

**BEFORE THE INDEPENDENT HEARINGS PANEL
IN QUEENSTOWN**

IN THE MATTER of the Resource Management
Act 1991

AND

IN THE MATTER of the Inclusionary Housing
Variation to the Queenstown
Lakes Proposed District Plan

**SECTION 42A REPORT OF DAVID MEAD
ON BEHALF OF QUEENSTOWN LAKES DISTRICT COUNCIL**

**INCLUSIONARY HOUSING VARIATION TO THE PROPOSED DISTRICT PLAN
14 November 2023**

TABLE OF CONTENTS

1. PROFESSIONAL DETAILS.....	3
2. INTRODUCTION	4
3. BACKGROUND / CONTEXT.....	6
4. STATUTORY TESTS	12
5. TOPIC 1/SUPPORT	20
6. TOPIC 2/OPPOSE	22
7. TOPIC 3/ALTERNATIVES	25
8. TOPIC 4/EXCLUSIONS	27
9. TOPIC 5/PROVISIONS	36
10. RECOMMENDED AMENDMENTS TO VARIATION	50
11. CONCLUSION.....	52

Appendix 1: Recommended revised provisions

Appendix 2: Summary of submission points and recommended decisions

Appendix 3: Statutory Tests

1. PROFESSIONAL DETAILS

- 1.1** My full name is David William Arthur Mead. I am currently a consultant planner operating as David Mead Urban Planning. Prior to July 2022, I was a longstanding director at Hill Young Cooper Ltd, undertaking plan development and project planning work throughout New Zealand. Prior to joining Hill Young Cooper in 1998, I was a member of the strategic projects team at Waitakere City Council which was responsible for developing and implementing a range of integrated sustainable development projects, including urban growth strategies. I was a member of the core team that prepared the inaugural Waitakere City District Plan.
- 1.2** I hold the qualifications of a Bachelor of Town Planning from Auckland University and am a full member of the New Zealand Planning Institute. In 2017, I received a Distinguished Service Award from the New Zealand Planning Institute. I am also an Independent Hearing Commissioner and have considered and made decisions on plan changes, resource consents and notices of requirements.
- 1.3** I have been employed in planning roles in private consultancy and local government for over 30 years. Recent experience relevant to this hearing includes providing strategic evidence in support of Auckland Council's Plan Change 78 (Intensification Planning Instrument plan change); being the section 42A reporting planner on a number of plan changes in the Drury area of Auckland, as well as around Pokeno in Waikato District. I have also provided expert planning evidence on urban growth issues for several plan change appeals to the Environment Court including Okura, Frankton Flats, Bayswater Marina, Omaha and Long Bay.
- 1.4** I have helped to prepare numerous plan changes relating to new urban developments, affordable housing, stormwater management and urban design. This has involved preparation of strategies and action plans, developing structure and precinct plans, development of RMA plan provisions, consideration of alternatives, submission analysis, section 42A reporting and negotiation and mediation post council-level hearings.

1.5 I was involved in the preparation of the Inclusionary Housing variation, preparing a number of background reports, the section 32 report and drafting the proposed provisions. Other relevant experience includes assisting Auckland Council with affordable housing provisions of the Proposed Auckland Unitary Plan and Queenstown Lakes District Council with Plan Change 24 (Community Housing) to the former district plan.

1.6 Although this is a Council hearing, I confirm that I have read the Code of Conduct for Expert Witness contained in the Environment Court Practice Note and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

2. INTRODUCTION

2.1 In this section 42A report, I provide recommendations to the Hearings Panel on the original submissions and further submissions received on the Inclusionary Housing (IH) Variation to the Proposed Queenstown Lakes District Plan (PDP) by the time of the close of the submission period, being 13 October 2022. **Appendix 2** contains a schedule of submission points and recommendations to accept, reject or accept in part.

2.2 A total of 1,153 original submission points and 3,334 further submission points were received on the proposed IH provisions. A majority oppose the variation in whole or in part. 59 original submission points support the variation.

2.3 I discuss the common themes and issues raised by submitters and recommend a number of modifications to the notified provisions. I have grouped my analysis of the original submission points into five topics as follows:

Topic Group	Number of original submission points
Support	59
Oppose	441
Use alternatives	354
Widen exemptions	97
Amend provisions	202
Total	1153

- 2.4** For each topic, I summarise the key issue(s) and range of relief sought in the submissions as a group. I do not address each individual submission. I consider whether the relief sought better achieves the relevant objectives of the applicable policy documents, and evaluate the appropriateness, including costs and benefits, of the requested changes in terms of s32AA of the RMA. When I refer to individual submitters, I generally do so as the particular submission is representative of a group of submitters who raise similar issues. I do not list all of the submitters who raise the same point.
- 2.5** When assessing the submissions, I have had regard to the evidence prepared in relation to economics and social impact by Shamubeel Eaqub and Charlotte Lee respectively. I have also reviewed the evidence of Amy Bowbyes on behalf of the Council.
- 2.6** The key documents I have used, or referred to, in forming my views while preparing this section 42A report are:
- (a) Inclusionary Housing Variation – Section 32 Report (**S32**), including appendices;
 - (b) Queenstown Lakes Proposed District Plan (**PDP**);
 - (c) Queenstown Lakes Operative District Plan (**ODP**);
 - (d) National Policy Statement – Urban Development (**NPS-UD**);
 - (e) Partially Operative Regional Policy Statement 2019 for Otago (**PORPS 19**);
and
 - (f) Proposed Otago Regional Policy Statement 2021 (**PRPS 21**).

- 2.7** Relevant non-RMA plans and strategies include the Council’s 2023 Joint Housing Action Plan and 2021 Homes Strategy and Spatial Plan.
- 2.8** Changes I recommend to the notified provisions in response to original submissions and further submissions are included in **Appendix 1**, which contains a ‘tracked changes’ recommended chapter. My recommendations for accepting, accepting in part or rejecting each submission point are included in **Appendix 2** alongside a summary of the relief sought in the submissions.

3. BACKGROUND / CONTEXT

- 3.1** Queenstown Lakes District has faced housing affordability issues for many years. Council has sought to expand housing supply ahead of demand, but the combined demands of fast population growth, prevalence of second homes and investment properties and use of housing for short-term accommodation for visitors (defined as Residential Visitor Accommodation in the PDP) mean that there is always pressure on the housing resource, which is expressed through high house prices and rents.
- 3.2** I understand it is a common feature of the housing sectors of mountain-resorts for them to experience particularly acute stresses on housing costs. This arises from the strong demand for second/holiday homes/short term rentals, as well as restricted supply options due to geographic constraints and high landscape values within which settlements sit. Service workers generally feel the brunt of these stresses. Queenstown Lakes District is the main area in New Zealand which experiences these types of pressures. This can be seen in house-price-to-income multipliers. The website Interest.co.nz¹ lists Queenstown Lakes District as having a median house price to median income ratio of 14.86 (as of September 2023), well above a ratio of 8.88 for the Auckland metro area and the national average.
- 3.3** Queenstown Lakes District experiences fast growth, with the main driver of that growth being migration into the district (rather than natural increase). Statistics

¹ <https://www.interest.co.nz/property/house-price-income-multiples>

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.² Migration rates vary from year to year, which makes predicting housing demands complex. For example, during 2021/22 international migration rates declined, yet net inward migration rates for New Zealand residents increased.

- 3.4** The district is notable for its landscape values. Strategic Issue 2 of Chapter 3 of the PDP recognises the inter connections between growth impacting on the functioning and sustainability of urban areas, and the risks of that dysfunction detracting from rural landscapes, particularly outstanding natural features and outstanding natural landscapes.
- 3.5** The IH variation follows on from Council’s successful and unique use of Special Housing Areas and individually negotiated agreements to secure affordable housing contributions from developments as part of private plan change proposals. In 2007, Plan Change 24 sought to introduce a linkage-based approach to affordable housing, with a focus on housing demands generated by expansion of the workforce. The plan change sought (in part) to provide a consistent framework for the various affordable housing provisions being put forward in private plan change proposals. Appeal negotiations resulted in insertion of an objective and policies into the operative district plan relating to enabling affordable housing, but no specific rules or requirements. Post 2007, the Housing Accords and Special Housing Areas Act 2013 authorised more streamlined planning processes for qualifying developments in special housing areas. The Council was able to leverage some retained affordable housing contributions as part of arrangements with developers relating to those areas.
- 3.6** Through these means, Council has helped to fund the Queenstown Lakes Community Housing Trust (QLCHT). Other funding has been provided through transfer of public land and grants and loans. The work of the Trust has a long-term focus, with contributions retained for future affordable housing purposes through the housing ownership options offered by the Community Housing Trust. That is, rather than a ‘one-off’ reduction in land or house prices for the first buyer, the

² Stats NZ sub national population estimates.

Trust model ensures that contributions can be 'recycled' and leveraged for the benefit of future low to moderate income households.

- 3.7** Having said that, the variation does not lock in the QLCHT as the ultimate recipient of the financial contributions collected. This is an operational decision for the council, but one that must be made within the confines that contributions gathered must be directed to retained, affordable housing.

Formulating the Variation

- 3.8** As a starting point, the Proposed District Plan contains a number of references to affordable housing (also termed Community Housing):

- Policy 4.2.2.7 refers to exploring and encourage innovative approaches to design to assist provision of quality affordable housing.
- Policy 4.2.2.8 states that in applying plan provisions, regard should be had to the extent to which the minimum site size, density, height, building coverage and other quality controls have a disproportionate adverse effect on housing affordability.
- Subdivision & Development Policy 27.2.1.4 seeks to discourage non-compliance with minimum allotment sizes. However, where minimum allotment sizes are not achieved in urban areas, consideration will be given to whether any adverse effects are mitigated or compensated by providing: a. desirable urban design outcomes; b. greater efficiency in the development and use of the land resource; c. affordable or community housing.

- 3.9** In addition, the Low Density Suburban Residential Zone purpose statement outlines that "...the zone will help to provide a more diverse and affordable housing stock within the District.."

- 3.10** In formulating the IH variation a range of possible models were considered. Many countries and/or their local jurisdictions operate a form of Inclusionary Zoning whereby a portion of land/units in a residential development must be sold at an affordable (discounted) price to eligible households subject to retention mechanisms. Such schemes often involve a degree of negotiation over how many and what types of lots/units should be sold at a discounted price. This allows for

consideration of impacts on financial viability as well as tailoring the required lots/units to local circumstances. These types of negotiated schemes (that often operate within national and local policy guidance) do not sit easily with the Resource Management Act in the sense that the Act does not contemplate significant negotiation over contributions.

- 3.11** A key metric of the IH variation is the contribution rate. The contribution rate needs to help address impacts from limited affordable housing supply, yet not be at a level that deters development. The rate of 5% of new lots (land or monetary equivalent) was set following a range of feasibility testing, as set out in the section 32 report. For development of residential units (where a contribution has not been provided at the subdivision stage), the rate of 2% of sales value of additional units also followed feasibility testing.
- 3.12** An important contextual factor is the need for any contribution scheme to ‘fit’ with council’s growth management strategy. In this regard, it is important that any inclusionary housing provisions be applied to both greenfields and brownfields developments, as brownfields will increasingly represent a large component of future growth; a direction consistent with the National Policy Statement on Urban Development.
- 3.13** Council’s Spatial Plan 2021 recognises 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 Queenstown Lakes area. This means most of the change needed to accommodate the additional houses, jobs and visitors expected over the next 30 years will occur within the Wakatipu and Upper Clutha areas, primarily by growing within and around the existing urban areas of Queenstown, Wānaka and Hāwea.
- 3.14** Council is proposing a response to the NPS-UD’s directives around housing capacity and choice in brownfields areas. At the time of writing a proposed variation to the PDP that gives effect to policy 5 of the NPS-UD has been notified using the process set out in Schedule 1 of the RMA. A summary of decisions requested will be published later this year. I refer to Ms Bowbyes’ evidence which provides further detail on the content of the notified variation.

