nature to the Queenstown Country Club development on Ladies Mile and the Winton proposal at Northlake in Wānaka. She described it as a "*premium village*".[719]

---

713 Submission #105, paragraph 16

714 Section 42A Report, paragraph 8.22

715 Statement of evidence in chief of Michelle van Kampen, paragraphs 4.7-5.4

716 Statement of evidence in chief of Michelle van Kampen, paragraphs 5.9-6.4

717 Hearing 28 February 2024, Panel questioning

718 Hearing 28 February 2024, Panel questioning

719 Hearing 28 February 2024, Panel questioning

13.10.2 Resort zoned land

651. In her legal submissions for Trojan Helmet Limited, Boxer Hill Trust and Gibbston Valley Station Limited, Ms Wolt outlined the nature of the activities on these sites and the zoning that applied.[720]

652. Trojan Helmet Limited own 162 hectares of land near Arrowtown commonly known as the Hills Resort Zone. This principally provides for onsite visitor activities, visitor accommodation and a limited amount of residential activity, along with accommodation for workers. The Hills Resort Zone was confirmed by the Environment Court in 2021 following its own close scrutiny of a joint s32 analysis presented by the Council and the planning and landscape experts for Trojan Helmet Limited. The end result of that is a zone framework contained in Chapter 47 of the PDP which includes a set of policies and rules, in conjunction with a structure plan.

653. Boxer Hill Trust owns approximately 8.4 hectares of land located within the Wakatipu Basin Lifestyle Precinct. It is immediately adjacent to the Hills Resort Zone and the Arrowtown Retirement Village. Ms Wolt told us that the Wakatipu Basin Lifestyle Precinct zoning was recently confirmed by the Environment Court and provides for the establishment of up to 8 dwellings at a density of 1 dwelling per hectare, subject to a restricted discretionary consent being obtained for the subdivision to create rural residential lots and a subsequent consent being required to establish the dwelling.

654. Gibbston Valley Station Limited owns approximately 320 hectares of land in Gibbston. This includes Gibbston Valley Winery, Gibbston Valley Lodge and accommodation. The winery contains vineyards, cellar door sales, a restaurant/café, a cheesery, a gift store, bike hire, a wine cave, administration and function buildings, storage buildings, staff accommodation, visitor accommodation and a lodge/spa. The majority of the land sits within the Gibbston Valley Resort Zone, which was confirmed by the Environment Court in 2020, following an appeal on Stage 3 of the PDP. This was also the subject of joint evidence being presented to the Court in support of the consent order. This zone has a structure plan, in which activity areas are identified. These include visitor accommodation, commercial recreation (golf course), viticulture and residential activity. The commercial precinct has yet to be established. A separate large area for worker accommodation is also identified on the structure plan.

655. Ms Wolt noted that the special zones within the PDP include the Resort Zones and the Rural Visitor Zones and that these non-urban zones are located outside the UGBs. Unlike other examples of inclusionary housing the Council has relied on in notifying the Variation, this proposal includes non-urban and some rural residential development. No feasibility of such options had been prepared by the Council in this Variation process. Nor had there been much attention paid to the fact that lots in these areas are not serviced by Council infrastructure and tend to be more costly to develop than serviced land within the UGBs.[721]

656. With reference to Mr Giddens' planning evidence, Ms Wolt noted that the NPS-UD only applies to urban land. There was therefore no legal foundation to include non-urban land and rural land within the Variation. Mr Mead considered the NPS-UD did not provide a basis for addressing housing affordability other than through increasing supply and he relied upon

720 Synopsis of submissions for Trojan Helmet Limited, Boxer Hill Trust and Gibbston Valley Station Limited dated 5 March 2024, paragraphs 4-20

721 Synopsis of submissions for Trojan Helmet Limited, Boxer Hill Trust and Gibbston Valley Station dated 5 March 2024, paragraphs 4-24

section 5 of the Act to justify the Variation.[722] His position appeared to be inconsistent with that of Mr Whittington, who went to some effort to address the NPS-UD and submitted it supported the Variation.

657. On the topic of resorts, Ms Wolt referred us to the PDP definitions of "*resorts*" and "*urban development*", noting in particular that the latter includes the words "*For the avoidance of doubt, a resort development in an otherwise rural area does not constitute urban development*." She then submitted that "*The District Plan is express that resorts are not urban development*."[723] Ms Wolt made the point that resorts are not located within the UGBs and if they were, they would conflict with some of the strategic objectives outlined in Chapters 3 and 4 of the PDP. She submitted that if resorts were to be construed as urban development for the purposes of Chapter 40 (as proposed through the Variation) but not otherwise, there were serious plan integrity and plan coherence issues at play. Ms Wolt cited case law which has held that plan integrity and coherence are matters relevant to and encompassed within the consideration of "*appropriateness*" in s32 of the Act.[724]

658. She further submitted that the NPS-UD does not apply to "*urban-like*" areas as Mr Mead described resorts and some rural zones, but to "*urban environments*" which are specifically defined in the NPS-UD. Resorts did not fall within that definition.[725] Mr Giddens expanded on these points in his evidence. Ms Wolt also referred us to a recent decision of the Environment Court which explicitly examined the nature of the Wakatipu Basin Lifestyle Precinct and the application of the National Policy Statement – Highly Productive Land (NPS-HPL) to that land. It held that, like the Wakatipu Basin Rural Amenity Zone, the Wakatipu Basin Lifestyle Precinct was a landscape protection zone, not a general rural zone or rural production zone and the NPS-HPL did not apply.[726]

659. On the Council's overall approach to the Variation, Ms Wolt submitted:[727]

> "*While housing affordability is a live and very present issue confronting this District, the Council has taken a myopic view to resolving it. When formulating this variation it has looked no further than residential developers for a solution, who it sees as a lucrative funding source for the QLCHT. It has not examined the scheme of the District Plan and how its proposal fits within that. It has not considered the wordings of the various zones to which it proposes the Variation apply. It has not considered the strategic goals of the PDP. The PDP seeks to encourage residential development within areas zoned for that purpose, not to discourage it, which is the effect of the variation in so far as it proposes that residential development is avoided unless a contribution of specified quantum is paid*."

and

---

722 For example, s42A Report, paragraphs 4.13 and 4.14

723 Synopsis of submissions for Trojan Helmet Limited, Boxer Hill Trust and Gibbston Valley Station dated 5 March 2024, paragraphs 33-38

724 At paragraph 39, citing Environment Court decisions resolving appeals on the PDP - Decision 2.1 [2019] NZEnvC 160, Decision 2.2 [2019] NZEnvC 205, Decision 2.6 [2020] NZEnvC 159 and *Barnhill Corporate Trustee Limited v QLDC* [2022] NZEnvC 58 at paragraph [16(a)]

725 Synopsis of submissions for Trojan Helmet Limited, Boxer Hill Trust and Gibbston Valley Station dated 5 March 2024, paragraphs 33-38, paragraphs 41-42

726 Synopsis of submissions for Trojan Helmet Limited, Boxer Hill Trust and Gibbston Valley Station dated 5 March 2024, paragraphs 44-62, citing *Wakatipu Equities Limited v QLDC* [2023] NZEnvC 188

727 Synopsis of submissions for Trojan Helmet Limited, Boxer Hill Trust and Gibbston Valley Station dated 5 March 2024, paragraphs 91 and 94

"*Building homes does not make houses affordable; there is simply no logic to the variation equation. This variation is misguided and on any measure does not stack up against section 32*."

660. Millbrook Country Club Limited also submitted on this topic. Millbrook is a golf tourism resort at Arrowtown. Counsel for Millbrook, Mr Gordon, told us that the Millbrook Resort Zone (Chapter 43 of the PDP) is one of four golf tourism zones in the PDP. Millbrook was started in the 1980s. Its current operations include visitor accommodation, golf, food and beverage and conference facilities and a health and fitness centre. The structure plan for the Millbrook Resort Zone enables the present visitor facilities to be doubled in capacity.[728] Mr Gordon also told us that the structure plan has recently been extended to include an area to the west known as Mill Farm, which will enable 9 more golf holes. He noted that Millbrook is regarded as a world class facility and currently hosts about 84,000 guests annually. The facility employs 300 staff full-time. While there is no staff accommodation on the site at present, there are plans to build such a facility within the next five years.[729]

661. We were told that Millbrook has a Stakeholder's Deed with the Council, signed in 2007, which records Millbrook's commitment to providing staff accommodation to assist in the Council's community housing strategy. The Deed recorded the difficulties facing that proposal at that time. In his oral submissions, Mr Gordon noted that there was no good reason now to not provide the staff accommodation. He submitted that Millbrook was a big contributor to the District, but its owners had never made a personal profit, as all profits were ploughed back into resort development. He submitted the requirement to pay the financial contribution would be difficult.[730]

13.10.3 Remarkables Park

662. In its submission[731], Remarkables Park Limited sought a variety of relief, including exclusion of the Remarkables Park Special Zone and/or any equivalent zone under the PDP from the scope of the Variation. Remarkables Park Limited's concerns included the level of retrospectivity proposed by the Variation and its impact on developments that are well advanced and were planned without the 5% contribution being required. We referred to this point earlier in our report, given it was raised by a number of parties. Specifically, Remarkables Park Limited noted the integrated nature of the zone it was developing and the long-term considerations it had given to the requirement for infrastructure. Mr Porter made similar points in his evidence.[732]

13.10.4 Rural land

663. Some submitters suggested rural land outside of UGBs be excluded from the Variation. The same general grounds were raised as detailed above, particularly in relation to the wording of the NPS-UD and its reference to urban development.

