

**BEFORE AN INDEPENDENT HEARING PANEL
APPOINTED BY QUEENSTOWN LAKES DISTRICT COUNCIL**

UNDER Resource Management Act 1991

IN THE MATTER of a Variation to the proposed Queenstown Lakes District
Plan (Inclusionsary Housing) in accordance with Schedule 1
of the Resource Management Act 1991

BRIEF OF EVIDENCE OF TIMOTHY PAUL ALLAN
Dated: 19 December 2023

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Qualifications and Experience

- 1 My full name is Timothy Paul Allan.
- 2 I provide this statement of evidence in support of my submission as a ratepayer on the proposed Plan Change Inclusionary Zone (PCIZ), being submission #116 and I am also authorised to make this statement of evidence on behalf of the following submitters:
 - (a) Marama Hill Limited (#112),
 - (b) Koko Ridge Limited (#113),
 - (c) Foley Investment Trust (#114)
 - (d) Mr Wayne Foley (#115),
 - (e) Pine lane Limited (#118),
 - (f) David Reid Homes (#143)
- 3 I hold the degree of Bachelor of Commerce from the University of Canterbury and have post-graduate qualifications in engineering and environmental management.
- 4 I am a Chartered Accountant with the Chartered Accountants Australia and New Zealand.
- 5 For the last 23 years I have promoted developments in the renewable energy, tourism, property, and housing sectors and led large multi-disciplinary project teams to advance these projects through engineering, environmental acceptance, regulatory, commercialisation and construction phases.
- 6 My relevant previous experience includes Water Infrastructure Development Manager at Meridian Energy Limited, Renewable Energy Project Manager at Solid Energy New Zealand Limited and Kainga Ora where I was Manager – Canterbury Investment Plan, Strategy and Implementation and later Development Strategist.
- 7 In my roles at Kainga Ora I was responsible for the team that over 4 years delivered 850 new homes into the post-earthquake Christchurch environment to replace Kainga Ora's housing capacity. Much of this

development involved the early adoption of medium density housing in existing low density suburban settings. My later role had a national focus and included the implementation of strategies that has now resulted in the redevelopment of 139 Greys Ave, Auckland CBD; Epuni, Lower Hutt and other medium density redevelopments around the country in cities such as Hamilton, Porirua.

- 8 I was a Company Director of Creating Communities Limited which was the private development company that developed 331 affordable homes in New Lynn, Auckland. This project was the catalyst for the council led Tamaki regeneration programme which seeks to bring 10,500 new homes to the wider area over the next two decades.
- 9 Among my current directorships, I am:
- (a) a company director of nation-wide house builder David Reid Homes Limited and
 - (b) Development Director of landowner Koko Ridge Limited which is completing subdivision developments within the Queenstown District at Ladies Mile
 - (c) Director of Pine Lane Limited which in conjunction with Marama Hill Limited is further subdividing residential land on Broadview Rise.
- 10 In preparing this statement of evidence, I confirm that I have read the code of conduct for expert witnesses contained in the environment Court practice note and that I agree to comply with it despite this being a council hearing. I confirm that I have considered the section 42 a report, section 32 report and I have considered all the material facts that I am aware of that could alter or detract from the opinions that I expressed in this statement of evidence. I confirm that this evidence is one in my area of expertise as I describe above except where I state that I am relying on the evidence of another person.

Introduction

- 11 In this statement of evidence I address the following matters:
- (a) The proposed plan change does not follow best-practice and misrepresents the concept of an Inclusionary Zone;

- (b) Incorrectly describes a tax as a financial contribution;
 - (c) Describes a nexus between the payment of a tax to the delivery of Affordable Housing where no legal relationship between the Council and a provider exists to deliver affordable housing;
 - (d) Inequitably taxes First-home and New-to-the-district home buyers;
 - (e) Mis-uses the Resource Management Act 1991 for social policy;
 - (f) Examines the Council involvement in social housing and introducing market controls to the housing market – which are both matters that are the responsibility of central government.
- 12 In reviewing the section 42A report for this plan change, there is much I disagree with. I do not comment on every matter on which I hold a different opinion with the author of that report or other evidence. Therefore, the fact that I am silent on some matters should not be taken to mean that I agree with the information and statements made within the section 42A report.
- 13 I also note that the relief requested and the key points in the submissions listed at para 2 have not been summarised correctly and therefore have not been addressed in the section 42A report. Where this is relevant to my opinion, I explain this further. However, I do record my disappointment that these submissions have been summarised in a format that does not express their content and nature.