- 3.15** In considering possible IH models that fit with New Zealand’s statutory environment, Australian experience is helpful. In particular, Sydney operates a number of discrete (area specific) inclusionary housing schemes. For example, the City West scheme applies in Sydney’s Ultimo Pyrmont regeneration precinct. A review of the City West Scheme by SGS Economics³ notes that ‘the beauty of the City West Scheme lies in four factors – simplicity, non-negotiability, universality and low transaction costs’.
- 3.16** The scheme mandates the transfer of social housing at zero consideration based on a fixed ratio of total floorspace in new developments. Proponents of residential development in Ultimo Pyrmont must provide social housing at the rate of 0.8% of total floorspace, while non-residential development attracts a contribution obligation of 1.1% of floorspace. Where contributions of finished units are not practical or desirable, proponents make a pre-notified cash payment in lieu per square metre of floorspace.
- 3.17** The SGS Economics review highlights that the scheme’s low transaction costs, broad scope and relative simplicity have meant that the scheme has been very successful. While the City West scheme has an inner metropolitan city focus that is different to Queenstown Lakes District, the model of a ‘simple’ contribution regime is applicable.
- 3.18** For subdivision in Queenstown Lakes, based on 2021 analysis, a 5% contribution rate translates into a contribution of land or money equal to \$15,600 per lot. This is based on a feasibility study of a 50-lot subdivision in Hāwea⁴. For brownfields, a 2022 feasibility update report considered two brownfield case studies in Queenstown⁵. A 2% levy on sale value results in a total contribution of \$139,130 for a 12 unit development for one case study area and a contribution of \$160,870 (also for a 12 unit development) in a different area, or a range of \$11,594 to \$13,405 per unit. Both case studies involved a net increase of 10 units.

³ <https://sgsep.com.au/publications/insights/the-affordable-housing-beacon-we-sailed-past>

⁴ Attachment 3E to section 32 report:

⁵ Attachment 3F to section 32 report

- 3.19** The QLDC Inclusionary Housing variation concentrates on the residential sector and does not seek to apply contributions to the non-residential sector. This focus reflects the outcome of encouraging the development of sustainable residential communities, and the range of pressures on residential land resources from the likes of second/holiday homes and short-term rentals. As well, residential development is the main form of property investment in the district. Building consent data collected by Statistics New Zealand shows that over the approximately five years from mid-2019 to mid-2023, the value of residential building work has outpaced non-residential work by a factor of at least 3.5 to 1⁶. In addition there are some businesses that are providing accommodation for workers, and while not comprehensive, this is an indication that business activities are likely to respond to stretched housing resources affecting key workers (i.e. they will mitigate some of the impacts on housing resources from their growth). Whether the proposed IH provisions should be extended to cover Visitor Accommodation and other forms of non-residential development in residential areas is an issue raised in submissions.
- 3.20** The point at which payment of the contribution is required varies between subdivision and development and this difference has some bearing on when the contribution is triggered. With subdivision, the contribution can be made a condition of consent and the issuance of the 224c certificate dependent upon the conditions being fulfilled. For development that requires a resource consent, the contribution can be a condition of consent, with that consent running with the land. For permitted development, payment of the contribution can be a standard that the activity must meet. As notified, the variation requires payment within 3 months of the relevant building consent being issued. Whether the point of payment should be issuance of a Code Compliance Certificate is a matter raised in submissions and is discussed below.
- 3.21** In either case I note that Council has limited ability to withhold building consent or Code Compliance Certificates due to a non-building related permitted activity standard not being addressed (i.e. non-payment of the financial contribution for

⁶ \$3,300 million for residential building work and \$900 million for non-residential building. Sourced from building consent data.

an activity that is otherwise a permitted activity). Section 37 of the Building Act provides for the council to stop any building work if a resource consent is required for any matter that may materially affect building work, but it is unclear whether this section can 'hold' building work until a financial contribution is paid.

3.22 While financial contributions can apply to permitted activities, the above matters mean that collection of the contribution from permitted activities can be problematic. Monitoring and compliance become difficult. Non-payment of the contribution becomes a debt collection matter. In contrast, development that triggers a resource and/or subdivision consent provides scope for payment to be a condition of consent. If a development is on-sold without having made payment, then the relevant consent condition remains a matter for the new consent holder to address.

3.23 This matter is addressed further with regards to submissions which suggest that smaller scale development should not trigger the contribution (i.e. one residential unit developed on a site). One option is for the financial contribution to only apply to multi-unit developments. Subsequent subdivision of the multi-unit development into Unit Titles would trigger the contribution and provide a route for compliance monitoring.

4. STATUTORY TESTS

4.1 Appendix 3 sets out the relevant statutory tests for plan changes and variations.

4.2 Of note, section 75 requires that District Plans must give effect to national policy. The National Policy Statement on Urban Development updated 2022 (**NPS-UD**) is the most relevant national policy. Ministry for the Environment guidance states that the NPS-UD is designed to improve the responsiveness and competitiveness of land and development markets. In particular, it requires local authorities to open up more development capacity, so more homes can be built in response to demand. The NPS-UD provides direction to make sure capacity is provided in accessible places, helping to build homes in the places close to jobs, community services, public transport, and other amenities.

- 4.3** QLD is a tier 2 urban environment under the NPS-UD. Section 55 of the RMA provides that the Council must implement the NPS-UD as soon as practicable.
- 4.4** Objective 1 of the NPS-UD seeks to achieve 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. Objective 2 seeks that planning decisions improve housing affordability by supporting competitive land and development markets.
- 4.5** Objectives 1 and 2 are implemented by policies that seek to ensure sufficient supply of land and housing opportunities. Significantly, Policy 1 states that planning decisions should 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. Price is a significant issue in the Queenstown housing market.
- 4.6** Policy 2 requires tier 1, 2, and 3 local authorities, to at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short, medium and long term.
- 4.7** Policy 5 further requires regional policy statements and district plans applying to tier 2 and 3 urban environments to enable heights and density of urban form commensurate with the greater of:
- (a) the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or
 - (b) relative demand for housing and business use in that location.
- 4.8** In terms of methods to implement objectives and policies (including those mandated in national policy), Section 31 of the RMA provides for integrated management of natural and physical resources. In the QLD context, there is a close connection between management of natural resources (like outstanding natural landscapes) and physical resources such as housing.
- 4.9** In particular, the landscapes and landforms of the district constrain options for urban expansion. Much of the district is identified as Outstanding Natural

Landscapes where section 6 of the RMA applies. These constrained options have the effect of concentrating urban growth into corridors, with land values responding.

4.10 The Council has notified a Variation to the Proposed District Plan in response to the NPS-UD, as explained in the evidence of Ms Bowbyes. The IH variation proposes an additional (and complementary) method to implement the NPS-UD. This method is the financial contribution towards affordable housing. The proposed method seeks to provide a relatively simple way of meeting the outcome of subdivision and development resulting in sustainable, mixed income neighbourhoods that contribute to a well-functioning urban environment.

4.11 In terms of the proposed method, Section 108(10) provides that 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.

4.12 Section 32 of the RMA requires an assessment of the appropriateness of proposed objectives and the efficiency and effectiveness of proposed methods in achieving those objectives. A detailed section 32 report and associated technical reports have been prepared. The submissions received on the IH variation, the analysis presented in this report and associated evidence further refines and expands upon the evaluation.

Discussion of statutory tests

4.13 It is clear that the NPS-UD has a focus on increasing housing supply opportunities so as to help contribute to more affordable housing. However, the NPS-UD is not especially directive as to what action should be taken where sufficient / reasonable housing capacity is provided, but house prices and rental levels continue to grow and make housing unaffordable for a large sector of the community. The Council's

most recent Housing and Business Capacity Assessment 2021⁷ concludes that long term plan enabled capacity is for 64,500 additional dwellings. This equates to nearly three and a half times the existing gross level of demand for dwellings within the urban environment over the next 30 years. (that is, an increase of 16,472 dwellings over 2020-2050, in the urban environment). 51,400 dwellings of the plan-enabled capacity represent current feasible development options.

- 4.14** In this context of significant supply, but continually rising land and house prices, I consider it is necessary to refer to Part 2 of the RMA to help address the situation where more housing supply is not the complete ‘answer’ to affordability. In my experience housing supply is a necessary condition, but often not sufficient by itself to deliver on affordability.
- 4.15** Section 5 of the RMA addresses using resources *in a way and at a rate* which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety. Section 5 language is similar to Objective 1 of the NPS-UD.
- 4.16** A stock of affordable housing is an important component of a well-functioning urban environment that provides for people’s and communities’ needs. In the absence of market-based provision of affordable housing, I consider it is reasonable to secure a contribution towards such outcomes.
- 4.17** In terms of methods to implement objectives relating to increased housing affordability, the specific issues associated with financial contributions are discussed further in relation to submissions that question the legality of the variation. At a general level, I note that:
- a. The RMA and NPS-UD do not explicitly exclude the use of financial contributions for affordable housing
 - b. Financial contributions must be in accordance with the purposes specified in the district plan (s77E RMA). No specific purposes are listed in section 77E,

⁷ Currently being updated.

although a district plan may include the purpose of ensuring positive effects on the environment to offset any adverse effect.

- c. Financial contributions do not have to meet the tests under section 108AA that conditions of resource consents must be directly connected to an adverse effect of the activity on the environment.
- d. Financial contributions can be applied to permitted activities.

4.18 I acknowledge that a financial contribution provision must still meet the tests of section 32; that is, that the proposed method is an effective and efficient method in terms of the RMA.

4.19 The section 32 report acknowledges that there could be 'costs' from implementation of the variation. These potential costs cover:

- Additional transaction / consenting costs for developers
- Additional administration costs for council
- Possibility of some housing developments being delayed, not proceeding or having to be sold at a higher price to off-set increased costs.

4.20 On the benefits side of the equation, possible benefits relate to:

- Improved social, economic outcomes for the community
- More effective use of scarce urban land (land is used in a way and at a rate that delivers some affordable housing)
- Reduced rates of displacement of low to medium income household to other settlements (like Cromwell and Kingston).

4.21 These costs and benefits cannot easily be quantified. Benefits are tangible, long term and experienced across a range of social and economic outcomes. Costs tend to be short term and concentrated in particular sectors and are less certain in their extent.

4.22 The largest cost is seen by submitters to be the provisions resulting in less housing being supplied at an increased cost, as developers and subdividers seek to pass on the additional charges to buyers. The section 32 report noted that there may be some temporary effects in the early stages of any new provision, but over time the

extra costs will be absorbed into land values. In principle, the 'cost' of affordable housing contributions will fall on the land seller rather than the developer or end buyer of finished development product. Development will proceed as long as the residual land value after the incorporation of affordable housing requirements maintains a sufficient margin over the value of the land in its next best use. In the case of QLD, there is a large margin between the value of future residential land and rural or rural-residential land uses.

- 4.23** This point is acknowledged by a joint submission on draft provisions provided by the Ministry of Housing and Urban Development and Ministry for the Environment, in October 2021. Their comments noted that “if well designed and signalled well in advance the cost of IZ⁸ will primarily fall on landowners in the long-term. Taking this approach, the cost is a reduction in future value gain, rather than a direct out-of-pocket cost and would get factored into land values and pricing of developable land, recognising the desired outcome from IZ. There is, however, a potential risk to short-medium term feasibility that could have detrimental impacts on the supply of housing by the market, if not managed well. Careful consideration of transition to and introduction of IZ is essential to mitigate this potential risk”.
- 4.24** The evidence of Mr Eaqub discusses the economics of the contribution in more detail. His analysis finds no evidence of IH policies applied to date in QLD increasing house prices.
- 4.25** The section 32 report acknowledged that inclusionary housing policies may impact more on brownfields development feasibility, compared to greenfields, particularly where district plan controls on density are restrictive. This issue is addressed through the proposed contribution rate being lower for brownfields development, as well as recognition of the role of small-scale developments in contributing to affordable housing supply. In addition, as discussed by Ms Bowbyes, the Council has proposed a variation that seeks to expand housing supply in existing built-up areas of the district.

⁸ “IZ” refers to Inclusionary Zoning. QLDC uses the term Inclusionary Housing (or IH) as better reflecting the purpose of the proposed financial contribution, and following discussion with Community Housing Aotearoa on consistent terminology.