728 Synopsis of Submissions for Millbrook Country Club Limited dated 5 March 2024, paragraphs 1-6

729 Synopsis of Submissions for Millbrook Country Club Limited dated 5 March 2024, paragraphs 7-9

730 Synopsis of Submissions for Millbrook Country Club Limited dated 5 March 2024, paragraphs 17-30 and Appendix to written submissions

731 Submission #124

732 Statement of evidence of Alastair Porter, paragraphs 6.1-6.7

13.10.5 Council response

664. Table 9 of the s32 assessment briefly set out whether the Variation should apply to zones in the District. Table 9 included these references:
- Rural Residential – contribution to apply but limited development likely;
- Rural Lifestyle – contribution not to apply due to the main purpose of the zone being landscape protection;
- Millbrook/ The Hills – contribution to apply but at a reduced rate.

665. The Gibbston Valley Station zone was not mentioned.

666. We could not find any specific discussion of retirement villages in Mr Mead's s42A Report, rebuttal evidence or reply evidence, other than a simple record of the request from the relevant submitters for them to be excluded from the Variation. Resorts and rural land were briefly addressed. A note was made of the relief sought by Remarkables Park Limited.

667. At the hearing, the Panel questioned Mr Mead further on these issues. Mr Mead essentially repeated the opinions stated in his s42A Report (on resort zones) that there are nodes of development in rural areas that have urban characteristics and where residents access Council services, amenities and workplaces. He remained of the opinion that these areas should not be exempt from the Variation.[733] While Mr Mead appeared to generally accept the point about infrastructure being provided by these developers, he remained of the view that this type of land should pay a contribution, as it also influences house prices and the supply of affordable dwellings. However, he did not explain how this impact occurs.[734] Table 9 of the s32 Report did not include detailed reasons why some zones should be levied and others not.

13.10.6 Discussion

668. To some extent, this issue overlaps with our discussion of the NPS-UD and the approach taken to the term "*urban development*". Some submitters urged the Panel to exclude their land/developments from the Variation because they argued the land/developments were not urban in character. Others, such as Remarkables Park Limited, raised the retrospectivity point. We do not consider either point warrants exclusion from the Variation.

669. Additionally, in our earlier discussion, we referred to the definition of "*urban development*" in the NPS-UD, in particular its reference to whether an area of land is, or is intended to be, predominantly urban in character and is, or is intended to be, part of a housing and labour market of at least 10,000. The definition is wide enough to apply to many pieces of land in the District. We were not provided with detailed evidence on how that definition (particularly the reference to a housing and labour market of 10,000) might be applied here. The economic evidence considered the District as a whole and did not consider specific parts of the District in which higher numbers of residents lived and worked.

670. In relation to specific matters raised in respect to resorts, retirement villages, rural land and Remarkables Park, had we recommended that the Variation proceed:
    a. we would not have excluded retirement villages from the Variation. We consider these to be urban in character;

733 Panel questioning on 27 February 2024

734 Section 32 Report, paragraph 11.40

b. we would not have excluded specific resorts located in rural areas. These facilities create a demand for housing for low income workers and none have built worker accommodation to date;
c. we would not have excluded Remarkables Park from the Variation. We do not accept the reasons put forward by Remarkables Park to warrant exclusion;
d. we do not consider the inconsistencies in the Council's approach[735] to whether Rural Lifestyle and Rural Residential zoned land should be included or excluded from the Variation to be justified. Both provide for some element of rural living and the approach to these areas should be consistent. We would not have exempted Rural Lifestyle and Rural Residential zoned land from the Variation;
e. we make no finding on the exclusion of rural land, given this issue was simply not canvassed in detail in the evidence before us.

14 RECOMMENDATIONS TO THE COUNCIL ON THE VARIATION

671. We recommend that the Variation be withdrawn, and that the submissions and further submissions be accepted, accepted in part or rejected as set out in Appendix 1 attached. Our recommendation is primarily based on our findings in relation to whether the Variation satisfies the section 32 tests, which are set out in section 13.3 of our report, and summarised as follows:
    a. Our assessment under s32(1)(b)(i) has found that there are a number of reasonably practicable options before the Council that have not been assessed, or which have been inadequately assessed. Accordingly, the Council's assessment does not satisfy s32(1)(b)(i) of the Act.
    b. In terms of s32(1)(b)(ii), we have found that the Variation is not the most efficient and effective means of delivering affordable housing to the QLD. This is due in large part to the inadequate assessment of the reasonably practicable options for providing funding for the delivery of affordable housing (options 2 (rating) and 4 (development contributions), and/ or providing affordable housing (option 1 (plan provisions) and option 6 (partnering with other agencies)), or for directly addressing a primary cause of the shortage of rental housing in the District, being the proliferation of RVA (option 3). Given the lack of adequate assessment, we do not have the evidence to assess the efficiency and effectiveness of those options, and the submissions and evidence of the various submitters indicate that they may well be equally or more efficient than the provisions of the Variation.
    c. In terms of s32(2)(c), based on the evidence before us, and the inadequacy of some of that evidence in assessing reasonably practicable alternative options, we find that the risks of acting on this Variation outweigh the risks of not acting. There are a range of options available to the Council which can be implemented on their own or as part of a package of measures. We are firmly of the view 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 alone.

[735] Table 9, section 32 Report

672. We have considered all of the submissions and further submissions lodged. Our report has focused on the evidence presented to us at the hearing. However, in preparing our individual recommendations on submissions and further submissions, we have reviewed the relief sought in light of our overall conclusions. Thus, submissions which sought alternative courses of action, or action beyond the scope of the RMA, are recommended for rejection.

Jan Caunter, Chair, For the Panel

Appendix 1 – Recommended decisions on submissions

Submission Number	Submitter	Panel Recommendation
OS1.1	Benjamin Charles Mitchell	Accept
OS1.2	Benjamin Charles Mitchell	Accept in part
OS1.3	Benjamin Charles Mitchell	Accept in part
OS2.1	Robert Haydon	Accept
OS3.1	Christoffel Beukman	Accept
OS4.1	Alan Blyth	Accept in part
OS4.2	Alan Blyth	Accept in part
OS4.3	Alan Blyth	Accept in part
OS5.1	Graeme Edwards	Reject
OS5.2	Graeme Edwards	Reject
OS6.1	Rahul Doshi	Accept
OS7.1	Kim Harvey	Accept in part
OS7.2	Kim Harvey	Reject
OS8.1	LandEscape Wanaka	Accept
OS8.2	LandEscape Wanaka	Accept in part
OS9.1	Castle Island Trustees Ltd	Accept
OS9.2	Castle Island Trustees Ltd	Reject
OS9.3	Castle Island Trustees Ltd	Reject
OS9.4	Castle Island Trustees Ltd	Reject
OS9.5	Castle Island Trustees Ltd	Reject
OS10.1	Momentum Projects Limited	Accept
OS11.1	Trish Walker	Accept
OS12.1	Paul Carroll	Accept
OS12.2	Paul Carroll	Reject
OS12.3	Paul Carroll	Accept
OS12.4	Paul Carroll	Reject
OS13.1	Robert Smith	Accept
OS14.1	Josh Brinkmann	Reject
OS14.2	Josh Brinkmann	Accept
OS14.3	Josh Brinkmann	Reject
OS14.4	Josh Brinkmann	Accept
OS14.5	Josh Brinkmann	Accept
OS14.6	Josh Brinkmann	Accept
OS14.7	Josh Brinkmann	Reject
OS14.8	Josh Brinkmann	Accept
OS14.9	Josh Brinkmann	Accept
OS14.10	Josh Brinkmann	Reject

OS14.11	Josh Brinkmann	Accept
OS14.12	Josh Brinkmann	Accept
OS14.13	Josh Brinkmann	Accept
OS14.14	Josh Brinkmann	Accept
OS14.15	Josh Brinkmann	Accept
OS14.16	Josh Brinkmann	Accept
OS14.17	Josh Brinkmann	Accept
OS14.18	Josh Brinkmann	Accept
OS14.19	Josh Brinkmann	Accept
OS14.20	Josh Brinkmann	Accept
OS14.21	Josh Brinkmann	Reject
OS14.22	Josh Brinkmann	Accept
OS14.23	Josh Brinkmann	Accept
OS14.24	Josh Brinkmann	Accept
OS14.25	Josh Brinkmann	Reject
OS14.26	Josh Brinkmann	Accept
OS14.27	Josh Brinkmann	Reject
OS14.28	Josh Brinkmann	Accept
OS14.29	Josh Brinkmann	Reject
OS14.30	Josh Brinkmann	Accept
OS14.31	Josh Brinkmann	Accept
OS14.32	Josh Brinkmann	Accept
OS14.33	Josh Brinkmann	Reject
OS14.34	Josh Brinkmann	Accept
OS14.35	Josh Brinkmann	Accept
OS14.36	Josh Brinkmann	Accept
OS14.37	Josh Brinkmann	Accept
OS14.38	Josh Brinkmann	Accept
OS14.39	Josh Brinkmann	Reject
OS14.40	Josh Brinkmann	Accept
OS14.41	Josh Brinkmann	Accept
OS14.42	Josh Brinkmann	Reject
OS14.43	Josh Brinkmann	Accept
OS14.44	Josh Brinkmann	Accept
OS14.45	Josh Brinkmann	Accept
OS14.46	Josh Brinkmann	Accept
OS14.47	Josh Brinkmann	Reject
OS14.48	Josh Brinkmann	Accept