Background and Scope of Evidence

- 14 I acknowledge that there is a very large difference between housing supply and housing demand in the Queenstown Lakes District (QLD) and this difference is commonly characterised as a housing shortage. This statement of evidence does not diagnose the causes and reasons for the housing shortage.
- 15 However, I do comment on the reasons that I consider the Queenstown Lakes District Council (the Council) have notified a proposal for an inclusionary housing zone that will not solve the housing shortage that exists. In fact in my view, it is very likely to have the perverse outcome of making the supply of housing more expensive, thereby making the housing shortage more acute.

- 16 I also set out in more detail below, why the collection of the proposed development contribution is a levy or tax that does not serve a resource management purpose.
- 17 I therefore consider that the proposed plan change should be rejected in its entirety. It is not the most appropriate way to address the difference between demand and supply for housing in the Queenstown Lakes District because the proposal is poorly conceived and does not have a defined and there is considerable uncertainty as to its implementation.
- 18 Additionally, the Council does not have legal capacity to collect funds for the purpose of paying an unknown third party for a hypothetical project or to introduce market controls into the housing supply sector. This matter is not addressed by me in this statement of evidence but will instead be addressed by way of legal submission.

Poor Problem Definition

- 19 The QLDC has not clearly defined the problem that it is trying to solve by way of the proposed inclusionary housing plan change. There is a clear difference between the demand for housing and the supply of housing in the QLD¹. QLDC considers that the differential between supply and demand is driving the price of housing beyond a level that incomes earned in the region can meet².
- 20 At a policy level, QLDC has responded to demand factors by adopting a spatial plan and proceeding with a policy to address urban development intensification pursuant to the National Policy Statement - Urban Development (NPS-UD).
- 21 However, QLDC has not sufficiently addressed the supply of housing in the lower priced segment of the housing market with its policy responses. In particular, it has not explored partnerships with government agencies to supply social housing at a level that matches income and QLDC is similarly not a supplier of social housing at all.
- 22 Additionally, QLDC has not addressed other housing supply factors such as the costs of development and infrastructure age and capacity issues,

¹ Evidence of Amy Bowbyes

² S42A David Mead

which are the most relevant factors that contribute to the speed and costs of providing brownfield intensification developments and greenfield developments with high housing densities.

- 23 The justification for the Plan Change Variation conflates Inclusionary Zoning and Affordable Housing into something claimed to be Inclusionary Housing. Inclusionary Housing is defined by Community Housing Aotearoa on pg. 10 of their report. Inclusionary Housing is what is commonly understood as Inclusionary Zoning which is a place-based concept. Furthermore, Inclusionary Housing is clearly distinct from Affordable Housing which is also separately defined on the same page of the Community Housing Aotearoa report. The simplest and widely accepted definition of Affordable Housing is that it is housing that costs less than 30% of a household's income.
- 24 The PCIZ purports to implement Inclusionary "Zoning". However, there is no place-based zone proposed as it is intended to apply throughout the entirety of the district.
- 25 This focus on definitions is important as the overarching policy thrust of the Proposed Plan Change Variation is claimed to achieve affordable housing outcomes.
- 26 The PCIZ value is not set on an economic multiplier that is linked to the improvement or an activity of the Council necessitated by managing or ameliorating the effects a development has on the infrastructure or activity. Instead, it has been linked to the anticipated final market value of a product.
- 27 Charging an amount to a developer based on the future potential market value operates as a tax. That is because the value is calculated as a percentage of the final product price and it is compulsory contribution to the revenue of the QLDC, without a defined Council expenditure programme. I consider it is not within the scope of the Council's mandate to introduce controls on the pricing of housing by imposing a financial contribution.
- 28 I consider that the financial contribution provision in the RMA does not provide for the QLDC to impose a charge that has no direct link between the development and activity and the Council's delivery of infrastructure. This point will be further developed in legal submissions.