- 4.26** Transitional and possible longer-term costs can be best mitigated through a modest, broad-based contribution, the incidence of which can be easily determined as part of development feasibility investigations.
- 4.27** In terms of benefits, the Beca Social Impact Assessment identifies low to moderate social benefits arising from implementation of the variation, compared to the status quo. Benefits would be seen across a broad range of social indicators, with both households that are assisted by the Community Housing Trust, as well as the wider community, experiencing these benefits. The latter benefits, such as a more stable community and less pressure on the housing stock, are important outcomes in terms of social wellbeing under section 5 of the RMA.
- 4.28** The economic report prepared by Mr Equb identifies a range of monetary benefits from application of the financial contribution. The largest benefit is from improved labour market outcomes and stability (reduced turnover), which adds an estimated \$27m-\$53m of economic benefits, discounted over 30 years at 6%. There are modest positive economic benefits from improved mental health, education, and household bills. There are also potential benefits from reduced commute times for some households.
- 4.29** One submitter has provided expert evidence with their submission that contends that the benefits of the proposed provisions (in particular a more stable workforce) are overstated. This point is addressed in the evidence of Mr Equb.
- 4.30** Alongside these sector-specific benefits are the long-term benefits for the sustainable management of natural and physical resources of the District. Land suitable for urban expansion is a finite resource and so it is important that this resource is used in a way and at a rate that supports a range of environmental, economic and social outcomes (including managing impacts of urban growth on the district's prized landscapes and highly productive land). Intensification of the urban footprint is necessary, and it is important that this process also helps deliver a range of housing types at a variety of price points.

- 4.31** While a precise cost-benefit ratio is not able to be generated, my judgement is that over time, benefits will exceed costs by some margin.
- 4.32** These costs and benefits need to be considered alongside the costs and benefits of alternative means of meeting objectives. In this case the main alternative method is enabling more housing supply, both in greenfields and brownfields areas. This method is discussed in more detail in response to submissions calling for more housing and development opportunities. A significant issue with this method is the uncertainty as to whether any affordable housing (new or existing houses) will be delivered.
- 4.33** Overall, I consider that IH variation is an appropriate way of assisting the Council to carry out its functions and achieving the purpose of the Act.
- 4.34** Finally, I note that the Natural and Built Environment Act (NBEA) was passed on 28 August 2023, replacing the Resource Management Act. Implementation of the NBEA is a staggered process, with the first tranche of NBEA plans expected to take 7 to 10 years to develop. In the interim, variations and plan changes that commenced under the RMA continue to be considered as though the RMA is in force.
- 4.35** By way of context, the NBEA puts in place a modified approach to financial contributions, with the term ‘environmental contributions’ used. Environmental contribution is defined in the NBEA as a contribution:
- (a) in money;
 - (b) in land, including an esplanade or esplanade strip (other than if required in respect of a subdivision);
 - (c) as a combination of money and land; but
 - (d) does not include Maori land (within the meaning of Te Ture Whenua Maori Act 1993), unless that Act provides otherwise.
- 4.36** Section 181 sets out the parameters for environmental contributions. Plans must specify the purpose for which the contribution is required. Purposes may include:
- ensuring that positive outcomes as well as positive effects on the environment are achieved;

- making available a mechanism to minimise or offset adverse effects;
- providing an incentive for good environmental design and practice to be adopted; and
- requiring a contribution on account of the increased cost of providing infrastructure to support development in greenfield land.

4.37 Plans must also:

- describe the outcomes in the plan that the contribution supports or contributes to; and
- how the amount of the contribution is to be determined; and
- when the contribution will be required; and
- the local authority with responsibility for administering the rule and to which the contribution is to be applied.

4.38 In short, environmental contributions would appear to be a flexible tool that can be used to achieve a positive outcome, not just address a negative or adverse effect.

5. TOPIC 1/ SUPPORT

5.1 Organisations which have submitted in support of the variation include:

- Centre for Research Evaluation and Social Assessment (CRESA) [OS67]
- Te Whatu Ora, National Public Health Service Southern [OS38]
- Otago Regional Council [OS34]
- Te Wai Pounamu Housing Network [OS52]
- New Ground Capital Limited [OS55]
- Queenstown Lakes Community Housing Trust [OS41].

5.2 In addition, a range of individuals also support the IH Variation.

5.3 Reasons for support include:

- quality and affordable housing are essential for physical and mental health and wellbeing
- affordable housing in residential subdivisions and development may also contribute to equitable access to resources and education, public transport and other facilities and resources for health promotion.

- that a focus on key workers and the need to take pressure off the public and social housing stock will help ensure low and modest income households have affordable housing through intermediate tenures.

Discussion

- 5.4** The Otago Regional Council [submission OS34.1] notes alignment of the plan change with regional policy, in particular Policy UFD-P10:

‘Significant development capacity’ is provided for where a proposed plan change affecting an urban environment meets all of the following criteria: ...
(4) the proposal makes a significant contribution to meeting a need identified in a Housing and Business Development Capacity Assessment, or a shortage identified in monitoring for:
(a) housing of a particular price range or typology, particularly more affordable housing....”

Anticipated Environmental Result (UFD-AER9) include an increased range of housing types and locations and an increased number of dwellings, particularly more affordable housing in existing and planned urban areas.

- 5.5** Some support, such as that of the Queenstown Community Housing Trust [submitter OS41], is conditional upon modifications to the plan change, such as amending the triggers as to when the financial contribution applies (such as excluding small scale infill on existing sites). Modifications to the triggers are discussed in section 5.

- 5.6** The Centre for Research Evaluation and Social Assessment [submitter OS 67] notes that while the proposal is supported in principle, it should not disincentivise subdivision or burden existing and serviced developments. In this regard, I note that the notified Variation seeks to provide a relatively simple, ‘transparent’ route for compliance compared to the much more complex process that was set out in Plan Change 24. This approach, along with relatively modest contribution rates, seek to ensure that new developments will not be disincentivised. This matter is addressed in more detail in Mr Equb’s evidence.

Recommendation

5.7 That the submissions in support be accepted.

6. TOPIC 2 /OPPOSE

6.1 This group of submissions oppose the plan change. The submissions either consider that the plan change is outside the scope of the RMA, or the costs of the plan change will outweigh any benefits. Common points raised include:

- the RMA is not a social policy tool. The use of financial contributions to achieve a social outcome should be rejected [submitter OS68].
- that the variation is not able to be implemented under section 108(1)(a) of the RMA, specifically to impose a financial contribution condition that new residential development contribute to affordability of residential development [OS71].
- the proposal seeks to impose a 'financial contribution' on residential subdivision and development. However, this 'financial contribution' is not to address or mitigate an adverse effect that is associated with residential subdivision and development. The proposal is a tax that the Council seeks to impose through its District Plan under the RMA [OS 124].
- If implemented, the tax would fail to meet the Newbury test because it does not fairly and reasonably relate to the development authorised and is for an ulterior purpose. It also is not reasonable because it is likely to hinder housing development [OS124].

6.2 Some submissions [e.g. OS106.12] suggest that only the introductory sections of the plan change be made operative (such as clauses 40.1 and 40.2) and that the remainder of the proposed chapter 40 be deleted entirely (i.e. 40.3 - 40.8).

6.3 Procedural-type issues are also raised. For example:

- that the proposal be suspended pending Council taking separate declaratory or similar proceedings to clarify the legality of the proposal under the RMA [e.g. OS 64].
- that council apply to the Environment Court for delayed legal effect of any rules under the proposal in accordance with section 86D of the Resource Management Act to ensure the proposal is confirmed as operative before taking legal effect; that is, a date other than the date on which the decision on submissions relating to the rule is made and publicly notified [OS75].

Discussion

- 6.4 Council will present detailed legal analysis as part of its opening submissions.
- 6.5 I consider a number of planning-related points are relevant to the issue of whether the Variation is within scope of the RMA:
- (a) The High Court decision *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council* found that inclusionary zoning is, in principle, possible under the Act and affordable housing is a resource management issue. However, the merits of particular plan provisions (such as advanced by PC 24) were not tested as part of that decision.
 - (b) PC 24 was based on a 'linkage zoning' assessment of new business and housing activities; with employment generated and resulting housing demands for low to moderate income households estimated. The required individual assessments may have found no linkage between new development and affordable housing demands and hence no requirement to provide affordable housing. While this process enabled case-by-case linkages to be identified, it also involved substantial transaction costs for individual developments.
 - (c) Since PC 24, there has been a greater focus on supply of housing opportunities and supporting diversity of residential developments (type, price and location) as ways to provide for social and economic well-being. Section 31 of the RMA has been modified to make more explicit the importance of housing supply when formulating plans. The NPS-UD anticipates local authorities making planning rules influencing the price points as which homes are sold.

(d) The current IH Variation proposes a financial contribution model. Section 108(10) of the RMA anticipates use of financial contributions for resource management purposes. Financial Contributions are not constrained by section 108AA of the RMA which states that conditions of consent must be directly connected to an adverse effect of the activity on the environment. In this context, it is not necessary to have a link between the adverse effect of an activity and a financial contribution.

6.6 On the use of financial contributions, the Environment Court - in *Remarkables Park Ltd v Queenstown Lakes District Council* [2004] NZRMA 433, para 37 - stated that contributions to roads, sewerage, water supply reserves usually fit within the RMA purposes. Contributions towards housing, hospital, education and libraries are not usually required. However when a council has particular regard to the maintenance and enhancement of the quality of the environment and the breath of the latter term, then the social, economic, aesthetic and cultural conditions that affect people and communities appear to allow contributions to be levied for these types of buildings and institutions they house.

6.7 In other words a 'financial contribution' does not have to address or mitigate specific adverse environmental effects that are associated with residential subdivision and development. The contention that the proposal is akin to a 'tax' may or may not be accurate but is not relevant unless it is unlawful to impose such a financial contribution through a District Plan under the RMA.

6.8 Regarding the submissions seeking the use of s86D RMA to delay legal effect, this is an option Council will be able to consider when making decisions on the variation. In my view, it is a matter related to process, rather than the substance of the variation itself.

6.9 I do not support proceeding only with objectives and policies (and not specific methods). The ODP takes this approach, and as far as I am aware the ODP objectives and policies have not be called upon to support any particular affordable housing development since the PDP has been notified and Special Housing Areas have ceased to be a tool. In my view, objectives and policies need to be

accompanied by appropriate methods, otherwise they become 'orphan' provisions.

Recommendation

6.10 That these submissions be rejected.

7. TOPIC 3/ALTERNATIVES

7.1 This group of submitters raise a variety of other methods to help address housing affordability, including RMA and non-RMA tools. RMA based tools generally involve enabling faster and greater housing supply. Non- RMA tools cover funding sources such as rates.

7.2 For example, submitter OS64 suggests that proposed policy 3.3.5.2 be amended to read as follows:

~~Ensure that Provide for increased affordable housing choices for low to moderate income households as a consequence of increased zoning and development capacity. are incorporated into new neighbourhoods and settlements and in redevelopments of existing neighbourhoods.~~

7.3 Submitter OS171 suggests that affordable housing contributions should be negotiated between council and developers where the development will generate greater than a defined number (e.g. >20) of new building lots.

7.4 In contrast, submitter OS103 notes that any financial contribution required to support housing affordability should fall on all members of the community, not the limited pool of people wanting to provide new homes.

7.5 Submitter OS73 suggests that other methodologies such as the taxation across all activities and uses, including tourism, visitor accommodation and residential visitor accommodation activities, commercial, new residential and existing residential, should be explored.

- 7.6** Submitter OS75 seeks that further consultation and research be undertaken to assess ways in which parallel planning incentives should be promoted alongside any inclusionary zoning policy.