OS14.49	Josh Brinkmann	Accept
OS14.50	Josh Brinkmann	Accept
OS15.1	Anna Ryder	Reject
OS15.2	Anna Ryder	Reject
OS16.1	Gerrit Heezen	Accept
OS17.1	Charlotte Pringle	Accept
OS18.1	Nathan Pringle	Accept
OS19.1	Ian Macgregor	Accept
OS20.1	Ian Moore	Accept
OS20.2	Ian Moore	Reject
OS21.1	Brooke Clark	Reject
OS22.1	Campbell Black	Accept
OS22.2	Campbell Black	Accept
OS23.1	Richard Carter	Reject
OS23.2	Richard Carter	Reject
OS23.3	Richard Carter	Reject
OS24.1	D Cocks	Accept
OS24.2	D Cocks	Accept in part
OS24.3	D Cocks	Reject
OS24.4	D Cocks	Reject
OS24.5	D Cocks	Reject
OS25.1	Bruce Williams	Accept
OS25.2	Bruce Williams	Reject
OS25.3	Bruce Williams	Reject
OS26.1	Murray Frost	Accept
OS26.2	Murray Frost	Reject
OS26.3	Murray Frost	Accept
OS26.4	Murray Frost	Accept
OS26.5	Murray Frost	Reject
OS26.6	Murray Frost	Accept in part
OS26.7	Murray Frost	Reject
OS26.8	Murray Frost	Reject
OS26.9	Murray Frost	Accept in part
OS26.10	Murray Frost	Accept
OS26.11	Murray Frost	Accept
OS27.1	Robert Barr	Accept
OS27.2	Robert Barr	Accept
OS28.1	Tony Strain	Accept in part

OS28.2	Tony Strain	Reject
OS29.1	Craig Walker	Accept
OS30.1	Jo-Anne & Robert Graves	Reject
OS30.2	Jo-Anne & Robert Graves	Reject
OS30.3	Jo-Anne & Robert Graves	Reject
OS30.4	Jo-Anne & Robert Graves	Reject
OS30.5	Jo-Anne & Robert Graves	Reject
OS30.6	Jo-Anne & Robert Graves	Reject
OS30.7	Jo-Anne & Robert Graves	Reject
OS30.8	Jo-Anne & Robert Graves	Reject
OS30.9	Jo-Anne & Robert Graves	Reject
OS30.10	Jo-Anne & Robert Graves	Reject
OS30.11	Jo-Anne & Robert Graves	Reject
OS30.12	Jo-Anne & Robert Graves	Reject
OS31.1	Arethusa Trust	Accept
OS31.2	Arethusa Trust	Accept
OS31.3	Arethusa Trust	Reject
OS31.4	Arethusa Trust	Reject
OS31.5	Arethusa Trust	Reject
OS31.6	Arethusa Trust	Accept in part
OS31.7	Arethusa Trust	Accept in part
OS32.1	Sarah Graves	Reject
OS33.1	John Glover	Accept
OS33.2	John Glover	Reject
OS33.3	John Glover	Reject
OS34.1	Otago Regional Council	Reject
OS35.1	Brenda Jessup	Accept
OS35.2	Brenda Jessup	Reject
OS36.1	Hayden Lockhart	Accept
OS36.2	Hayden lLckhart	Reject
OS36.3	Hayden lockhart	Accept in part
OS37.1	Ray Ferner	Accept
OS37.2	Ray Ferner	Reject
OS37.3	Ray Ferner	Reject
OS37.4	Ray Ferner	Reject
OS37.5	Ray Ferner	Reject
OS38.1	Te Whatu Ora, National Public Health Service Southern	Reject

OS38.2	Te Whatu Ora, National Public Health Service Southern	Reject
OS38.3	Te Whatu Ora, National Public Health Service Southern	Reject
OS38.4	Te Whatu Ora, National Public Health Service Southern	Reject
OS38.5	Te Whatu Ora, National Public Health Service Southern	Reject
OS38.6	Te Whatu Ora, National Public Health Service Southern	Reject
OS38.7	Te Whatu Ora, National Public Health Service Southern	Reject
OS38.8	Te Whatu Ora, National Public Health Service Southern	Reject
OS39.1	Alistair Munro	Reject
OS39.2	Alistair Munro	Reject
OS39.3	Alistair Munro	Accept
OS39.4	Alistair Munro	Reject
OS39.5	Alistair Munro	Accept in part
OS40.1	AT & RE Grubb Family Trust	Reject
OS41.1	Queenstown Lakes Community Housing Trust	Reject
OS41.2	Queenstown Lakes Community Housing Trust	Accept
OS41.3	Queenstown Lakes Community Housing Trust	Reject
OS42.1	Flora Gilkison	Accept in part
OS43.1	Grant Thomas	Accept in part
OS43.2	Grant Thomas	Reject
OS43.3	Grant Thomas	Reject
OS43.4	Grant Thomas	Reject
OS43.5	Grant Thomas	Reject
OS43.6	Grant Thomas	Reject
OS44.1	RCL Henley Downs Limited	Accept
OS44.2	RCL Henley Downs Limited	Reject
OS44.3	RCL Henley Downs Limited	Reject
OS44.4	RCL Henley Downs Limited	Accept in part
OS45.1	AHHA Studio Ltd	Reject
OS45.2	AHHA Studio Ltd	Reject
OS45.3	AHHA Studio Ltd	Accept
OS46.1	Nigel Lloyd	Accept in part
OS46.3	Nigel Lloyd	Accept in part
OS46.4	Nigel Lloyd	Accept in part
OS46.5	Nigel Lloyd	Reject

OS46.6	Nigel Lloyd	Reject
OS46.7	Nigel Lloyd	Reject
OS46.8	Nigel Lloyd	Reject
OS47.1	Richard Kemp	Reject
OS47.2	Richard Kemp	Accept in part
OS48.1	Marian Krogh	Reject
OS48.2	Marian Krogh	Reject
OS49.1	Dan Batchelor	Accept
OS49.2	Dan Batchelor	Accept
OS49.3	Dan Batchelor	Accept
OS49.4	Dan Batchelor	Accept
OS49.5	Dan Batchelor	Accept
OS49.6	Dan Batchelor	Accept
OS49.7	Dan Batchelor	Accept
OS49.8	Dan Batchelor	Accept
OS50.1	Jenny Howe	Accept
OS51.1	Lakeside Estates	Accept in part
OS51.2	Lakeside Estates	Reject
OS52.1	Te Wai Pounamu Housing Network	Reject
OS52.2	Te Wai Pounamu Housing Network	Accept in part
OS53.1	B R Dowland Family Trust	Accept
OS53.2	B R Dowland Family Trust	Accept
OS53.3	B R Dowland Family Trust	Reject
OS54.1	Carrie Skilton	Reject
OS54.2	Carrie Skilton	Reject
OS54.3	Carrie Skilton	Reject
OS54.4	Carrie Skilton	Reject
OS54.5	Carrie Skilton	Reject
OS54.6	Carrie Skilton	Reject
OS54.7	Carrie Skilton	Reject
OS54.8	Carrie Skilton	Reject
OS54.9	Carrie Skilton	Reject
OS54.10	Carrie Skilton	Reject
OS54.11	Carrie Skilton	Reject
OS54.12	Carrie Skilton	Reject
OS54.13	Carrie Skilton	Reject
OS54.14	Carrie Skilton	Reject
OS54.15	Carrie Skilton	Reject

OS54.16	Carrie Skilton	Reject
OS55.1	New Ground Capital Limited	Reject
OS55.2	New Ground Capital Limited	Reject
OS55.3	New Ground Capital Limited	Reject
OS55.4	New Ground Capital Limited	Accept in part
OS56.1	Alastair Wood	Reject
OS56.2	Alastair Wood	Reject
OS56.3	Alastair Wood	Accept
OS57.1	Steve Norman	Accept
OS57.2	Steve Norman	Accept
OS57.3	Steve Norman	Reject
OS58.1	Clement Lejean	Accept
OS58.2	Clement Lejean	Accept in part
OS59.1	Keri & Roland Lemaire-Sicre	Accept
OS60.1	Common Ground	
OS60.2	Common Ground	
OS60.3	Common Ground	
OS60.4	Common Ground	Accept
OS60.5	Common Ground	
OS60.6	Common Ground	
OS60.7	Common Ground	
OS60.8	Common Ground	
OS60.9	Common Ground	
OS60.10	Common Ground	Accept in part
OS60.11	Common Ground	
OS60.12	Common Ground	
OS60.13	Common Ground	
OS60.14	Common Ground	
OS60.15	Common Ground	
OS60.16	Common Ground	
OS60.17	Common Ground	
OS60.18	Common Ground	Accept in part
OS60.19	Common Ground	
OS60.20	Common Ground	
OS61.1	Stephanie Rodger	Accept
OS61.2	Stephanie Rodger	Reject
OS62.1	Nic Ballara	Accept
OS62.2	Nic Ballara	Reject

OS62.3	Nic Ballara	Reject
OS62.4	Nic Ballara	Reject
OS62.5	Nic Ballara	Accept
OS62.6	Nic Ballara	Accept in part
OS62.7	Nic Ballara	Reject
OS62.8	Nic Ballara	Reject
OS63.1	Chris Glaudel	Reject
OS63.2	Chris Glaudel	Reject
OS63.3	Chris Glaudel	Accept
OS63.4	Chris Glaudel	Reject
OS64.1	Gibbston Highway Limited	Accept
OS64.2	Gibbston Highway Limited	Reject
OS64.3	Gibbston Highway Limited	Reject
OS64.4	Gibbston Highway Limited	Reject
OS64.5	Gibbston Highway Limited	Reject
OS64.6	Gibbston Highway Limited	Reject
OS64.7	Gibbston Highway Limited	Reject
OS64.8	Gibbston Highway Limited	Reject
OS64.9	Gibbston Highway Limited	Reject
OS64.10	Gibbston Highway Limited	Reject
OS64.11	Gibbston Highway Limited	Reject
OS64.12	Gibbston Highway Limited	Accept
OS64.13	Gibbston Highway Limited	Reject
OS64.14	Gibbston Highway Limited	Reject
OS64.15	Gibbston Highway Limited	Accept
OS64.16	Gibbston Highway Limited	Accept
OS64.17	Gibbston Highway Limited	Accept
OS64.18	Gibbston Highway Limited	Accept
OS65.1	Jennian Homes Wanaka	Reject
OS65.2	Jennian Homes Wanaka	Accept
OS65.3	Jennian Homes Wanaka	Reject
OS65.4	Jennian Homes Wanaka	Accept
OS65.5	Jennian Homes Wanaka	Accept
OS65.6	Jennian Homes Wanaka	Reject
OS65.7	Jennian Homes Wanaka	Accept
OS66.1	Diane Kenton	Accept
OS66.2	Diane Kenton	Reject
OS66.3	Diane Kenton	