- 29 The PCIZ will be paid by the first purchaser of a home, which will disproportionately fall on first-home buyers and new-to-the-district homeowners. That is the very market sector that the policy purports to be assisting by providing for “Inclusionary Housing”. However, the PCIZ will fail to address the supply constraints in the housing sector and the transitional risks if the PCIZ is implemented will do irrecoverable harm³ to the economic basis of the housing market. The PCIZ policy framework cannot operate to ensure access to affordable housing in perpetuity, as it is only operating with the sectors of the market linked to growth of the district.
- 30 Growth can only occur provided there is land use change or up-zoning together with the provision of infrastructure for that increase in density. The level of growth in the district will not sustain the policy because growth rates fluctuate.
- 31 As currently proposed, the PCIZ will require 100 new homes to fund one “affordable” home.
- 32 The Council does not meet the need for social housing currently, and it certainly cannot supply affordable housing to meet the level of demand. Additionally, the provision of social housing and affordable housing is the respective purview Kainga Ora and Community Housing providers (e.g. Queenstown Lakes Community Housing Trust).
- 33 Therefore the costs of this housing levy will only fall on landowners.

PCIZ Does Not Meet Best Practice Policy Standards

- 34 The Ministry for the Environment and Ministry of Housing and Urban Development joint submission has already informed the Council of the requirements for a successful intervention in the supply of housing at a price that matches incomes. Specifically, they advised:

“There is some merit with the use of Inclusionary Zoning (IZ) if the design and implementation of the tool considers the context of where it will be applied (i.e. is place-based).

If well designed and signalled well in advance the cost of IZ will primarily fall on landowners in the long-term.

³ As Kiwibuild did at a national level by mis-directing private building and development resources into government sponsored projects that were a failure. The end result of Kiwibuild was less houses were built than would have been built without the intervention.

“Costs” are therefore a reduction in future value gain, rather than a direct out-of-pocket expense.

Costs 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.”

- 35 I consider the PCIZ does not meet the recommend best practice principles outlined above for several reasons.
- 36 The PCIZ is a method of imposing a tax on all new building and new subdivision, it is therefore not a Zone linked to a spatial description as would typically be the case for a Zone. It is not imposed for a resource management purpose, rather the PCIZ is directed at controlling the pricing of an element of the market sector.
- 37 The PCIZ costs are imposed as an expense to the developer and is incurred at the point of development. Therefore, the PCIZ proposed is targeting the existing cost of supplying a finished product and is not directed as a market intervention to reduce future value gain from land use change.
- 38 The Section 32 report states the Queenstown property market is dysfunctional. If that is an accurate description, the underlying reason is that while the Wakatipu basin is not physically constrained the Queenstown community desires to protect the landscape values, thus creating a practical and legal constraint on where people can be housed. Therefore, the short-medium terms impacts on the demand and supply of housing are uncertain where upzoning has not occurred to provide for the growth of the district into Greenfields areas or with respect to the intensification of housing supply.
- 39 The PCIZ cannot address the existing level of demand for affordable housing as it only applies to new housing supply and growth of housing units. The rate of growth cannot occur at the rate necessary to address the existing demand for affordable housing that has already occurred as I explain in my assessment of the costs and benefits of the PCIZ below.

- 40 There are no transitional provisions in PCIZ and there are no methods proposed for managing economic drivers of accommodation demand such as seasonal employers.
- 41 It is my opinion that the PCIZ has a high risk of failing to achieve the outcome promised if implemented in the manner proposed. The main reason for this opinion is that scope and content of the PCIZ fails to follow any of the best practice advice received from the Ministry of Environment and Ministry of Housing and Urban Development.