Discussion

- 7.7** The issues with addressing housing affordability through enabling or encouraging development are addressed in the evidence of Mr Eaquib. As I have noted in section 3, to date, housing capacity in excess of demand has not reduced house prices in the district. Additional supply could attract more households into the district, fuelling housing demands, for example. Experience to date is that a 'more supply' option has not been effective in delivering affordable housing.
- 7.8** Council has prepared plans to accommodate growth through rezonings and is amending planning provisions that support intensification, but as explained, choices are not plentiful with development confined to obvious corridors. Longer term, the district faces greater constraints on growth options which are likely to impact even more on affordability. Steps taken now to secure a pipeline of affordable housing will have long term benefits. This accords with the need to take into account the foreseeable needs of future generations under section 5(2)(a).
- 7.9** With regard to non-RMA methods, Council investigated the use of rates and/or development contributions during preparation of the variation (see attachment 3 to section 32 report: affordable housing – alternative mechanisms). This work concluded that it was not possible to levy a development contribution for affordable housing under current legislation. A general (or possibly targeted) rate could be struck for housing purposes. To have either a general or targeted rate QLDC would need to identify the activity that the rates revenue is funding in their long-term plan. Rates are paid by existing and new (future) owners of property whether they develop their land or not or benefit from rezoning.
- 7.10** The strategic evidence of Ms Bowbyes outlines the infrastructure investment required to sustain the projected level of growth. Council will have to fund and finance this work through a mixture of rates and development contributions. In this context, there are 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.

7.11 There is no easy solution to the affordable housing problems facing the district. Past experience is that RMA-based provisions (albeit negotiated outcomes as part of private plan changes or through specific vehicles such as Special Housing Areas) have provided the main, long-term source of funding for the QLCHT, and have not resulted in adverse outcomes in terms of delayed or reduced production of housing. This experience also suggests that negotiated outcomes are only viable where there is scope for the Council to seek affordable housing contributions through plan change or consent processes. In the absence of specific requirements, developers are not likely to voluntarily offer to contribute to retained, affordable housing.

7.12 Having said that RMA-based methods are an important source of funding, the scale of the affordability issue facing the district means that other sources of funding for the QLCHT will be required, irrespective of the extent of funding sourced through the Variation. The Variation does not preclude these other sources being accessed.

Recommendation

7.13 That these submissions be rejected.

8. TOPIC 4/EXCLUSIONS

8.1 The Variation proposes to apply a financial contribution to residential subdivisions and developments within urban growth boundaries or other residential zones outside urban growth boundaries; residential subdivisions in a Settlement Zone; and residential subdivision or developments in Rural-Residential Zones, the Wakatipu Basin Lifestyle Precinct and Special Zones.

8.2 A number of submissions seek exemption from the financial contribution regime, either on the basis that specific types of developments provide a form of affordable accommodation, or the development does not result in 'main-stream' residential activities. In contrast, a number of submissions suggest the contributions 'net' be

extended to cover commercial sectors, such as visitor accommodation. Other submissions suggest that the focus of the contribution should be on greenfield developments, not brownfields.

8.3 Issues raised in submissions include:

- (a) That all units in a retirement village, whether managed or independent, should be exempt from affordable housing contributions [submitter OS129].
- (b) That the commercial and visitor accommodation sectors should not be excluded [submitter OS170].
- (c) That worker accommodation be excluded [submitter OS123]. Worker accommodation is suggested by the submitter to mean a residential unit or units owned, leased or otherwise controlled by an employer and rented at an affordable rate as defined by Rule 40.8.1.3 to the employer's staff and/or employees.
- (d) That the plan change be amended to exclude the application of the provisions to all non-urban zones in the district, including the Gibbston Valley Resort Zone, Gibbston Valley Rural Visitor Zone and Gibbston Character Zone [submitter OS168].
- (e) Exemption is sought for development in areas subject to separate agreements that secure affordable housing. For example, that a new objective, policy and method be inserted into Chapter 40 which acknowledges that some developments occur in accordance with a developer agreement with QLDC, and that in such scenarios the provisions of Chapter 40 should not apply [submitter OS25].
- (f) Submitter OS75 seeks that notified policy 40.2.1.4 be amended by adding new limbs (d) and (e) so that it reads as follows:
 - d) Residential units located in a Zone that already contains affordable housing provisions in the district plan, or where previous agreements regarding affordable housing delivery with Council have already been negotiated.
 - e) Residential units principally made available for worker accommodation, community housing, and emergency refuge accommodation.

- (g) That Remarkables Park Special Zone and /or any equivalent zone under the PDP, be excluded from the scope of the variation [submitter OS124].
- (h) That housing and visitor accommodation development within the Millbrook Resort Zone and the district's other resort zones be excluded or exempted [OS117].
- (i) That housing and visitor accommodation development within the Jacks Point Zone and the district's other special and resort zones be excluded or exempted [submitter OS 126].
- (j) Submitter OS72 seeks that two additional limbs be added to 40.6.1.3 as follows;
 - e.) Land identified as meeting the status of one of the following in s129 of the Te Ture Whenua Maori Act 1993:
 - i. Maori Customary land
 - ii. Maori freehold land
 - iii. Crown land reserved for Maori
 - f) land transferred to successors under Ngai Tahu Claims Settlement Act 1998 Part 15.
- (k) Submitter OS127 seeks that 'Sticky Forest' be excluded from the inclusionary housing variation requirements, and that specific reference to this land is included in the exemption at rule 40.6.1 in case the land is up zoned from a rural to residential zoning in due course.
- (l) Submitter OS133 states that affordable housing contributions should be associated with rezoning and subdivision activities rather than building/development activities.
- (m) That 40.6.1.1 be amended to subject subdivisions in the Settlement Zone, the Rural Residential Zone, Wakatipu Basin Lifestyle Precinct and Special Zones to the same criteria as residential subdivisions as notified [submitter OS66].
- (n) That community-led or collective housing which is driven by the residents who will live in the houses they are developing for their residential use should not be subject to the affordable housing contribution and be eligible to receive affordable housing assistance [submitter OS60].

Discussion

8.4 These submissions raise a range of issues as to the appropriate parameters for the proposed financial contribution. As noted in the introductory section, the variation has a focus on the residential sector, recognising that there is a range of residentially oriented pressures on the district's housing resource (such as holiday homes, second homes and residential visitor accommodation). These pressures are not necessarily related to employment and business growth.

8.5 Within this context, the following sub themes are raised by submitters:

- (a) Existing agreements
- (b) Rural-residential and resort type developments
- (c) Worker accommodation and other forms of residential development
- (d) Greenfields only
- (e) Iwi landholdings.

Existing Agreements

8.6 I note that as notified, clause 40.6.1.3 (d) recognises that a residential unit 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 objective 3.2.1.10 and 40.2.1 and their associated policies, are exempt from the provisions.

8.7 It has been suggested that to assist with the interpretation of the above clause, Council will need to provide a schedule of zones and areas where existing agreements apply.

8.8 I agree that 40.6.1.3 (d) should refer to a residential lot or unit located in a Zone that already contains affordable housing provisions.

8.9 I agree it would be appropriate to support the exclusion with a policy, for example:

40.2.1.4 Recognise that the following forms of residential development either provide affordable housing or do not generate pressure on housing resources and should not be subject to the affordable housing contribution:

- a) social or affordable housing delivered by Kāinga Ora, a publicly owned urban regeneration company, the Council or a registered community housing provider;
- b) managed care units in a Retirement Village (as defined by the Retirement Villages Act 2003) or Rest Home (under the Health and Services Disability Act 2001); ~~and~~
- c) Residential Flats, and
- d) A residential lot or unit 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 objective 3.2.1.10 and 40.2.1 and their associated policies.

Rural residential and resort

8.10 In relation to non-urban residential development (such as rural-residential and resort subdivisions and developments), it is appropriate that the residential component of these types of developments contribute to affordable housing provision. Owners and occupiers of residential units in resort zones, rural residential zones and the like generate demand for public services and local employment, for example, yet the very nature of the development means that affordable living options are not provided within the development.

8.11 The section 32 report⁹ made the following comment as to contributions from the various forms and locations of residential development:

“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

⁹ Para 11.40, page 44. Queenstown Lakes District Proposed District Plan Section 32 Evaluation For: Inclusionary Housing Report dated: 18 July 2022

appropriate as these developments also influence house prices and supply of affordable dwellings”.

- 8.12** Furthermore, if the contribution is not applied to rural-residential / resort / special zones, this may create an incentive for further residential development in these areas, to the detriment of more consolidated, compact forms of growth.
- 8.13** The non-urban areas of the district span a range of zones that enable dwellings including the PDP Rural, Rural Lifestyle and Rural Residential zones; a number of Special Zones including Gibbston Valley Resort, Jacks Point and Millbrook Resort; and the two Wakatipu Basin zones (Lifestyle Precinct and Rural Amenity Zone).
- 8.14** The Variation seeks contributions from a sub-set of these zones on the basis of the zones enabling residential type developments, being the following PDP Zones:
- Settlement Zone,
 - Rural-Residential Zone,
 - Wakatipu Basin Lifestyle Precinct,
 - Special Zones¹⁰.
- 8.15** Current estimates of plan enabled dwelling capacity in the rural environment¹¹ in Wakatipu area (particularly within the Wakatipu Basin and the associated Lifestyle Precinct) is space for an estimated 430 additional dwellings. The Gibbston Valley zones provide estimated plan enabled capacity of just over 100 additional dwellings. There is a small amount of capacity in the Rural Residential zone at the southern end of the Jacks Point Special Zone, and in Quail Rise. In total, the Wakatipu Ward has capacity for an estimated 721 dwellings in the rural environment.
- 8.16** In the Wānaka Ward, the majority of rural capacity is in the Cardrona area – primarily in the Rural Zone, but also areas of Rural Lifestyle Zone. There is smaller capacity in a number of Rural Residential Zones around Hāwea and Luggate. In

¹⁰ Special Zones cover Jacks Point; Waterfall Park; Millbrook; Coneburn Industrial; Gibbston Valley Resort zone; Rural Visitor zone; The Hills Resort zone; Hogans Gully Resort zone.

¹¹ Housing Development Capacity Assessment 2021, Queenstown Lakes District, 15 September 2021 – Final, section 5.5.

total, the Wānaka Ward provides estimated plan enabled capacity for 279 additional dwellings in the rural environment.

Worker accommodation and other forms of residential development

8.17 As noted, the Variation focuses on contributions from residential activities. The PDP defines residential activity to mean the use of land and buildings by people for the purpose of permanent residential accommodation, including all associated accessory buildings, recreational activities and the keeping of domestic livestock. For the purposes of this definition, residential activity includes Community Housing, emergency refuge accommodation and the non-commercial use of holiday homes. The definition excludes visitor accommodation and residential visitor accommodation.

8.18 I note that the reference to Community Housing in the definition stems from the Operative District Plan. The definition should be amended to refer to Affordable Housing, as is discussed in topic five.

8.19 While the definition of residential activity excludes residential visitor accommodation, it is important that residential visitor accommodation be included in the IH variation, as otherwise it would be easy for new housing developments to label themselves residential visitor accommodation to avoid the contribution, only to convert to full time occupation as a residential unit at a later stage.

8.20 With regard to an exemption for worker accommodation, the PDP does not define worker accommodation, although a number of submissions offer possible definitions. While I understand the intent to provide for dedicated worker accommodation as a form of affordable housing, the on-going use of such facilities as affordable accommodation (such as affordable rental) would need to be subject to strict monitoring. So-called worker accommodation could be converted to permanent accommodation, even if subject to conditions of consent. Enforcement would be very complex. A submission seeking to introduce the concept of worker accommodation into the PDP was considered in Stage 3 of the plan review (see IHP

Report 20.8¹²). My position is consistent with the Council planner's position, the relevant IHP Report recommendation and subsequent Council decision to reject the inclusion of the term 'worker accommodation' in the PDP in Stage 3.

8.21 The Variation does provide scope for alternative forms of affordable housing to be proposed through consent processes, subject to assessment and if necessary detailed eligibility and retention mechanisms applied as part of consent conditions, as outlined in schedule 40.1. I recommend that no specific allowance be made for 'worker accommodation' as a means of satisfying the requirements of the proposed affordable housing provisions, with any such option considered through resource consent processes.

8.22 Retirement villages contain a variety of living units, from independent units to managed care units. Independent units are essentially a form of residential development and should not be excluded. The notified provisions exclude managed care units in a Retirement Village or Rest Home (as defined by the Retirement Villages Act 2003 or the Health and Disability Act).