OS66.4	Diane Kenton	Reject
OS66.5	Diane Kenton	Reject
OS66.6	Diane Kenton	Reject
OS66.7	Diane Kenton	Reject
OS66.8	Diane Kenton	Reject
OS66.9	Diane Kenton	Reject
OS66.10	Diane Kenton	Reject
OS66.11	Diane Kenton	Reject
OS66.12	Diane Kenton	Accept
OS66.13	Diane Kenton	Accept
OS66.14	Diane Kenton	Reject
OS66.15	Diane Kenton	Reject
OS66.16	Diane Kenton	Reject
OS66.17	Diane Kenton	Reject
OS66.18	Diane Kenton	Accept
OS66.19	Diane Kenton	Accept
OS66.20	Diane Kenton	Accept in part
OS66.21	Diane Kenton	Reject
OS66.22	Diane Kenton	Reject
OS66.23	Diane Kenton	Reject
OS66.24	Diane Kenton	Reject
OS66.25	Diane Kenton	Reject
OS66.26	Diane Kenton	Accept
OS66.27	Diane Kenton	Accept in part
OS66.28	Diane Kenton	Accept in part
OS66.29	Diane Kenton	Accept
OS66.30	Diane Kenton	Reject
OS66.31	Diane Kenton	Reject
OS66.32	Diane Kenton	Reject
OS67.1	Centre for Research Evaluation and Social Assessment (CRESA)	Reject
OS67.2	Centre for Research Evaluation and Social Assessment (CRESA)	Reject
OS67.3	Centre for Research Evaluation and Social Assessment (CRESA)	Reject
OS67.4	Centre for Research Evaluation and Social Assessment (CRESA)	Reject
OS67.5	Centre for Research Evaluation and Social Assessment (CRESA)	Reject
OS67.6	Centre for Research Evaluation and Social Assessment (CRESA)	Reject

OS68.1	Falcon Construction Services L:td	Accept
OS68.2	Falcon Construction Services L:td	Accept
OS68.3	Falcon Construction Services L:td	Accept
OS68.4	Falcon Construction Services L:td	Accept
OS68.5	Falcon Construction Services L:td	Accept
OS68.6	Falcon Construction Services L:td	Accept
OS69.1	Hamish Hudson	
OS69.2	Hamish Hudson	
OS70.1	Jim and Daphne Ledgerwood	Accept
OS71.1	McLintock Topp Family Trust	
OS71.2	McLintock Topp Family Trust	
OS71.3	McLintock Topp Family Trust	
OS71.4	McLintock Topp Family Trust	Reject
OS71.5	McLintock Topp Family Trust	Reject
OS71.6	McLintock Topp Family Trust	Reject
OS71.7	McLintock Topp Family Trust	Accept
OS72.1	Papatipu Runanga and Te Runanga o Ngai Tahu	Reject
OS72.2	Papatipu Runanga and Te Runanga o Ngai Tahu	Reject
OS72.3	Papatipu Runanga and Te Runanga o Ngai Tahu	Reject
OS72.4	Papatipu Runanga and Te Runanga o Ngai Tahu	Reject
OS73.1	TPI 1 Ltd	Reject
OS73.2	TPI 1 Ltd	Reject
OS73.3	TPI 1 Ltd	Accept in part
OS73.4	TPI 1 Ltd	Reject
OS73.5	TPI 1 Ltd	Reject
OS73.6	TPI 1 Ltd	Reject
OS73.7	TPI 1 Ltd	Accept
OS73.8	TPI 1 Ltd	Reject
OS74.1	Milstead Trust	Reject
OS74.2	Milstead Trust	Reject
OS74.3	Milstead Trust	Accept in part
OS74.4	Milstead Trust	Reject
OS74.5	Milstead Trust	Reject
OS74.6	Milstead Trust	Reject
OS74.7	Milstead Trust	Accept
OS75.1	Glendhu Bay Trustees Limited	Accept

OS75.2	Glendhu Bay Trustees Limited	Reject
OS75.3	Glendhu Bay Trustees Limited	Reject
OS75.4	Glendhu Bay Trustees Limited	Reject
OS75.5	Glendhu Bay Trustees Limited	Reject
OS75.6	Glendhu Bay Trustees Limited	Reject
OS75.7	Glendhu Bay Trustees Limited	Reject
OS75.8	Glendhu Bay Trustees Limited	Reject
OS75.9	Glendhu Bay Trustees Limited	Reject
OS75.10	Glendhu Bay Trustees Limited	Reject
OS75.11	Glendhu Bay Trustees Limited	Reject
OS75.12	Glendhu Bay Trustees Limited	Accept
OS75.13	Glendhu Bay Trustees Limited	Reject
OS75.14	Glendhu Bay Trustees Limited	Reject
OS75.15	Glendhu Bay Trustees Limited	Accept
OS75.16	Glendhu Bay Trustees Limited	Accept
OS75.17	Glendhu Bay Trustees Limited	Accept
OS75.18	Glendhu Bay Trustees Limited	Accept
OS76.1	Affordable Housing for Generations Research programme	Reject
OS76.2	Affordable Housing for Generations Research programme	Reject
OS76.3	Affordable Housing for Generations Research programme	Reject
OS76.4	Affordable Housing for Generations Research programme	Reject
OS77.1	Woodlot Properties Limited	Reject
OS77.2	Woodlot Properties Limited	Reject
OS77.3	Woodlot Properties Limited	Accept in part
OS77.4	Woodlot Properties Limited	Reject
OS77.5	Woodlot Properties Limited	Reject
OS77.6	Woodlot Properties Limited	Reject
OS77.7	Woodlot Properties Limited	Accept in part
OS77.8	Woodlot Properties Limited	Reject
OS78.1	Wakatipu Investments Limited	Reject
OS78.2	Wakatipu Investments Limited	Reject
OS78.3	Wakatipu Investments Limited	Accept in part
OS78.4	Wakatipu Investments Limited	Reject
OS78.5	Wakatipu Investments Limited	Reject
OS78.6	Wakatipu Investments Limited	Reject
OS78.7	Wakatipu Investments Limited	Accept in part

OS78.8	Wakatipu Investments Limited	Reject
OS79.1	Tractor Trust	Reject
OS79.2	Tractor Trust	Reject
OS79.3	Tractor Trust	Accept in part
OS79.4	Tractor Trust	Reject
OS79.5	Tractor Trust	Reject
OS79.6	Tractor Trust	Reject
OS79.7	Tractor Trust	Accept in part
OS79.8	Tractor Trust	Reject
OS80.1	Infinity Investment Group Holdings Limited	Accept
OS80.2	Infinity Investment Group Holdings Limited	Reject
OS80.3	Infinity Investment Group Holdings Limited	Reject
OS80.4	Infinity Investment Group Holdings Limited	Reject
OS80.5	Infinity Investment Group Holdings Limited	Reject
OS80.6	Infinity Investment Group Holdings Limited	Reject
OS80.7	Infinity Investment Group Holdings Limited	Reject
OS80.8	Infinity Investment Group Holdings Limited	Reject
OS80.9	Infinity Investment Group Holdings Limited	Reject
OS80.10	Infinity Investment Group Holdings Limited	Reject
OS80.11	Infinity Investment Group Holdings Limited	Reject
OS80.12	Infinity Investment Group Holdings Limited	Accept
OS80.13	Infinity Investment Group Holdings Limited	Reject
OS80.14	Infinity Investment Group Holdings Limited	Reject
OS80.15	Infinity Investment Group Holdings Limited	Accept
OS80.16	Infinity Investment Group Holdings Limited	Accept
OS80.17	Infinity Investment Group Holdings Limited	Accept
OS80.18	Infinity Investment Group Holdings Limited	Accept
OS81.1	Heron Investments Limited	Reject
OS81.2	Heron Investments Limited	Reject
OS81.3	Heron Investments Limited	Accept in part
OS81.4	Heron Investments Limited	Reject
OS81.5	Heron Investments Limited	Reject
OS81.6	Heron Investments Limited	Reject
OS81.7	Heron Investments Limited	Accept
OS81.8	Heron Investments Limited	Reject
OS82.1	Silverlight Studios Limited	Accept
OS82.2	Silverlight Studios Limited	Reject
OS82.3	Silverlight Studios Limited	Reject