Transfer of Central Government Responsibilities

- 42 The provision of Social Housing is a central Government responsibility, and this is achieved through various mechanisms including the Crown entity Kainga Ora which provides physical housing and charges income related rents (Affordable at 25% of tenant income) and the Ministry of Social Development which provides income support, rent subsidies and other housing assistance.
- 43 Kainga Ora is conspicuous by its absence in Queenstown housing. By way of comparison, in Auckland a similarly expensive property market, Kainga Ora owns 7% of all residential land. Yet in Queenstown, Kainga Ora owns no land and possibly does not even provide emergency housing.
- 44 Even more substantially the accommodation supplement provided by the Ministry of Social Development subsidises Auckland rents by over \$2 billion each and every year.
- 45 It is a lack of Government participation in the supply of housing in QLD which is one cause contributing to the differential between housing supply and demand. There is an existing policy tool which is not being utilised. The election of Government to not participate in the housing supply for QLD should not be the rationale for the costs and remedy of a shortage of affordable housing to be transferred to the private sector.
- 46 The QLDC has a moral and equitable obligation to its ratepayers who are also taxpayers to ensure that Kainga Ora is able to and does invest in housing in the district and that high the cost of rental accommodation is able to be offset by the Accommodation Supplement at a similar amount to that in Auckland. A failure to do so, effectively results in Queenstown residents subsidising social and affordable housing around the country.

Analysis of Costs vs Benefits – s32A analysis

- 47 The Section 32 analysis is fundamentally flawed and fails to demonstrate how PCIZ and proposed tax will mitigate adverse market forces to ensure that housing prices better align with household incomes – such misalignment being the dominant factor in the lack of affordable housing.
- 48 PCIZ also does not address supply side factors such as the cost and speed of development which drive the rate at which housing can be supplied and the costs of supply.
- 49 I also consider that the comment “while a precise cost benefit ratio is not able to be generated, my judgement [sic] is that over time, benefits will exceed costs by some margin”⁴ is not an adequate policy analysis for a proposal which is intended to have a significant impact on housing suppliers and developers.
- 50 An adequate policy analysis would attribute factors or weightings to relevant policy attributes enabling a weighted cost benefit analysis to be calculated. Additionally, a costs-benefits analysis should have a defined timeframe over which the costs and benefits are evaluated.
- 51 This tax is proposed to be levied at 2% of the build cost which equates to less than 1.5% of a land & house package. Therefore, it would take in the order of 65 new builds to fund one affordable home. This is a marginal outcome and in no way can be described as significant provision of affordable housing in the context of the total housing stock in the QLD.
- 52 This is confirmed in the s42A report at paragraph 3.7 which states that the funds collected go into the Councils general reserves and are not necessarily committed to the Council supplying housing or with a project administered by the Queenstown Lakes Community Housing Trust or any other housing entity.
- 53 Additionally, QLDC does not have a policy or proposal to become a supplier of housing in the QLD. I therefore consider the future use of funds collected under this proposal are not clear and certain – it is a hypothetical use of funds or land and as such the benefits are not certain and cannot be evaluated with any degree of accuracy.

⁴ Para 4.31, David Meads 42A report

- 54 The Council in its S32 analysis claims that this tax is effective and efficient method yet its s32A analysis fails to cost the tax of as an expense of development and includes the benefits accruing from affordable housing without acknowledging or considering that the funds raised from the tax may not necessarily be applied to affordable housing⁵.
- 55 Mr Equb in his evidence states benefits of this tax in terms of the economic benefits of a stable workforce, without considering the deadweight loss that results from the collection and redistribution of any tax. He also incorrectly attributes the benefits of a marginal increase affordable housing without discounting the fact that this a discretionary application of the tax collected.
- 56 It is secure uncrowded housing that confers workforce stability and positive health benefits on its inhabitants. This has nothing to do with the collection of an inequitable tax on first-home and new-to-the-district homeowners.
- 57 I consider that the conclusions reached in the section 32 report and the section 42A report are unreliable as they have not been informed by a rigorous policy evaluation using a robust economic methodology.