8.23 Collective (or co) housing which is driven by the residents who will live in the houses they are developing for their residential use should be subject to the affordable housing contribution. Co-housing is not necessarily retained, affordable housing.

Greenfields only

8.24 A number of submissions suggest that 40.2.1.3 be amended as follows:

~~Ensure~~ Encourage that greenfield rezoning and residential subdivision and development set out in Policy 4.2.1.1 and 4.2.1.2 ~~provides a financial contribution for affordable housing. Avoid subdivision or development for residential activities that does not~~ where that would provide for significant ~~provide a~~ affordable housing contributions, or otherwise ~~does not~~ make appropriate provision to help meet the affordable housing needs of the District.

¹² IHP Report 20.8, paragraphs 37 – 47: <https://www.qldc.govt.nz/media/jgfcskt/qldc-stage-3-report-20-8-settlement-zone-with-appendix-2.pdf>

8.25 To date, inclusionary zoning type approaches have been deployed in greenfields developments – whether these be individually negotiated side agreements or through Special Housing Areas. While greenfields subdivisions will continue, urban redevelopment (brownfields development) will become more prevalent. I do not support confining the scope of the Variation to greenfields developments. Such a move may, in the long term, encourage greenfield rezonings that are inappropriate in landscape and/or environmental terms if this is the only source of contributions.

Iwi

8.26 Iwi have submitted that land that they control, or is likely to be in their control, should not be subject to the provisions. I understand that this is on the basis that they do not want to be in a situation where they may lose ownership of part of the land (for example from a contribution based on land). Furthermore, they have limited landholdings from which to generate financial returns to the Iwi. I also appreciate that through Iwi ownership, the land will be held in their ownership in perpetuity and any development could involve an affordable housing component. In a similar vein other submitters have suggested that particular forms of housing, such as papakāinga housing be recognised as a type of affordable housing.

8.27 While I appreciate the particular circumstances of the Iwi, the affordable housing contribution should generally apply to all forms of residential development. One possible avenue to help address the issue raised would be to modify Policy 40.2.1.5 to include reference to papakāinga housing. This would require a definition of such housing. This is a matter that would be appropriate to be considered via a more comprehensive assessment of papakāinga housing generally in the PDP. The Joint Housing Action Plan 2023 includes Action 3D which seeks the *“opportunity for collaboration with Kāi Tahu to address housing challenges for Māori and improve housing outcomes, including papakāinga housing”*.

Recommendation

8.28 That this group of submissions be rejected, except for:

- a) OS64.14 which is accepted in part, to the extent that this submission (and the same submission made by other submitters) support additional policy that acknowledge previous affordable housing agreements.
- b) OS106.7 in as far as it supports relabelling the ODP definition ‘Community Housing’ as “Affordable Housing”.

9. TOPIC 5/PROVISIONS

9.1 This group covers submissions seeking a range of amendments to the notified objectives and provisions.

9.2 The most common issue raised is the threshold as to when the financial contribution applies. For example whether there should be allowance for building a single house on an existing lot (a lot that existed prior to notification of the Variation), and/or the ability to create one to three new vacant lots and associated residential units without triggering the financial contribution. Many of these submissions appear to have come from single lot holders who may be able to subdivide their existing lot and/or build another dwelling unit on their land.

9.3 The following section discusses relevant submissions under three subheadings, as follows:

- Objectives and Policies
- Triggers
- Technical detail of provisions.

Objectives and Policies

9.4 A range of views have been put forward by submitters on the notified objectives and policies:

- (a) Submitter OS64 suggests that 3.2.1.10 could be amended to add: “affordable housing choices could also be provided in areas that are not new residential development, such as infilling”.

- (b) Submitter OS64 also suggests that Strategic objective 3.2.1.10 is amended to read as follows:

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

- (c) Submitter OS75 proposes that Objective 3.2.1.10 is amended to remove 'low to moderate' income households, or that a definition of low to moderate income households is included within Chapter 2. Definitions.

- (d) Submitter OS75 suggests that policy 3.3.5.2 be amended to read as follows:

~~Ensure that~~ Provide for increased affordable housing choices for low to moderate income households as a consequence of increased zoning and development capacity. ~~are incorporated into new neighbourhoods and settlements and in redevelopments of existing neighbourhoods.~~

- (e) In a similar vein, submitter OS64 proposes that 3.3.5.4 be amended as follows:

~~Require from~~ Incentivize development and subdivision that involves a residential component the transfer of land or money to the Council as a financial contribution towards meeting Objective 3.2.1.10 and policy 3.3.52 and 3.3.53, ~~with contributions primarily sourced from residential subdivision and development within urban growth boundaries~~ by enabling coordinated and well-functioning development outcomes.

- (f) Submitter OS82 states that 40.2.1 be amended to read as follows:

~~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.

- (g) Submitter OS101 suggests that 40.2.1.1 be amended to read as follows:

~~Target~~ Incentivize affordable housing contributions ~~to~~ from residential subdivisions and developments ~~(including Residential~~

~~Visitor Accommodation and independent living units in retirement villages) where housing is in high demand and generally close to employment, educational and community services, being land within Urban Growth Boundaries, or where a through opportunities for expansion or intensification in plan change or resource consent applications seeking to establish urban scale development.~~

- (h) Submitter OS106 suggests that policy 40.2.1.1 be amended to remove 'target' and replace with 'require' or 'apply'.
- (i) Submitter OS106 suggests that policy 40.2.1.3. be amended to remove the word 'avoid'. In their view, the use of 'avoid' provides a strict mandate that may have potential to create negative unintended consequences and does not align with the Discretionary activity status of rule 40.5.2.
- (j) Submitter OS64 suggests that 40.2.1.3 be amended as follows:

~~Ensure Encourage that greenfield rezoning and residential subdivision and development set out in Policy 4.2.1.1 and 4.2.1.2 provides a financial contribution for affordable housing. Avoid subdivision or development for residential activities that does not where that would provide for significant provide a affordable housing contributions, or otherwise does not make appropriate provision to help meet the affordable housing needs of the District~~
- (k) Submitter OS106 notes that Policy 40.2.1.6 addresses two different aspects of contributions, one financial and the other land. They suggest it would be better if these issues were separated and rewritten as clear policies. Further, the policy states that monetary contribution is the preferred form of financial contribution, but this is contradicted by Rules under 40.6.1 which require land contribution for subdivision over 20 lots.
- (l) Submitter OS106 also notes that the final paragraph of 40.1 should be amended to outline how the money collected should be utilised in accordance with the reason that it was collected.

Discussion – objectives and policies.

- 9.5 Notified Objective 3.2.1.10 refers to '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.”

9.6 By reference to ‘new residential developments’, I accept that this policy could be construed to only apply to greenfields developments. This is not the intention. The objective could be amended to refer to ‘new and redeveloping residential areas’ to cover both greenfields and brownfields (as shown in Appendix 1). With this change, I see no need to add the specific words: “affordable housing choices could also be provided in areas that are not new residential development, such as infilling” as suggested by some submitters.

9.7 Submissions note that the term ‘low to moderate income households’ is a relative and subjective term when discussing income, particularly in the context of the QLDC area. It is therefore requested that this term is removed from the plan or low to moderate income households is defined. I note that clause 4.10 of the Operative District Plan refers to low to moderate income households and that these terms are defined. These definitions are carried over into PDP Chapter 2 (Definitions) as follows:

- Low Income - Means Household Income below 80% of the Area Median Income.
- Moderate Income - Means Household Income between 80% and 120% of the Area Median Income.

As a result, I see no need for the district plan to expand further as to what is meant by low to moderate income households.

9.8 I agree that policy 40.2.1.1 should be amended to refer to applying the financial contribution to residential development, rather than the word ‘target’ as in the notified provisions. This change is shown in Appendix 1.

9.9 Policy 40.2.1.6 says that contributions in the form of money are preferred, yet the rules indicate a preference for land in larger subdivisions. This may be confusing to plan users. In response, I agree that the words “Financial contributions in the form

of a monetary contribution are preferred” could be deleted from the policy (as shown in Appendix 1).

9.10 Otherwise I would not recommend that the objectives and policies be further modified. In particular, I do not agree that they should be changed to set in place an enabling/voluntary approach to the provision of affordable housing, or a policy approach of only focusing on expanding supply options. As discussed, an enabling stance is unlikely to see the supply of affordable housing increased. To date, affordable housing contributions have been provided where the council has some leverage over the relevant developments (such as Special Housing Areas). Additional housing supply options are important, but need to be accompanied by a mechanism that secures part of that supply for affordable housing. Housing supply issues are further discussed in the evidence of Mr Eaquib.

9.11 Finally, I support use of the word ‘avoid’ in policy 40.2.1.3, namely:

Ensure that residential subdivision and development set out in Policy 4.2.1.1 and 4.2.1.2 provides a financial contribution for affordable housing. Avoid subdivision or development for residential activities that does not provide a contribution, or otherwise does not make appropriate provision to help meet the affordable housing needs of the District.

Without a strong policy direction, it is likely that many developments will seek to circumvent the contribution. I note that the policy leaves open the nature and ‘quantum’ of contribution, which is a matter where there is discretion.

Triggers

9.12 Common points raised in submissions as to when the trigger for financial contribution should apply are:

- (a) Submitter OS142 suggests that the proposal be amended to exclude residential section owners with one section.
- (b) That 40.6.1.1 be amended to exclude the family home and the subdivision of the lot the home sits on from the affordable housing contribution [submitter OS107].
- (c) That 40.6.1 (1a.i) be amended by providing an exemption for subdivision of a serviced lot in a zone within the urban growth boundary where the

- record of title was issued prior to the date of the plan change becoming operative and that creates no more than three lots [submitter OS63].
- (d) That Rule 40.6.1.2 is amended so any lot that is existing and serviced at the time the plan change becomes operative should not be required to pay a financial contribution upon the construction of a single residential dwelling [submitter OS65].
- (e) That 40.6.1.2 be amended to provide an exemption for existing serviced allotments where the record of title was issued prior to the date the plan change becoming operative, and where only one residential unit is to be erected on each lot, and an exemption for a dwelling on those lots created pursuant to the existing urban lot exemption [submitter OS60].
- (f) Submitter OS141 proposes that 40.2.4.1 be amended as to add the following exemptions:
- c) residential flats.; and*
 - d) Subdivision lots with a value below \$500,000 (to be reviewed annually by council); and*
 - e) Subdivision lots in satellite townships including Makarora and Glenorchy.*
- (g) That the proposal be amended to exclude contribution requirements for new builds for owner occupiers, but require contribution requirements for investment or secondary houses [submitter OS15].

Discussion – Triggers

9.13 Affordable housing schemes that operate in other jurisdictions often have a threshold of 10 or 20 housing lots or units before relevant provisions are triggered¹³. This threshold reflects the percentage contribution, such as 10% of units or lots being sold at an affordable level, as well as limiting impacts on financial viability of smaller developments. Some schemes have a ‘pro rata’ monetary contribution rate for smaller developments (i.e. developments of less than 10 units provide cash on a pro-rata basis).

¹³ See Chapter 5 of the Issues and Options Report, June 2021, attachment 3a to the Section 32 Report.

- 9.14** An “across-the-board” financial contribution does not need such a threshold or trigger and there are benefits from having a broad, comprehensive approach to the contribution (as discussed by Mr Eaquab). Nevertheless consideration should be given to what level of subdivision or development triggers a contribution. I agree that the notified provisions would benefit from greater clarity as to when the contribution is triggered.
- 9.15** Submissions have a general flavour that any contribution should apply to larger scale developments (e.g. multi-unit developments in brownfields areas – such as redevelopment involving two or three or more new units – or major greenfield developments). Submitters suggest that small scale development such as a single lot subdivision or construction of a single dwelling on a lot should not trigger the contribution. This is because such small-scale development may offer an affordable product, and/or the paying the contribution may represent a significant impact on the financial viability of proceeding with the development.
- 9.16** Looking at small-scale development, as discussed by Mr Eaquab concerns over the impact of the financial contribution on development feasibility can be mitigated through the provisions being co-related with land value uplifts due to expansion of the subdivision and development potential of the land. Developing a single house on a lot is unlikely to see an uplift in the underlying land value; however multi-unit development will more likely see an uplift. Similarly with subdivision – one new lot versus multiple, additional lots.
- 9.17** With regard to ‘small-scale’ subdivisions, the notified provisions refer to contributions applying to subdivisions resulting in more than 1 but less than 20 new lots¹⁴. As has been pointed out in submissions (and is discussed in section 5 below) it would be appropriate for the rule to refer to more than one *additional* (rather than new) lot. The notified provisions therefore already provide for one lot to be created without triggering the contribution. I support this provision. It recognises that subdivision of an existing title to create a single, additional lot can potentially supply an affordable small lot. In my experience such an exemption is unlikely to generate a boundary effect (many repeat single lot subdivisions of a

¹⁴ Rule 40.6.1.1.

larger block). This is due to the time and costs involved in this type of incremental consenting.