OS82.4	Silverlight Studios Limited	Reject
OS82.5	Silverlight Studios Limited	Reject
OS82.6	Silverlight Studios Limited	Reject
OS82.7	Silverlight Studios Limited	Reject
OS82.8	Silverlight Studios Limited	Reject
OS82.9	Silverlight Studios Limited	Reject
OS82.10	Silverlight Studios Limited	Reject
OS82.11	Silverlight Studios Limited	Reject
OS82.12	Silverlight Studios Limited	Accept
OS82.13	Silverlight Studios Limited	Reject
OS82.14	Silverlight Studios Limited	Reject
OS82.15	Silverlight Studios Limited	Accept
OS82.16	Silverlight Studios Limited	Accept
OS82.17	Silverlight Studios Limited	Accept
OS82.18	Silverlight Studios Limited	Accept
OS83.1	Glendhu Station Properties Limited	Accept
OS83.2	Glendhu Station Properties Limited	Reject
OS83.3	Glendhu Station Properties Limited	Reject
OS83.4	Glendhu Station Properties Limited	Reject
OS83.5	Glendhu Station Properties Limited	Reject
OS83.6	Glendhu Station Properties Limited	Reject
OS83.7	Glendhu Station Properties Limited	Reject
OS83.8	Glendhu Station Properties Limited	Reject
OS83.9	Glendhu Station Properties Limited	Reject
OS83.10	Glendhu Station Properties Limited	Reject
OS83.11	Glendhu Station Properties Limited	Reject
OS83.12	Glendhu Station Properties Limited	Accept
OS83.13	Glendhu Station Properties Limited	Reject
OS83.14	Glendhu Station Properties Limited	Reject
OS83.15	Glendhu Station Properties Limited	Accept
OS83.16	Glendhu Station Properties Limited	Accept
OS83.17	Glendhu Station Properties Limited	Accept
OS83.18	Glendhu Station Properties Limited	Accept
OS84.1	Henley Downs Land Holdings Limited	Accept
OS84.2	Henley Downs Land Holdings Limited	Reject
OS84.3	Henley Downs Land Holdings Limited	Reject
OS84.4	Henley Downs Land Holdings Limited	Reject
OS84.5	Henley Downs Land Holdings Limited	Reject

OS84.6	Henley Downs Land Holdings Limited	Reject
OS84.7	Henley Downs Land Holdings Limited	Reject
OS84.8	Henley Downs Land Holdings Limited	Reject
OS84.9	Henley Downs Land Holdings Limited	Reject
OS84.10	Henley Downs Land Holdings Limited	Reject
OS84.11	Henley Downs Land Holdings Limited	Reject
OS84.12	Henley Downs Land Holdings Limited	Accept
OS84.13	Henley Downs Land Holdings Limited	Reject
OS84.14	Henley Downs Land Holdings Limited	Reject
OS84.15	Henley Downs Land Holdings Limited	Accept
OS84.16	Henley Downs Land Holdings Limited	Accept
OS84.17	Henley Downs Land Holdings Limited	Accept
OS84.18	Henley Downs Land Holdings Limited	Accept
OS85.1	Sir Robert Stewart	Accept
OS85.2	Sir Robert Stewart	Reject
OS85.3	Sir Robert Stewart	Reject
OS85.4	Sir Robert Stewart	Reject
OS85.5	Sir Robert Stewart	Reject
OS85.6	Sir Robert Stewart	Reject
OS85.7	Sir Robert Stewart	Reject
OS85.8	Sir Robert Stewart	Reject
OS85.9	Sir Robert Stewart	Reject
OS85.10	Sir Robert Stewart	Reject
OS85.11	Sir Robert Stewart	Reject
OS85.12	Sir Robert Stewart	Accept
OS85.13	Sir Robert Stewart	Reject
OS85.14	Sir Robert Stewart	Reject
OS85.15	Sir Robert Stewart	Accept
OS85.16	Sir Robert Stewart	Accept
OS85.17	Sir Robert Stewart	Accept
OS85.18	Sir Robert Stewart	Accept
OS86.1	Jacks Point Land Limited	Accept
OS86.2	Jacks Point Land Limited	Reject
OS86.3	Jacks Point Land Limited	Reject
OS86.4	Jacks Point Land Limited	Reject
OS86.5	Jacks Point Land Limited	Reject
OS86.6	Jacks Point Land Limited	Reject
OS86.7	Jacks Point Land Limited	Reject

OS86.8	Jacks Point Land Limited	Reject
OS86.9	Jacks Point Land Limited	Reject
OS86.10	Jacks Point Land Limited	Reject
OS86.11	Jacks Point Land Limited	Reject
OS86.12	Jacks Point Land Limited	Accept
OS86.13	Jacks Point Land Limited	Reject
OS86.14	Jacks Point Land Limited	Reject
OS86.15	Jacks Point Land Limited	Accept
OS86.16	Jacks Point Land Limited	Accept
OS86.17	Jacks Point Land Limited	Accept
OS86.18	Jacks Point Land Limited	Accept
OS87.1	Jacks Point Village Holdings No 2 Limited	Accept
OS87.2	Jacks Point Village Holdings No 2 Limited	Reject
OS87.3	Jacks Point Village Holdings No 2 Limited	Reject
OS87.4	Jacks Point Village Holdings No 2 Limited	Reject
OS87.5	Jacks Point Village Holdings No 2 Limited	Reject
OS87.6	Jacks Point Village Holdings No 2 Limited	Reject
OS87.7	Jacks Point Village Holdings No 2 Limited	Reject
OS87.8	Jacks Point Village Holdings No 2 Limited	Reject
OS87.9	Jacks Point Village Holdings No 2 Limited	Reject
OS87.10	Jacks Point Village Holdings No 2 Limited	Reject
OS87.11	Jacks Point Village Holdings No 2 Limited	Reject
OS87.12	Jacks Point Village Holdings No 2 Limited	Accept
OS87.13	Jacks Point Village Holdings No 2 Limited	Reject
OS87.14	Jacks Point Village Holdings No 2 Limited	Reject
OS87.15	Jacks Point Village Holdings No 2 Limited	Accept
OS87.16	Jacks Point Village Holdings No 2 Limited	Accept
OS87.17	Jacks Point Village Holdings No 2 Limited	Accept
OS87.18	Jacks Point Village Holdings No 2 Limited	Accept
OS88.1	Jacks Point Village Phase 2	Accept
OS88.2	Jacks Point Village Phase 2	Reject
OS88.3	Jacks Point Village Phase 2	Reject
OS88.4	Jacks Point Village Phase 2	Reject
OS88.5	Jacks Point Village Phase 2	Reject
OS88.6	Jacks Point Village Phase 2	Reject
OS88.7	Jacks Point Village Phase 2	Reject
OS88.8	Jacks Point Village Phase 2	Reject
OS88.9	Jacks Point Village Phase 2	Reject

OS88.10	Jacks Point Village Phase 2	Reject
OS88.11	Jacks Point Village Phase 2	Reject
OS88.12	Jacks Point Village Phase 2	Accept
OS88.13	Jacks Point Village Phase 2	Reject
OS88.14	Jacks Point Village Phase 2	Reject
OS88.15	Jacks Point Village Phase 2	Accept
OS88.16	Jacks Point Village Phase 2	Accept
OS88.17	Jacks Point Village Phase 2	Accept
OS88.18	Jacks Point Village Phase 2	Accept
OS89.1	Peninsula Hill Farm Limited	Accept
OS89.2	Peninsula Hill Farm Limited	Reject
OS89.3	Peninsula Hill Farm Limited	Reject
OS89.4	Peninsula Hill Farm Limited	Reject
OS89.5	Peninsula Hill Farm Limited	Reject
OS89.6	Peninsula Hill Farm Limited	Reject
OS89.7	Peninsula Hill Farm Limited	Reject
OS89.8	Peninsula Hill Farm Limited	Reject
OS89.9	Peninsula Hill Farm Limited	Reject
OS89.10	Peninsula Hill Farm Limited	Reject
OS89.11	Peninsula Hill Farm Limited	Reject
OS89.12	Peninsula Hill Farm Limited	Accept
OS89.13	Peninsula Hill Farm Limited	Reject
OS89.14	Peninsula Hill Farm Limited	Reject
OS89.15	Peninsula Hill Farm Limited	Accept
OS89.16	Peninsula Hill Farm Limited	Accept
OS89.17	Peninsula Hill Farm Limited	Accept
OS89.18	Peninsula Hill Farm Limited	Accept
OS90.1	Willow Pond Farm Limited	Accept
OS90.2	Willow Pond Farm Limited	Reject
OS90.3	Willow Pond Farm Limited	Reject
OS90.4	Willow Pond Farm Limited	Reject
OS90.5	Willow Pond Farm Limited	Reject
OS90.6	Willow Pond Farm Limited	Reject
OS90.7	Willow Pond Farm Limited	Reject
OS90.8	Willow Pond Farm Limited	Reject
OS90.9	Willow Pond Farm Limited	Reject
OS90.10	Willow Pond Farm Limited	Reject
OS90.11	Willow Pond Farm Limited	Reject

OS90.12	Willow Pond Farm Limited	Accept
OS90.13	Willow Pond Farm Limited	Reject
OS90.14	Willow Pond Farm Limited	Reject
OS90.15	Willow Pond Farm Limited	Accept
OS90.16	Willow Pond Farm Limited	Accept
OS90.17	Willow Pond Farm Limited	Accept
OS90.18	Willow Pond Farm Limited	Accept
OS91.1	Mt Christina Limited	Accept
OS91.2	Mt Christina Limited	Reject
OS91.3	Mt Christina Limited	Reject
OS91.4	Mt Christina Limited	Reject
OS91.5	Mt Christina Limited	Reject
OS91.6	Mt Christina Limited	Reject
OS91.7	Mt Christina Limited	Reject
OS91.8	Mt Christina Limited	Reject
OS91.9	Mt Christina Limited	Reject
OS91.10	Mt Christina Limited	Reject
OS91.11	Mt Christina Limited	Reject
OS91.12	Mt Christina Limited	Accept
OS91.13	Mt Christina Limited	Reject
OS91.14	Mt Christina Limited	Reject
OS91.15	Mt Christina Limited	Accept
OS91.16	Mt Christina Limited	Accept
OS91.17	Mt Christina Limited	Accept
OS91.18	Mt Christina Limited	Accept
OS92.1	The Station at Waitiri Limited	Accept
OS92.2	The Station at Waitiri Limited	Reject
OS92.3	The Station at Waitiri Limited	Reject
OS92.4	The Station at Waitiri Limited	Reject
OS92.5	The Station at Waitiri Limited	Reject
OS92.6	The Station at Waitiri Limited	Reject
OS92.7	The Station at Waitiri Limited	Reject
OS92.8	The Station at Waitiri Limited	Reject
OS92.9	The Station at Waitiri Limited	Reject
OS92.10	The Station at Waitiri Limited	Reject
OS92.11	The Station at Waitiri Limited	Reject
OS92.12	The Station at Waitiri Limited	Accept
OS92.13	The Station at Waitiri Limited	Reject