9.18 Some submissions (such as the QLCHT) suggest that the exemption be extended to three additional lots from subdivision of existing titles in the urban area. I consider that this scale of exemption could undermine the purpose of the Variation. It also potentially creates an incentive not to maximise the redevelopment of a brownfield site (i.e, develop three units rather than 5 or 6).

9.19 In my opinion it is also appropriate to provide an exemption for development of a single residential unit on a lot. Again this is on the basis of flexibility for small scale development, while recognising there is not likely to be any 'uplift' in land value from the development. It also helps address concerns over how to gather financial contributions from what is likely to be permitted development in most residential zones. I note that a lot (if created once the provisions have legal effect) would have provided a contribution, if the lot was part of a subdivision creating multiple titles.

9.20 I do not agree that new dwellings that are to be the family home, or owner-occupied homes should be exempt, but single dwellings for use as holiday homes or short-term rentals should pay the contribution. Council has no real ability to monitor the use of a dwelling in this way. I note that exemption of a single dwelling on a lot will apply to all forms of residential activity (whether this be primary residence, second/holiday home etc).

9.21 The following amendment is proposed to address the issues raised:

- a) 40.6.1.1 be modified to make it clear that the subdivision contribution only applies when more than one additional lot is created.
- b) 40.6.1.2 be modified so it applies to residential floorspace for any new or relocated units as part of a multi-unit development (that is, the contribution would not apply to development of a single house on a lot).
- c) 40.6.1.3 Exemptions be modified to include the following:

(e) contributions in accordance with 40.6.1.2 (a) and (b) do not apply to development or replacement of a single residential unit on a lot.

Detailed technical provisions

9.22 In terms of technical issues, examples of issues raised in submissions are:

- (a) That the timing of payment of financial contribution for development be changed to be prior to granting of code of compliance [*sic, Code Compliance Certificate*] rather than issue of building consent [submitter OS 46].
- (b) That 40.6.1.4 be amended so that the cost of the valuer be included within the contribution as needed [submitter OS 65].
- (c) That a new definition is included for 'residential floorspace' as below:
Means any floorspace in a building that accommodates a residential activity, except the floor area of any garage or carport, outdoor areas and any area as part of a Residential Flat [submitter OS106].
- (d) That the proposal be modified to include a credit regime enabling developers and employers to be awarded credit for affordable worker or residential accommodation provided above the threshold [submitter OS104].
- (e) The term 'is capable of containing' in Rule 40.5.2 be deleted or clarified. 'Capable of' is not a good measure, as the subdivision or development may not reach what it is capable of. For example, a site in a residential zone but not used for a residential activity would be captured as it is capable of containing a residential unit regardless of actual or proposed use. Therefore, the rule should only consider what is proposed rather than anticipate what activity might go on a site [submitter OS106].
- (f) The wording of the rule 40.6.1(1)(a) relating to new lots creates ambiguity, as for a two-lot subdivision two new lots are created, however there is only one net additional lot. Furthermore, for a boundary adjustment where no net additional lots are created two new lots will still be created. The following amendment is proposed [submitter OS106]:

40.6.1.1 An Affordable Housing Financial Contribution shall be provided to Council as follows:

1. Subdivisions:

a. Residential subdivisions within urban growth boundaries or other Residential Zones outside urban growth boundaries:

i. resulting in 1 to 19 net additional ~~more than 1 but less than 20 new~~ lots: a monetary contribution shall be paid to the Council equal to 5% of the estimated sales value of serviced lots; or

ii. resulting in 20 or more net additional lots: a contribution of a monetary and land comprising 5% of serviced lots transferred for no monetary or other consideration to the Council.

- (g) Rule 40.6.1.1 refers to affordable lots being provided unencumbered. The term unencumbered should be further specified as subdivided lots are often encumbered through rights-of-way, easements, covenants and/or consent notices. These may be appropriate and/or required to create a desirable character and amenity for a subdivision or comprehensive development [submitter OS106].
- (h) That a new definition is included in Chapter 2 of the PDP for 'affordable housing' as below, rather than be incorporated into Chapter 40 [submitter OS 106]:

Affordable housing 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 repayments, 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.

- (i) That the use of 'residential subdivision and development' throughout the plan is reconsidered. 'Subdivision and development' is defined as: 'Includes subdivision, identification of building platforms, any buildings and associated activities such as roading, earthworks, lighting, landscaping, planting and boundary fencing and access/gateway

structures.' If this is applied to the inclusionary housing provisions it could capture a very wide range of activities including minor alterations to buildings, and smaller subdivision activities such as boundary adjustments and require contributions from subdivisions undertaken for the purposes of establishing infrastructure [submitter OS106].

- (j) That 40.4.3 should not refer to external documents that are updated or new editions published over time. There is a large amount of uncertainty introduced with referring to an external document that Council has no control over [submitter OS106].
- (k) Rule 40.6.3 addresses staging of subdivision or development. Submissions seek that it be amended to provide for stage 1 of multiple stage developments to have no contribution to recognise the large financial outlay at the beginning of a subdivision [submitter OS106].

Discussion – Detailed Technical Provisions

9.23 The following section discusses key aspects of the proposed provisions in the context of the above submissions. The section follows the order of the proposed rules (Rule 40.4 onwards).

9.24 Clause 40.4 sets out a number of matters relating to interpretation of the rules. 40.4.1 and 40.4.2 cover when payment must be made. 40.4.2 refers to payment within three months of the issue of Building Consent. I agree it is appropriate to reference the financial contribution being payable upon a Code Compliance Certificate being issued, rather than building consent. Not all building consents issued will be actioned. The recommended amendment to rule 40.4.2 proposes payment must be made within three months of the Code Compliance Certificate being issued.

9.25 For developments, contribution may be based on the sales value of the unit, or a flat fee per square metre (not unlike Council's development contribution policy for reserves). While the flat fee per square metre of residential floorspace provides a clear and measurable means of compliance, the approach comes with the complication that the flat fee does not change over time (such as by indexation to inflation or building costs). Clause 40.4.3 seeks to ensure that the option of a flat

fee retains currency by reference to an external cost index (Statistics New Zealand Producer Price Index for Construction Outputs - EE11 Building construction SQUEE1100). A submission [OS106] questions whether this reference to an undated external document is appropriate. I note that this price index is publicly available. The index is updated quarterly. The update to the index does not change the basis of its calculation, it just adds the most recent quarterly figure. In this context, the reference is not to a document or guideline within the meaning of clause 30 of RMA Schedule 1. The most recent index does not introduce new or modified criteria or outcomes that make a material difference to how a contribution is to be applied. The alternative to referring to an index is Council preparing and notifying a plan change from time to time to update the per square metre rate, which is cumbersome.

9.26 I note that there are few district plan examples to draw upon as to how monetary contributions can be kept current, as most district plans do not contain detailed financial contribution requirements. One district that does – Western Bay of Plenty – appears to prepare a schedule of works, and hence the actual amounts payable, that is updated each year through the LTP and/or Annual Plan process under the Local Government Act. With regard to indexation within the district plan, Chapter 11 of the Western Bay of Plenty Operative District Plan, in reference to a specific structure plan area, notes that¹⁵ “in accordance with the Rangioru financial contribution schedule in Appendix 7 (specified dollar amount per square metre of site area so used), adjusted annually to reflect updated construction cost estimates or completed actual construction costs, and the financing costs (based on the New Zealand Official Cash Rate plus 1.5%)”.

9.27 One option could be to bring 40.4.3. into 40.6.4 so that reference to the construction cost index is a standard, rather than an advice note. This amendment is contained in Appendix 3. I would also suggest that the base year for the indexation be nominally made June 2024 (i.e. when decisions on submissions may be released).

¹⁵11.8 Additional financial contributions that apply to specific Structure Plan Areas, clause (iv),

- 9.28** Clause 40.4.4 provides a definition of residential floorspace. Submissions seek an extension of the definition to clarify that accessory buildings and outdoor areas are not part of a residential activity. I agree that, for the purposes of Chapter 40, this amendment is appropriate as it helps to clarify how the contribution is to be calculated. I do not agree that the definition should exclude residential flats. The exclusion of residential flats is provided for under rule 40.6.1.3 (a). The recommended amendments to 40.4.4 are shown in Appendix 1.
- 9.29** Clause 40.5.1 and 40.5.2 set in place the basic framework of a standard to be met, with non-compliance being a discretionary activity. One submission (OS54) suggests that the activity status for non-compliance with the standard should be non-complying or prohibited. In my view discretionary status is sufficient to address the issues arising from applications that seek to exempt themselves from the standard. In this regard, I note the importance of the use of ‘avoid’ in policy 40.2.1.3.
- 9.30** Clause 40.6.1 sets out the financial contribution rule. It states that subdivision or development that is proposed to contain or is capable of containing residential lots or units (including residential visitor accommodation units and independent living units in retirement villages) must provide the contribution. Submissions state that the term ‘is capable of containing’ is subjective. The terminology is used to address the situation where the intended use of lots or units is left uncertain at the development or subdivision stage as a means of avoiding the contribution (such as a development being termed a mixed-use development or visitor accommodation development). Submissions are concerned that the clause may see the Council interpret the provision so as to apply the contribution based on a maximum development envelope of lots, when in reality actual development may be much less. I note that the potential for additional or different use of lots to that shown on a subdivision plan is partly addressed through clause 3 of 40.6.1 (the so called top up provision). This captures multi-unit developments on lots where only a single unit was contemplated at the subdivision stage (and where a ‘single’ contribution was provided). However, this clause does not address situations where proposed lots are labelled in a way that seeks to avoid the contribution. In

this context I consider that the wording 'is capable of containing' is necessary and should be retained.

- 9.31** 40.6.1.1 sets out the financial contribution for subdivisions. I agree with submissions that the rule should be clarified so that they refer to 'additional lots' or similar. This is, for example, where a parent lot is subdivided into three lots. In this case three new lots will be created, but only two additional lots are formed. The recommended amendments are shown in Appendix 1.
- 9.32** 40.6.4 provides for valuation where cash is preferred or offered in place of land. Submissions suggest that this clause could be placed under 40.4 – Interpretation. I do not agree, as clause 40.6.4 has the effect of a standard that should be followed, rather than an advice note. A standard is needed to help determine how a valuation should be prepared. Submissions suggest that the cost of a valuers report should be deducted from any contribution. I do not agree with this, as council will not be able to manage the cost of such valuations.
- 9.33** 40.7.5 states that affordable lots provided in accordance with 40.6.1 I (a) (ii) shall be located within the development site, serviced and unencumbered. The term 'unencumbered' is important, in that lots to be offered as fulfilment of the contribution may be subject to consent notices or covenants that restrict the number and types of units on them. Council (and or the Housing Trust upon transfer) may not be able to remove these constraints. However some lots may be encumbered by consent notices or covenants that relate to environmental features or infrastructure requirements and should remain upon transfer. To address this, the term unencumbered could be qualified to refer to encumbrances that relate to the number, size or design of buildings.
- 9.34** 40.7.6 relates to where development is to be staged, with the affordable housing contribution to be provided as each stage proceeds, on a proportionate lot basis. One submission [submitter OS106] calls for the ability to defer contributions to later stages (for example to enable a development to get underway, or in other cases, affordable lots may be best located in a different stage – for example where the lots are proximate to a proposed neighbourhood centre). I consider the

notified rule to be the more appropriate approach as it helps to ensure that the contribution is not continually deferred to later stages (which then may never proceed). I note that there is the ability to defer contributions as managed through consent processes – which allows for appropriate conditions to be imposed.