OS92.14	The Station at Waitiri Limited	Reject
OS92.15	The Station at Waitiri Limited	Accept
OS92.16	The Station at Waitiri Limited	Accept
OS92.17	The Station at Waitiri Limited	Accept
OS92.18	The Station at Waitiri Limited	Accept
OS93.1	Jacks Point Village Holdings Limited	Accept
OS93.2	Jacks Point Village Holdings Limited	Reject
OS93.3	Jacks Point Village Holdings Limited	Reject
OS93.4	Jacks Point Village Holdings Limited	Reject
OS93.5	Jacks Point Village Holdings Limited	Reject
OS93.6	Jacks Point Village Holdings Limited	Reject
OS93.7	Jacks Point Village Holdings Limited	Reject
OS93.8	Jacks Point Village Holdings Limited	Reject
OS93.9	Jacks Point Village Holdings Limited	Reject
OS93.10	Jacks Point Village Holdings Limited	Reject
OS93.11	Jacks Point Village Holdings Limited	Reject
OS93.12	Jacks Point Village Holdings Limited	Accept
OS93.13	Jacks Point Village Holdings Limited	Reject
OS93.14	Jacks Point Village Holdings Limited	Reject
OS93.15	Jacks Point Village Holdings Limited	Accept
OS93.16	Jacks Point Village Holdings Limited	Accept
OS93.17	Jacks Point Village Holdings Limited	Accept
OS93.18	Jacks Point Village Holdings Limited	Accept
OS94.1	Marhill Limited	Accept
OS94.2	Marhill Limited	Reject
OS94.3	Marhill Limited	Reject
OS94.4	Marhill Limited	Reject
OS94.5	Marhill Limited	Reject
OS94.6	Marhill Limited	Reject
OS94.7	Marhill Limited	Reject
OS94.8	Marhill Limited	Reject
OS94.9	Marhill Limited	Reject
OS94.10	Marhill Limited	Reject
OS94.11	Marhill Limited	Reject
OS94.12	Marhill Limited	Accept
OS94.13	Marhill Limited	Reject
OS94.14	Marhill Limited	Reject
OS94.15	Marhill Limited	Accept

OS94.16	Marhill Limited	Accept
OS94.17	Marhill Limited	Accept
OS94.18	Marhill Limited	Accept
OS95.1	Grant Stalker Trust	Accept
OS95.2	Grant Stalker Trust	Reject
OS95.3	Grant Stalker Trust	Reject
OS95.4	Grant Stalker Trust	Reject
OS95.5	Grant Stalker Trust	Reject
OS95.6	Grant Stalker Trust	Reject
OS95.7	Grant Stalker Trust	Reject
OS95.8	Grant Stalker Trust	Reject
OS95.9	Grant Stalker Trust	Reject
OS95.10	Grant Stalker Trust	Reject
OS95.11	Grant Stalker Trust	Reject
OS95.12	Grant Stalker Trust	Accept
OS95.13	Grant Stalker Trust	Reject
OS95.14	Grant Stalker Trust	Reject
OS95.15	Grant Stalker Trust	Accept
OS95.16	Grant Stalker Trust	Accept
OS95.17	Grant Stalker Trust	Accept
OS95.18	Grant Stalker Trust	Accept
OS96.1	Mount Cardrona Station Village Limited	Accept
OS96.2	Mount Cardrona Station Village Limited	Reject
OS96.3	Mount Cardrona Station Village Limited	Reject
OS96.4	Mount Cardrona Station Village Limited	Reject
OS96.5	Mount Cardrona Station Village Limited	Reject
OS96.6	Mount Cardrona Station Village Limited	Reject
OS96.7	Mount Cardrona Station Village Limited	Reject
OS96.8	Mount Cardrona Station Village Limited	Reject
OS96.9	Mount Cardrona Station Village Limited	Reject
OS96.10	Mount Cardrona Station Village Limited	Reject
OS96.11	Mount Cardrona Station Village Limited	Reject
OS96.12	Mount Cardrona Station Village Limited	Accept
OS96.13	Mount Cardrona Station Village Limited	Reject
OS96.14	Mount Cardrona Station Village Limited	Reject
OS96.15	Mount Cardrona Station Village Limited	Accept
OS96.16	Mount Cardrona Station Village Limited	Accept
OS96.17	Mount Cardrona Station Village Limited	Accept

OS96.18	Mount Cardrona Station Village Limited	Accept
OS97.1	K & E Stalker Partnership	Accept
OS97.2	K & E Stalker Partnership	Reject
OS97.3	K & E Stalker Partnership	Reject
OS97.4	K & E Stalker Partnership	Reject
OS97.5	K & E Stalker Partnership	Reject
OS97.6	K & E Stalker Partnership	Reject
OS97.7	K & E Stalker Partnership	Reject
OS97.8	K & E Stalker Partnership	Reject
OS97.9	K & E Stalker Partnership	Reject
OS97.10	K & E Stalker Partnership	Reject
OS97.11	K & E Stalker Partnership	Reject
OS97.12	K & E Stalker Partnership	Accept
OS97.13	K & E Stalker Partnership	Reject
OS97.14	K & E Stalker Partnership	Reject
OS97.15	K & E Stalker Partnership	Accept
OS97.16	K & E Stalker Partnership	Accept
OS97.17	K & E Stalker Partnership	Accept
OS97.18	K & E Stalker Partnership	Accept
OS98.1	Gravestalker Trust #2	Accept
OS98.2	Gravestalker Trust #2	Reject
OS98.3	Gravestalker Trust #2	Reject
OS98.4	Gravestalker Trust #2	Reject
OS98.5	Gravestalker Trust #2	Reject
OS98.6	Gravestalker Trust #2	Reject
OS98.7	Gravestalker Trust #2	Reject
OS98.8	Gravestalker Trust #2	Reject
OS98.9	Gravestalker Trust #2	Reject
OS98.10	Gravestalker Trust #2	Reject
OS98.11	Gravestalker Trust #2	Reject
OS98.12	Gravestalker Trust #2	Accept
OS98.13	Gravestalker Trust #2	Reject
OS98.14	Gravestalker Trust #2	Reject
OS98.15	Gravestalker Trust #2	Accept
OS98.16	Gravestalker Trust #2	Accept
OS98.17	Gravestalker Trust #2	Accept
OS98.18	Gravestalker Trust #2	Accept
OS99.1	Glenpanel Developments Limited	Accept

OS99.2	Glenpanel Developments Limited	Reject
OS99.3	Glenpanel Developments Limited	Reject
OS99.4	Glenpanel Developments Limited	Reject
OS99.5	Glenpanel Developments Limited	Reject
OS99.6	Glenpanel Developments Limited	Reject
OS99.7	Glenpanel Developments Limited	Reject
OS99.8	Glenpanel Developments Limited	Reject
OS99.9	Glenpanel Developments Limited	Reject
OS99.10	Glenpanel Developments Limited	Reject
OS99.11	Glenpanel Developments Limited	Reject
OS99.12	Glenpanel Developments Limited	Accept
OS99.13	Glenpanel Developments Limited	Reject
OS99.14	Glenpanel Developments Limited	Reject
OS99.15	Glenpanel Developments Limited	Accept
OS99.16	Glenpanel Developments Limited	Accept
OS99.17	Glenpanel Developments Limited	Accept
OS99.18	Glenpanel Developments Limited	Accept
OS100.1	Shotover Country No. 2 Limited	Accept
OS100.2	Shotover Country No. 2 Limited	Reject
OS100.3	Shotover Country No. 2 Limited	Reject
OS100.4	Shotover Country No. 2 Limited	Reject
OS100.5	Shotover Country No. 2 Limited	Reject
OS100.6	Shotover Country No. 2 Limited	Reject
OS100.7	Shotover Country No. 2 Limited	Reject
OS100.8	Shotover Country No. 2 Limited	Reject
OS100.9	Shotover Country No. 2 Limited	Reject
OS100.10	Shotover Country No. 2 Limited	Reject
OS100.11	Shotover Country No. 2 Limited	Reject
OS100.12	Shotover Country No. 2 Limited	Accept
OS100.13	Shotover Country No. 2 Limited	Reject
OS100.14	Shotover Country No. 2 Limited	Reject
OS100.15	Shotover Country No. 2 Limited	Accept
OS100.16	Shotover Country No. 2 Limited	Accept
OS100.17	Shotover Country No. 2 Limited	Accept
OS100.18	Shotover Country No. 2 Limited	Accept
OS101.1	Tory Trust	Accept
OS101.2	Tory Trust	Reject
OS101.3	Tory Trust	Reject

OS101.4	Tory Trust	Reject
OS101.5	Tory Trust	Reject
OS101.6	Tory Trust	Reject
OS101.7	Tory Trust	Reject
OS101.8	Tory Trust	Reject
OS101.9	Tory Trust	Reject
OS101.10	Tory Trust	Reject
OS101.11	Tory Trust	Reject
OS101.12	Tory Trust	Accept
OS101.13	Tory Trust	Reject
OS101.14	Tory Trust	Reject
OS101.15	Tory Trust	Accept
OS101.16	Tory Trust	Accept
OS101.17	Tory Trust	Accept
OS101.18	Tory Trust	Accept
OS102.1	FII Holdings LImited	Accept
OS102.2	FII Holdings LImited	Reject
OS102.3	FII Holdings LImited	Reject
OS102.4	FII Holdings LImited	Reject
OS102.5	FII Holdings LImited	Reject
OS102.6	FII Holdings LImited	Reject
OS102.7	FII Holdings LImited	Reject
OS102.8	FII Holdings LImited	Reject
OS102.9	FII Holdings LImited	Reject
OS102.10	FII Holdings LImited	Reject
OS102.11	FII Holdings LImited	Reject
OS102.12	FII Holdings LImited	Accept
OS102.13	FII Holdings LImited	Reject
OS102.14	FII Holdings LImited	Reject
OS102.15	FII Holdings LImited	Accept
OS102.16	FII Holdings LImited	Accept
OS102.17	FII Holdings LImited	Accept
OS102.18	FII Holdings LImited	Accept
OS103.1	Andrew & Lisa Rankin	Accept
OS103.2	Andrew & Lisa Rankin	Accept
OS103.3	Andrew & Lisa Rankin	Reject
OS103.4	Andrew & Lisa Rankin	Reject
OS103.5	Andrew & Lisa Rankin	Accept

OS103.6	Andrew & Lisa Rankin	Reject
OS103.7	Andrew & Lisa Rankin	Reject
OS103.8	Andrew & Lisa Rankin	Reject
OS104.1	Jon Mitchell	Reject
OS104.2	Jon Mitchell	Reject
OS104.3	Jon Mitchell	Reject
OS104.4	Jon Mitchell	Reject
OS104.5	Jon Mitchell	Reject
OS104.6	Jon Mitchell	Reject
OS105.1	John Collyns	Accept
OS105.2	John Collyns	Reject
OS105.3	John Collyns	Reject
OS106.1	Paterson Pitts Group	Accept in Part
OS106.2	Paterson Pitts Group	Accept
OS106.3	Paterson Pitts Group	Reject
OS106.4	Paterson Pitts Group	Reject
OS106.5	Paterson Pitts Group	Reject
OS106.6	Paterson Pitts Group	Reject
OS106.7	Paterson Pitts Group	Reject
OS106.8	Paterson Pitts Group	Reject
OS106.9	Paterson Pitts Group	Reject
OS106.10	Paterson Pitts Group	Reject
OS106.11	Paterson Pitts Group	Reject
OS106.12	Paterson Pitts Group	Reject
OS106.13	Paterson Pitts Group	Reject
OS106.14	Paterson Pitts Group	Reject
OS106.15	Paterson Pitts Group	Reject
OS106.16	Paterson Pitts Group	Reject
OS106.17	Paterson Pitts Group	Reject
OS106.18	Paterson Pitts Group	Reject
OS106.19	Paterson Pitts Group	Reject
OS106.20	Paterson Pitts Group	Reject
OS106.21	Paterson Pitts Group	Reject
OS106.22	Paterson Pitts Group	Accept
OS106.23	Paterson Pitts Group	Reject
OS106.24	Paterson Pitts Group	Reject
OS106.25	Paterson Pitts Group	Reject
OS106.26	Paterson Pitts Group	Reject

OS106.27	Paterson Pitts Group	Accept in Part
OS106.28	Paterson Pitts Group	Accept in Part
OS106.29	Paterson Pitts Group	Accept in Part
OS106.30	Paterson Pitts Group	Reject
OS106.31	Paterson Pitts Group	Accept in Part
OS106.32	Paterson Pitts Group	Reject
OS106.33	Paterson Pitts Group	Reject
OS106.34	Paterson Pitts Group	Reject
OS106.35	Paterson Pitts Group	Reject
OS106.36	Paterson Pitts Group	Reject
OS106.37	Paterson Pitts Group	Reject
OS106.38	Paterson Pitts Group	Accept
OS106.39	Paterson Pitts Group	Accept
OS106.40	Paterson Pitts Group	Reject
OS106.41	Paterson Pitts Group	Reject
OS107.1	Tara Nathan	Accept
OS107.2	Tara Nathan	Accept
OS107.3	Tara Nathan	Accept
OS107.4	Tara Nathan	Accept
OS107.5	Tara Nathan	Accept
OS107.6	Tara Nathan	Reject
OS107.7	Tara Nathan	Accept
OS107.8	Tara Nathan	Accept
OS108.1	Darryll Rogers	Accept
OS108.2	Darryll Rogers	Reject
OS108.3	Darryll Rogers	Reject
OS108.4	Darryll Rogers	Accept
OS108.5	Darryll Rogers	Reject
OS108.6	Darryll Rogers	Accept
OS108.7	Darryll Rogers	Reject
OS108.8	Darryll Rogers	Reject
OS108.9	Darryll Rogers	Reject
OS109.1	Tara Nathan	Accept
OS110.1	Denise Prince	Accept
OS110.2	Denise Prince	Reject
OS111.1	MacFarlane Investments Limited	Accept
OS111.2	MacFarlane Investments Limited	Reject
OS111.3	MacFarlane Investments Limited	Reject

OS111.4	MacFarlane Investments Limited	Reject
OS111.5	MacFarlane Investments Limited	Reject
OS111.6	MacFarlane Investments Limited	Reject
OS111.7	MacFarlane Investments Limited	Reject
OS111.8	MacFarlane Investments Limited	Reject
OS111.9	MacFarlane Investments Limited	Reject
OS111.10	MacFarlane Investments Limited	Reject
OS111.11	MacFarlane Investments Limited	Reject
OS111.12	MacFarlane Investments Limited	Accept
OS111.13	MacFarlane Investments Limited	Reject
OS111.14	MacFarlane Investments Limited	Reject
OS111.15	MacFarlane Investments Limited	Accept
OS111.16	MacFarlane Investments Limited	Accept
OS111.17	MacFarlane Investments Limited	Accept
OS111.18	MacFarlane Investments Limited	Accept
OS112.1	Marama Hill Limited	Accept
OS112.2	Marama Hill Limited	Accept
OS113.1	Foley Koko Ridge Limited	Accept
OS113.2	Foley Koko Ridge Limited	Accept
OS114.1	Foley Investment Trust	Accept
OS114.2	Foley Investment Trust	Accept
OS115.1	Wayne A Foley	Accept
OS115.2	Wayne A Foley	Accept
OS116.1	Timothy Paul Allan	Accept
OS116.2	Timothy Paul Allan	Reject
OS116.3	Timothy Paul Allan	Reject
OS116.4	Timothy Paul Allan	Reject
OS117.1	Millbrook Country Club Limited	Accept
OS117.2	Millbrook Country Club Limited	Reject
OS117.3	Millbrook Country Club Limited	Accept in Part
OS117.4	Millbrook Country Club Limited	Reject
OS118.1	Pine Lane Limited	Accept
OS119.1	Koki Ridge Limited	Accept
OS120.1	Queenstown Central Limited	Accept
OS120.2	Queenstown Central Limited	Accept in Part
OS121.1	Upper Clutha Transport	Reject
OS121.2	Upper Clutha Transport	Accept
OS121.3	Upper Clutha Transport	Reject

OS121.4	Upper Clutha Transport	Reject
OS121.5	Upper Clutha Transport	Reject
OS121.6	Upper Clutha Transport	Reject
OS122.1	Bill and Diana Wiseman	Accept
OS122.2	Bill and Diana Wiseman	Accept in Part
OS123.1	Chris Broadhead	Accept
OS123.2	Chris Broadhead	Accept in Part
OS123.3	Chris Broadhead	Reject
OS123.4	Chris Broadhead	Reject
OS123.5	Chris Broadhead	Reject
OS123.6	Chris Broadhead	Reject
OS123.7	Chris Broadhead	Reject
OS123.8	Chris Broadhead	Reject
OS124.1	Remarkables Park Limited	Accept
OS124.2	Remarkables Park Limited	Accept in Part
OS124.3	Remarkables Park Limited	Reject
OS124.4	Remarkables Park Limited	Reject
OS124.5	Remarkables Park Limited	Reject
OS124.6	Remarkables Park Limited	Reject
OS124.7	Remarkables Park Limited	Reject
OS124.8	Remarkables Park Limited	Reject
OS124.9	Remarkables Park Limited	Reject
OS124.10	Remarkables Park Limited	Reject
OS124.11	Remarkables Park Limited	Reject
OS124.12	Remarkables Park Limited	Reject
OS124.13	Remarkables Park Limited	Accept in Part
OS125.1	Alpha Properties NZ Ltd	Accept in Part
OS125.2	Alpha Properties NZ Ltd	Accept in Part
OS126.1	Homestead Bay Trust Limited	Accept
OS126.2	Homestead Bay Trust Limited	Accept in Part
OS126.3	Homestead Bay Trust Limited	Accept in Part
OS126.4	Homestead Bay Trust Limited	Reject
OS127.1	Te Arawhiti	Accept in Part
OS127.2	Te Arawhiti	Reject
OS127.3	Te Arawhiti	Accept in Part
OS128.1	QT Lakeview Developments Limited	Accept
OS128.2	QT Lakeview Developments Limited	Accept in Part
OS128.3	QT Lakeview Developments Limited	Accept in Part