Recommendation

9.35 It is recommended that the submissions in this topic group be rejected, except for the following submissions which should be accepted in part:

- a) Submissions OS41.1 and OS41.3 as they relate to the exemption from the financial contribution of a single lot subdivision and the construction of a single dwelling on an existing title.
- b) Submission OS64.7 as it relates to changes to notified Objective 3.2.1.10.
- c) Submission OS106 as it relates to amending policy 40.2.1.1 by removing the word 'target' and replacing it with 'apply'.
- d) Submission OS106 as it relates to deletion of the first sentence in Policy 40.2.1.6.
- e) Submission OS175.2 as it relates to including residential visitor accommodation in Policy 40.2.1.3 which aligns the policy with the relevant rule.
- f) Submission OS14.29 as it relates to using the word “must”, rather than “shall” or “should” in Policy 40.2.1.7 and 40.2.1.8 so as to strengthen the requirement for the financial contribution to go towards the provision of affordable housing.
- g) Submission OS46.7 as it relates to use of the term “code compliance certificate” rather than building consent in 40.4.2.
- h) Submission OS106.26 as it relates to changes to the definition of residential floorspace.
- i) Submission OS106.7 as it relates to amending the title of the definition of “community housing” to “affordable housing”.

10. RECOMMENDED AMENDMENTS TO VARIATION

10.1 Based on the above submissions and associated discussion, I have recommended a number of changes to the notified text. The majority of these changes seek to

clarify the intent of the provisions and how they are to be implemented. These proposed changes are set out in Appendix 1.

10.2 The most substantive policy change relates to clarification that the financial contribution would not apply to:

- (a) subdivision creating one additional lot;
- (b) the building of a single house on a lot;
- (c) development on vacant lots that exist prior to the variation having legal effect.

10.3 The 'single lot/single house' exemptions are anticipated to enable small scale development of individual lots, assisting owners to provide a variety of housing types. In terms of section 32AA, costs and benefits are:

Benefit	Cost
Enables single lot owners to subdivide and develop, maintaining a range of housing supply options	Less revenue for affordable housing via work of the Trust
May enable smaller, more affordable house and land developments	May undermine equity principle of a 'broad-based' contribution being more sustainable than a contribution targeted at specific types of residential development
Reduced monitoring and enforcement processes for Council e.g. seeking payment of financial contributions from permitted development.	Further exemptions may see increased applications to circumvent the FC requirements on a 'me-too' basis.

10.4 There are risks in both acting and not acting. The risk of acting is that the exemption of single lot/single house developments may create an incentive to subdivide and develop 'lot-by-lot'. The risk of not acting is that the provisions are seen to be not proportionate to the impact that small scale development has on housing affordability.

10.5 The vacant lot exemption – for vacant lots that exist before the variation takes legal effect – will reduce the number of lots subject to the financial contribution and hence the ability of the QLCHT to deliver affordable housing. This cost needs to be

weighed against the issues involved in the provisions potentially seen to be 'winding back' the development potential of such land.

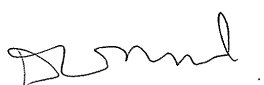
10.6 In terms of other less substantive changes, the following points are noted:

- (a) Modification of Policy 40.2.1.4 to include reference to existing agreements as being a basis for exemption will assist with administration of the provisions. The additional leg to the policy gives support to the equivalent rule. This change will improve the effectiveness of the proposed rule.
- (b) Relocating 40.2.1 (construction cost index) to 40.6.1.4 – Interpretation of standards. This will assist with giving certainty to the method by which contributions are to be calculated. The interpretation section of 40.6.1.4 has the status of a rule or standard.

11. CONCLUSION

11.1 On the basis of the analysis set out in this report, I recommend that the changes within the Recommended Revised Provisions in **Appendix 1** be accepted by the Hearing Panel, and that submission points are accepted or rejected by the Hearing Panel as set out in **Appendix 2**. The substantive changes have been assessed in accordance with Section 32AA of the RMA and will improve the efficiency and effectiveness of the notified provisions.

11.2 The changes will improve the operability of the notified version, ensuring that a regular funding source for retained affordable housing is established to assist with addressing one of the key resource management issues facing the district that is unlikely to be solved through housing supply alone.



David Mead

14 November 2023

APPENDIX 1

Recommended Revised Provisions

Strikethroughs indicate deletions and underlines indicate additions

Proposed District Plan

Chapter 3: Strategic Direction

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~~ and redeveloping residential areas so that a diverse and economically resilient community representative of all income groups is maintained into the future.

3.3 Strategic Policies

Inclusionary housing

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

3.3.53 Ensure that affordable housing provided in accordance with Policy 3.3.52 is retained to meet the long term needs of current and future low to moderate income households.

3.3.54 Require from development and subdivision that involves a residential component the transfer of land or money to the Council as a financial contribution towards meeting Objective 3.2.1.10 and policy 3.3.52 and 3.3.53, with contributions primarily sourced from residential subdivision and development within urban growth boundaries.

40 Inclusionary Housing

40.1 Purpose

The purpose of this chapter is to make provision for housing choices for low to moderate income households in new neighbourhoods and in redevelopments of existing neighbourhoods.

The combination of multiple demands on housing resources (including proportionately high rates of residential visitor accommodation and holiday home ownership, along with visitor accommodation developments in residential areas); geographic constraints on urban growth and the need to protect valued landscape resources for their intrinsic and scenic values, means that the District's housing market cannot function efficiently. This has long term consequences for low to moderate income households needing access to affordable housing. In turn, this has adverse outcomes for the integrated and sustainable management of natural and physical resources, including pressure for additional urban expansion, displacement of lower income households to outlying settlements, and reduction of social and economic wellbeing.

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.

The rules in this chapter apply to most forms of subdivision and development for residential activities. Provision is made for affordable housing by imposing a standard requiring a financial contribution to be made. This Chapter sets out the purpose of the financial contribution, and the manner in which the level of contribution (i.e. the amount) is determined. The financial contribution to be provided to the Council is for a different purpose to any development contribution listed in the Council's current contributions policy and is imposed in addition to a development contribution.

The primary means of implementation of contributions received by the Council will be through the work of the Queenstown Lakes Community Housing Trust.

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.

Policies

40.2.1.1 ~~Target~~ Apply affordable housing contributions to residential subdivisions and developments (including Residential Visitor Accommodation and independent living units in retirement villages) where housing is in high demand and generally close to employment, educational and community services, being land within Urban Growth Boundaries, or where a plan change or resource consent seeks to establish urban scale development.

40.2.1.2 Require 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.

- 40.2.1.3 Ensure that residential subdivision and development set out in Policy 40.2.1.1 and 40.2.1.2 provides a financial contribution for affordable housing. Avoid subdivision or development for residential activities and Residential Visitor Accommodation that does not provide a contribution, or otherwise does not make appropriate provision to help meet the affordable housing needs of the District.
- 40.2.1.4 Recognise that the following forms of residential development either provide affordable housing or do not generate pressure on housing resources and should not be subject to the affordable housing contribution:
- a) social or affordable housing delivered by Kāinga Ora, a publicly owned urban regeneration company, the Council or a registered community housing provider;
 - b) managed care units in a Retirement Village (as defined by the Retirement Villages Act 2003) or Rest Home (under the Health and Services Disability Act 2001); ~~and~~
 - c) Residential Flats: and
 - d) A residential lot or unit 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 objective 3.2.1.10 and 40.2.1 and their associated policies.
- 40.2.1.5 Determine the amount of financial contributions in consideration of the following matters:
- a) The longer-term demand for affordable housing;
 - b) The impact of a contribution on the commercial feasibility of development at an area-wide scale and over different time periods;
 - c) The differences in commercial feasibility between greenfields and brownfields urban development; and
 - d) Whether the subdivision and development is located inside or outside of Urban Growth Boundaries.
- 40.2.1.6 ~~Financial contributions in the form of a monetary contribution are preferred.~~ Contributions in the form of land must be lots located within the subdivision site. Contributions of lots located outside the subdivision site may only occur where this leads to a superior outcome in terms of access by future residents to services and community facilities.
- 40.2.1.7 Financial contributions received by the Council ~~shall~~ must be used for the purposes of providing affordable housing for low to moderate income households.
- 40.2.1.8 Provision of affordable housing by means other than a financial contribution to Council (such as direct transfer of land or units to a Registered Community Housing Provider or to a low to moderate income household) ~~should~~ must only occur in exceptional circumstances and must include appropriate eligibility criteria and retention mechanisms.

40.3 Other Provisions and Rules

40.3.1 District Wide

Attention is drawn to the following District Wide chapters.

1 Introduction	2 Definitions	3 Strategic Direction
4 Urban Development	5 Tangata Whenua	6 Landscapes
25 Earthworks	26 Historic Heritage	27 Subdivision
28 Natural Hazards	29 Transport	30 Energy and Utilities
31 Signs	32 Protected Trees	33 Indigenous Vegetation and Biodiversity
34 Wilding Exotic Trees	35 Temporary Activities and Relocated Buildings	36 Noise
37 Designations	39 Wahi Tupuna	District Plan web mapping application

40.4 Interpreting and Applying the Rules

40.4.1 Financial contributions of money from a subdivision activity must be paid to the Council before the issue of a certificate under section 224(c) of the RMA. Where land forms part or all of a contribution, all necessary legal agreements to ensure implementation of such a contribution must be completed and executed before the issue of a certificate under section 224(c) of the RMA.

40.4.2 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 ~~building consents Code~~ Compliance Certificate under the Building Act 2004. If land forms part or all of a contribution, all necessary legal agreements to ensure implementation of such a contribution must be completed and executed before the issue of the necessary ~~building consents Code~~ Compliance Certificate under the Building Act 2004.

~~40.4.3 Where a rule specifies a set monetary contribution per square metre of floorspace, this amount shall be adjusted in accordance with the most recent changes to Statistics New Zealand Producer Price Index for Construction Outputs – EE11 Building construction SQUEE1100, with March 2023 as the base year.~~

40.4.4 For the purposes of this Chapter, residential floorspace is defined as any floorspace in a building that accommodates a residential activity, except the floor area of any garage, ~~or~~ carport, accessory building or outdoor area.

40.4.5 Where an activity does not comply with a standard listed in the standards tables, the activity status identified by the 'Non-Compliance Status' column shall apply. Where an activity breaches more than one Standard, the most restrictive status shall apply to the Activity.

40.4.6 The following abbreviations are used in the following tables. Any activity which is not permitted (P) or prohibited (PR) requires resource consent.