OS129.1	Northlake Investments Limited	Reject
OS129.2	Northlake Investments Limited	Reject
OS129.3	Northlake Investments Limited	Reject
OS129.4	Northlake Investments Limited	Reject
OS129.5	Northlake Investments Limited	Reject
OS129.6	Northlake Investments Limited	Reject
OS130.1	Ryman Healthcare Limited	Accept in Part
OS131.1	Universal Developments Limited	Accept
OS132.1	Winton Land Limited	Accept
OS132.2	Winton Land Limited	Accept in Part
OS133.1	Kerrin Burnnand	Reject
OS133.2	Kerrin Burnnand	Reject
OS133.3	Kerrin Burnnand	Reject
OS133.4	Kerrin Burnnand	Reject
OS134.1	John Langley	Reject
OS134.2	John Langley	Reject
OS135.1	Kingston Village Ltd	Reject
OS135.2	Kingston Village Ltd	Reject
OS135.3	Kingston Village Ltd	Reject
OS136.1	Joanne Skuse	Accept
OS136.2	Joanne Skuse	Accept in Part
OS137.1	Sanderson Group and Queenstown Commercial Limited	Accept
OS137.2	Sanderson Group and Queenstown Commercial Limited	Accept in Part
OS138.1	Kingston Flyer Ltd	Accept in Part
OS138.2	Kingston Flyer Ltd	Accept in Part
OS138.3	Kingston Flyer Ltd	Accept in Part
OS139.1	Cardrona Village Ltd	Accept in Part
OS139.2	Cardrona Village Ltd	Accept in Part
OS139.3	Cardrona Village Ltd	Accept in Part
OS140.1	Mount Iron Investments Limited	Accept
OS140.2	Mount Iron Investments Limited	Accept
OS140.3	Mount Iron Investments Limited	Accept
OS140.4	Mount Iron Investments Limited	Accept
OS140.5	Mount Iron Investments Limited	Accept
OS140.6	Mount Iron Investments Limited	Accept
OS140.7	Mount Iron Investments Limited	Accept
OS140.8	Mount Iron Investments Limited	Accept

OS140.9	Mount Iron Investments Limited	Accept
OS140.10	Mount Iron Investments Limited	Accept
OS140.11	Mount Iron Investments Limited	Accept
OS140.12	Mount Iron Investments Limited	Accept
OS140.13	Mount Iron Investments Limited	Accept
OS140.14	Mount Iron Investments Limited	Accept
OS140.15	Mount Iron Investments Limited	Accept
OS140.16	Mount Iron Investments Limited	Accept
OS140.17	Mount Iron Investments Limited	Accept
OS140.18	Mount Iron Investments Limited	Accept
OS140.19	Mount Iron Investments Limited	Accept
OS141.1	Aspiring Tourism Holdings Limited	Reject
OS141.2	Aspiring Tourism Holdings Limited	Reject
OS141.3	Aspiring Tourism Holdings Limited	Reject
OS141.4	Aspiring Tourism Holdings Limited	Reject
OS141.5	Aspiring Tourism Holdings Limited	Reject
OS141.6	Aspiring Tourism Holdings Limited	Accept in Part
OS141.7	Aspiring Tourism Holdings Limited	Reject
OS141.8	Aspiring Tourism Holdings Limited	Reject
OS142.1	Geoffrey Turner	Reject
OS142.2	Geoffrey Turner	Reject
OS142.3	Geoffrey Turner	Reject
OS142.4	Geoffrey Turner	Accept
OS142.5	Geoffrey Turner	Accept
OS142.6	Geoffrey Turner	Accept
OS142.7	Geoffrey Turner	Reject
OS142.8	Geoffrey Turner	Accept
OS142.9	Geoffrey Turner	Accept
OS142.10	Geoffrey Turner	Reject
OS142.11	Geoffrey Turner	Accept
OS142.12	Geoffrey Turner	Reject
OS142.13	Geoffrey Turner	Accept
OS142.14	Geoffrey Turner	Accept
OS142.15	Geoffrey Turner	Accept in Part
OS142.16	Geoffrey Turner	Reject
OS142.17	Geoffrey Turner	Reject
OS143.1	Mackenzie Homes (Queenstown) Limited	Accept
OS144.1	Keith Hay Group	Reject

OS144.2	Keith Hay Group	Reject
OS145.1	Ewen and Heather Rendel	Reject
OS145.2	Ewen and Heather Rendel	Reject
OS145.3	Ewen and Heather Rendel	Reject
OS145.4	Ewen and Heather Rendel	Reject
OS145.5	Ewen and Heather Rendel	Reject
OS145.6	Ewen and Heather Rendel	Reject
OS145.7	Ewen and Heather Rendel	Reject
OS145.8	Ewen and Heather Rendel	Reject
OS145.9	Ewen and Heather Rendel	Reject
OS145.10	Ewen and Heather Rendel	Reject
OS145.11	Ewen and Heather Rendel	Reject
OS146.1	Fulton Hogan Land Development Limited	Accept
OS146.2	Fulton Hogan Land Development Limited	Reject
OS146.3	Fulton Hogan Land Development Limited	Reject
OS146.4	Fulton Hogan Land Development Limited	Reject
OS146.5	Fulton Hogan Land Development Limited	Reject
OS146.6	Fulton Hogan Land Development Limited	Accept
OS147.1	Metlifecare	Accept
OS148.1	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.2	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.3	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.4	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.5	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.6	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.7	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.8	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.9	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.10	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.11	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.12	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept

OS148.13	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.14	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.15	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.16	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.17	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.18	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS148.19	Willowridge Developments, Orchard Road Holdings Limtied, Three Parks Properties	Accept
OS149.1	Ladies Mile Property Syndicate Limited Partnership	Accept
OS149.2	Ladies Mile Property Syndicate Limited Partnership	Accept
OS149.3	Ladies Mile Property Syndicate Limited Partnership	Accept in Part
OS149.4	Ladies Mile Property Syndicate Limited Partnership	Accept
OS150.1	Banco Trustees McCulloch Trustees 2004 Limited, Richard Newman, John Guthrie	Accept
OS151.1	Quartz Property Holdings Limited	Accept
OS152.1	Roger and Marliese Donaldson	Accept
OS153.1	Classic Developments NZ Limited	Accept
OS154.1	Exclusive Developments Limited	Accept
OS155.1	Gibbston Valley Station Limited	Accept
OS155.2	Gibbston Valley Station Limited	Reject
OS155.3	Gibbston Valley Station Limited	Accept in Part
OS155.4	Gibbston Valley Station Limited	Accept in Part
OS156.1	Trojan Holdings Limited	Accept
OS157.1	Qianlong Limited	Accept
OS158.1	Tussock Rise Limited	Accept
OS159.1	Pembroke Terrace Limited	Accept
OS160.1	Latitude 45 Development Limited	Accept
OS161.1	Winter Miles Airstream Limited	Accept
OS161.2	Winter Miles Airstream Limited	Reject
OS161.3	Winter Miles Airstream Limited	Accept in Part
OS162.1	Cardrona Cattle Company Limited	Accept
OS162.2	Cardrona Cattle Company Limited	Reject
OS162.3	Cardrona Cattle Company Limited	Accept in Part
OS163.1	Corona Trust	Accept

OS163.2	Corona Trust	Reject
OS163.3	Corona Trust	Accept in Part
OS164.1	Riverton Queenstown Limited	Accept
OS164.2	Riverton Queenstown Limited	Reject
OS164.3	Riverton Queenstown Limited	Accept in Part
OS165.1	Olivia Wensley	Accept
OS165.2	Olivia Wensley	Reject
OS165.3	Olivia Wensley	Accept in Part
OS166.1	MBGR Limited	Accept
OS166.2	MBGR Limited	Reject
OS166.3	MBGR Limited	Accept in Part
OS167.1	Malaghan Investments Limited	Accept
OS167.2	Malaghan Investments Limited	Reject
OS167.3	Malaghan Investments Limited	Accept in Part
OS168.1	Gibbston Valley Station Limited	Accept
OS168.2	Gibbston Valley Station Limited	Reject
OS168.3	Gibbston Valley Station Limited	Accept in Part
OS168.4	Gibbston Valley Station Limited	Accept in Part
OS169.1	Ōtautahi Community Housing Trust	Reject
OS169.2	Ōtautahi Community Housing Trust	Reject
OS169.3	Ōtautahi Community Housing Trust	Accept
OS170.1	Cath Gilmour	Reject
OS170.2	Cath Gilmour	Reject
OS170.3	Cath Gilmour	Reject
OS170.4	Cath Gilmour	Reject
OS171.1	Heather and Gary Crombie	Reject
OS171.2	Heather and Gary Crombie	Reject
OS171.3	Heather and Gary Crombie	Reject
OS171.4	Heather and Gary Crombie	Reject
OS172.1	GYP Properties Limited	Accept
OS172.2	GYP Properties Limited	Reject
OS173.1	Te Matapihi	Reject
OS174.1	Sue Bradley	Accept
OS175.1	Sonja Kooy	Reject
OS175.2	Sonja Kooy	Reject
OS175.3	Sonja Kooy	Reject
OS176.1	Centuria Property Holdco Limited	Accept
OS177.1	Mee Holdings Limited and Peninsula Hill Limited	Accept

OS178.1	Roger Monk and Cook Adam Trustees	Accept
OS179.1	Michael Ramsay	Reject
OS180.1	Jim Boult	Reject
OS181.1	Trojan Helmet Ltd and Boxer Hill Trust	Reject
OS181.2	Trojan Helmet Ltd and Boxer Hill Trust	Reject
OS181.3	Trojan Helmet Ltd and Boxer Hill Trust	Reject
OS181.4	Trojan Helmet Ltd and Boxer Hill Trust	Accept
OS181.5	Trojan Helmet Ltd and Boxer Hill Trust	Accept in Part
OS181.6	Trojan Helmet Ltd and Boxer Hill Trust	Accept in Part
OS181.7	Trojan Helmet Ltd and Boxer Hill Trust	Accept in Part