P – Permitted	C – Controlled	RD – Restricted Discretionary
D – Discretionary	NC – Non – Complying	PR - Prohibited

40.5 Rules – Activities

	Activities - Inclusionary Housing	Activity Status
40.5.1	Subdivision or development that is proposed to contain or is capable of containing residential lots or units (including residential visitor accommodation units and independent living units in retirement villages) and provides an affordable housing financial contribution in accordance with standard 40.6.1.	P
40.5.2	Subdivision or development that is proposed to contain or is capable of containing residential lots or units (including residential visitor accommodation units and independent living units in retirement villages) which does not provide an affordable housing financial contribution in accordance with standard 40.6.1.	D

40.6 Rules – Standards

	Standards - Affordable Housing	Non-compliance status
40.6.1	<p>An Affordable Housing Financial Contribution shall be provided to Council as follows:</p> <ol style="list-style-type: none"> 1. Subdivisions: <ol style="list-style-type: none"> a. Residential subdivisions within urban growth boundaries or other Residential Zones outside urban growth boundaries: <ol style="list-style-type: none"> (i) resulting in more than 1 but less than 20 new <u>additional</u> lots: a monetary contribution shall be paid to the Council equal to 5% of the estimated sales value of the <u>additional</u> serviced lots; or (ii) resulting in 20 or more <u>additional</u> lots: a contribution of land comprising 5% of <u>additional</u> serviced lots 	D

	Standards - Affordable Housing	Non-compliance status
	<p>transferred for no monetary or other consideration to the Council.</p> <p>b. Residential subdivisions in a Settlement Zone, Rural-Residential Zone, Wakatipu Basin Rural Amenity Zone Lifestyle Precinct or Special Zone <u>creating more than 1 additional lot</u>:</p> <p>(i) A monetary contribution shall be paid to the Council equal to 1.0% of the estimated sales value of the <u>additional</u> lots created.</p> <p>2. Development:</p> <p>a. Residential floorspace for any new or relocated units <u>as part of a multi-unit development</u> on lots that have not been subject to a financial contribution under 1 (a) above: A monetary contribution shall be paid to the Council equal to the lesser of:</p> <p>(i) 2.0% of the estimated sales value of <u>each additional unit</u> of the additional units, or</p> <p>(ii) \$150 per sqm of the net increase in residential floorspace.</p> <p>b. Residential floorspace for any new or relocated units <u>as part of a multi-unit development</u> on lots that have not been subject to a monetary contribution under 1 (b) above: A monetary contribution shall be paid to the Council equal to:</p> <p>(i) \$75 per sqm of the net increase in residential floorspace.</p> <p>c. For new residential <u>floorspace involving multi-unit developments of more than 1 unit</u> on lots that have provided a monetary contribution under 1(a) above, a 'top up' monetary contribution shall be paid to the Council, equal to the formula (A) – (B):</p> <p>With (A) being the lesser of:</p> <p>2.0% of the estimated sale value of the additional units, or</p> <p>\$150 per sqm of the net increase in residential floorspace, and</p> <p>(B) being the per lot contribution paid under 1(a).</p> <p>3. Exemptions:</p> <p>For the purposes of this standard, the following types of residential activities shall not be counted as contributing to the</p>	

	Standards - Affordable Housing	Non-compliance status
	<p>total number of residential units in a development, nor be counted towards fulfilling the requirement of 40.8.1:</p> <p>(a) a Residential Flat</p> <p>(b) social or affordable housing delivered by Kāinga Ora, a publicly owned urban regeneration company, the Council or a registered community housing provider that complies with the requirements of Schedule 40.1, where affordable housing comprises at least 10% of the dwelling <u>residential</u> units in the development; or</p> <p>(c) a managed care unit in a Retirement Village or Rest Home (as defined by the Retirement Villages Act 2003 or the Health and Disability Act), or</p> <p>(d) a residential <u>lot</u> or residential unit 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 objective 3.2.1.10 and 40.2.1 and their associated policies.</p> <p><u>(e) contributions in accordance with 2(a) and (b) do not apply to development or replacement of a single residential unit on a lot.</u></p> <p>4. Interpretation:</p> <p>a. The estimated sales value of lots, units or residential floorspace shall be determined by a valuation report prepared, at the applicant's expense, by a Registered Valuer (as mutually agreed by the Council and the applicant) within the 3 months prior to the financial contribution being paid. In the event of disagreement, the Council shall appoint a valuer to determine the matter.</p> <p>b. <u>Where a rule specifies a set monetary financial contribution per square metre of floorspace, this amount shall be adjusted in accordance with the most recent changes to Statistics New Zealand Producer Price Index for Construction Outputs - EE11 Building construction SQUEE1100, with March June 2023³⁴ as the base year.</u></p>	
40.6.2	Affordable lots provided in accordance with 40.6.1.1. a. ii. shall be located within the development site, serviced and unencumbered <u>by covenants or consent notices that limit the number, size or design of buildings on the lots.</u>	D
40.6.3	Where development is to be staged, the affordable housing contribution is to be provided as each stage proceeds, on a proportionate lot basis.	D

40.7 Assessment Matters

40.7.1 Discretionary Activities

40.7.1.1 The amount of the contribution

- a. Whether the site or development has unique or unusual characteristics that would mean full provision of the required number of affordable lots or monetary contribution imposes a significant financial burden on the development that would make the development unviable, as demonstrated by a site-specific development feasibility assessment that utilises industry accepted assessment methodologies, and an alternative mix or contribution is appropriate. It is expected that a full assessment of costs will be provided based on an “open book” approach i.e. the developer will be expected to make all of the relevant cost information available.

40.7.1.2 Land versus monetary contribution

- a. Whether the contribution is more appropriately provided in the form of money rather than land (lots) due to the location of the lots; their size and/or on-going high costs of upkeep (including resident’s society or body corporate fees or similar).

40.7.1.3 Off-site provisions

- a. Where lots are required, whether off-site locations may be considered for all or part of the requirement where:
 - i. there are exceptional reasons to avoid on-site provision, such as the site being poorly located for affordable housing, and/or
 - ii. the alternative sites are in close proximity to the development (i.e. within 2kms) and offer a superior outcome in terms of improved access to services and transport and or improved mix of dwelling types. Particular consideration will be given to whether the off-site provision will better address priority needs, particularly family housing, and/or
 - iii. the applicant has entered into a legally binding agreement with a Council approved community housing provider who can demonstrate that on-site provision will not meet their operational requirements and that an off-site location will deliver a superior outcome in terms of the number, mix and/or on-going management of the required retained affordable housing.

40.7.1.4 Staging of ~~dwellings~~ residential units and/or lots

- a. Deferral of provision of affordable lots or units to subsequent stages should generally not occur.
- b. Whether delayed delivery of the affordable dwellings or lots can be appropriately secured through a suitable binding agreement with the Council, the terms of which may include a bond.

40.7.1.5 Alternative forms of contribution

- a. Alternative forms of contribution to that specified in 40.8.1 (such as sale of lots or units direct to a Community Housing provider or a low to moderate income household) should not result in a lesser contribution.
- b. Transfer of lots or units should involve an appropriate retention mechanism and be subject to eligibility criteria (as specified in Schedule 40.1).
- c. Alternative forms of contribution should only be considered where exceptional circumstances apply.

40.8 Schedule 40.1

Where a financial contribution is not provided, and an alternative solution proposed, then the requirements in 40.8.1 must be met by compliance with the following:

Retention Mechanism

40.8.1.1 The lot or floorspace being sold to an eligible buyer with a legally enforceable retention mechanism which is fair, transparent as to its intention and effect and registrable on the title of the property, including, but not limited to, a covenant supported by a memorandum of encumbrance registered on the certificate of title or consent notice under the RMA, that:

- a. limits ownership and re-sale (including a future residential unit in the case of a vacant site subdivision) to:
 - (i) a registered community housing provider, Kāinga Ora, a publicly owned redevelopment agency or a registered community housing provider, or
 - (ii) an occupier who is approved by the council as meeting the eligibility criteria below, and
- b. limits rent and resale to an eligible buyer based on a formula that ensures that the lot or dwelling remains affordable into the long term, including a future residential unit in the case of vacant site subdivision; and
- c. prevents circumvention of the retention mechanism and provides for monitoring of the terms of the retention mechanism covenant or consent notice and the process should those terms be breached including where occupiers have defaulted on the mortgage and lenders seek to recover their interests in the property, and
- d. is legally enforceable by the council in perpetuity through the means of an option to purchase in favour of the council at the price determined in accordance with (e), supported by a caveat.
- e. at the time of resale, requires the reseller to:
 - (i) apply the same formula used to determine the price of the original purchase;
 - (ii) allows the reseller to recover the cost of capital improvements made subsequent to purchase, approved by the council at a value determined by a registered valuer.

Eligibility

40.8.1.2 For the purposes of 40.10.1.1 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 a monetary 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.

Affordability

40.8.1.3 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 repayments, 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.

Definitions

Community Affordable Housing

Means residential activity that maintains long term affordability for existing and future generations through the use of a retention mechanism, and whose cost to rent or own is within the reasonable means of low and moderate income households.

APPENDIX 2

Summary of submission points and recommended decisions

APPENDIX 3

Statutory Tests

A. General requirements - district plan (change or variation)

1. A district plan (change or variation) should be designed to accord with¹⁶ and assist the territorial authority to carry out its functions¹⁷ so as to achieve the purpose of the Act¹⁸.
2. The district plan (change or variation) must also be prepared in accordance with any regulation¹⁹ and any direction given by the Minister for the Environment²⁰.
3. When preparing its district plan (change or variation) the territorial authority must give effect to any national policy statement (including Policies 3, 4 and 5 of the NPS-UD), New Zealand Coastal Policy Statement, and national planning standard²¹.
4. When preparing its district plan (change or variation) the territorial authority shall:
 - a. have regard to any proposed regional policy statement (change)²²;
 - b. give effect to any operative regional policy statement²³.
5. In relation to regional plans:
 - a. the district plan (change or variation) must not be inconsistent with an operative regional plan for any matter specified in section 30(1) or a water conservation order;²⁴ and
 - b. the district plan (change or variation) must have regard to any proposed regional plan (change) on any matter of regional significance etc.²⁵
6. When preparing its district plan (change or variation) the territorial authority must also:
 - have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the New Zealand Heritage List/ Rārangī Kōrero and to any relevant project area and project objectives (if section 98 of the Urban Development Act 2020 applies)²⁶ to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities;²⁷ and to any emissions reduction plan and any national adaptation plan made under the Climate Change Response Act 2002;²⁸
 - take into account any relevant planning document recognised by an iwi authority;²⁹ and
 - not have regard to trade competition or the effects of trade competition:³⁰

¹⁶ RMA, section 74(1).

¹⁷ As described in section 31 of the RMA.

¹⁸ RMA, sections 72 and 74(1).

¹⁹ RMA section 74(1).

²⁰ RMA sections 74(1)(c) and 80L

²¹ RMA, section 75(3).

²² RMA, section 74(2)(a)(i).

²³ RMA, section 75(3)(c).

²⁴ RMA, section 75(4).

²⁵ RMA, section 74(2)(a)(ii).

²⁶ RMA, section 74(2)(b).

²⁷ RMA, section 74(2)(c).

²⁸ RMA, section 74(2)(d) and (e).

²⁹ RMA, section 74(2A).

³⁰ RMA, section 74(3)

7. A district plan (change or variation) must³¹ state its objectives, policies and the rules (if any) and may³² state other matters.

B. Objectives [the section 32 test for objectives]

8. Examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the Act.³³

C. Policies and methods (including rules) [the section 32 test for policies and rules]

9. The policies are to implement the objectives, and the rules (if any) are to implement the policies;³⁴
10. Whether the provisions (the policies, rules or other methods) are the most appropriate way to achieve the purpose of the district plan change and the objectives of the District Plan by³⁵:
 - a. identifying other reasonably practicable options for achieving the objectives;³⁶ and
 - b. assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by³⁷:
 - i. identifying and assessing 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:
 - economic growth that are anticipated to be provided or reduced;³⁸ and
 - employment that are anticipated to be provided or reduced;³⁹
 - ii. if practicable, quantifying the benefits and costs;⁴⁰ and
 - iii. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.⁴¹

D. Rules

11. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment including, in particular, any adverse effect.⁴²
12. Rules have the force of regulations.⁴³
13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive⁴⁴ than those under the Building Act 2004.
14. There are special provisions for rules about contaminated land.⁴⁵
15. There must be no blanket rules about felling of trees⁴⁶ in any urban environment.⁴⁷

³¹ RMA, section 75(1).

³² RMA, section 75(2).

³³ RMA, sections 74(1) and 32(1)(a).

³⁴ RMA, section 75(1)(b) and (c).

³⁵ See summary of tests under section 32 of the RMA for 'provisions' in *Middle Hill Limited v Auckland Council Decision* [2022] NZEnvC 162 at [30].

³⁶ RMA, section 32(1)(b)(i).

³⁷ RMA, section 32(1)(b)(ii).

³⁸ RMA, section 32(2)(a)(i).

³⁹ RMA, section 32(2)(a)(ii).

⁴⁰ RMA, section 32(2)(b).

⁴¹ RMA, section 32(2)(c).

⁴² RMA, section 76(3).

⁴³ RMA, section 76(2).

⁴⁴ RMA, section 76(2A).

⁴⁵ RMA, section 76(5).

⁴⁶ RMA, section 76(4A).

⁴⁷ RMA, section 76(4B).