Expected Market Behaviour

- 58 It is my opinion that the most likely outcome, if PCIZ is implemented is that less houses will be built as developers will seek to avoid the tax and people will bid up existing housing as a consequence of the lack of new home options.
- 59 As a Chartered Accountant, I have first-hand experience of how individuals respond to taxes and in particular ones they perceive as unfair and/or new. This behaviour is well understood and is why we have carbon taxes and tobacco taxes in order to reduce consumption of these goods. To suggest that a tax on new housing or growth in supply is going to result in anything other than a reduction in housing supply is fanciful and well outside orthodox economic theory and accepted tax policy.
- 60 Individuals often go to extra-ordinary lengths to avoid being taxed including foregoing the benefit of investment activity where they perceive that there are alternative investment options that are not subject to a similar tax. I note that the section 32a and the section 42a reports do not address the

⁵ Paragraphs 3.7 and 4.18 – 4.20 of the S42A report

impact of “tax averse” behaviours and I consider this is a further defect in the policy analysis presented to decision makers.

- 61 This tax is unfair as the direct costs will ultimately fall on local first home buyers and new residents looking to buy property in the district, while all existing homeowners will receive a windfall gain, having not had the direct cost of contributing to PCIZ. Those windfall gains will be most concentrated on those individuals that are considered to be eligible for an affordable housing package on terms similar to what is currently offered by the Queenstown Housing Trust as they are not paying full market price but can sell at full market price, which has been a significant increase in capital value.
- 62 I acknowledge there will be indirect positive effects of the PCIZ, but they will be trivial compared to the direct adverse effects outlined above. In my opinion, the direct adverse effects and costs will be disproportionate to the benefits intended to be achieved by this policy.

National Policy Statement – Urban Development (NPS-UD)

- 63 The Council has claimed that it can enact this tax through a District Plan Variation on the basis that the NPS-UD requires it to open up more development capacity⁶. As this tax will increase the cost of supplying housing in the district, the economic result will be less subdivision and less new housing built and the market value of existing housing will increase. This is the opposite of what NPS-UD requires the Council to achieve.
- 64 Furthermore, the long-term effects of the implementation of this PCIZ will be a windfall gain to existing homeowners, a tax on new owners, and the further exclusion of first home buyers.
- 65 The Council may claim that the majority of new homeowners paying this tax are from outside the QLDC district and therefore this is a victimless tax. However, this ignores that PCIZ offends against tax policy principles as it places a tax burden on a sector of the economy that does not receive benefit from the purpose of the tax policy. Receiving a benefit from the tax paid is typically the factor that influences opinions as to whether a tax is fair or unfair. On that evaluation this tax would be considered unfair and

⁶ Paragraph 4.2 of S42A report

therefore it is very likely to drive avoidant behaviours as I outline above, and it is a disincentive to supply housing.

66 Any disincentive to supply housing will put additional pressure on agencies providing affordable rental housing and social housing in the QLDC district. This is particularly so given the funds raised by the tax are not unequivocally committed to social housing improvements and will be insufficient to meet the increasing demand resulting from the increased cost of housing in the private sector.

Relief Sought

67 The Council has failed to provide the legal basis or a legal opinion for implementing this tax which ultimately land on first-home and new-to-the-district home buyers.

68 We are left with the Section 32 analysis which is fundamentally flawed as it relies on a 2010 High Court decision that established that affordable housing can be a matter that is provided for within a district plan. The case relied on by QLDC is fact specific and it did not provide a detailed analysis of the merits or lawfulness of a district plan framework providing for that activity. Therefore, that decision of the Court to refer to affordable housing cannot be relied on in this analysis as authority to introduce PCIZ.

69 Affordable housing is, for the reasons I have set out above, substantively different to Inclusionary Housing. As already noted, while the plan change is named Inclusionary Housing and describes the implementation of a “zone” it omits the basic requirement of such planning tools which is that such policies are place-based, defined to be a specific sub-area within a wider district and are linked to the effects of development and are implemented for a resource management purpose.

70 I will avoid reciting the relevant case law and the Newbury test for a rational policy and decision, as this will be covered comprehensively in legal submissions.

71 I have considerable sympathy for the desire to address the affordability of housing within the QLD, however PCIZ is an inequitable tax on first-home and new-to-the- district homeowners. It is ineffective and inefficient as it cannot achieve what it is intended to given the use of funds may not be applied to the provision of housing.

72 I consider PCIZ will result in unintended consequences, including the suppression of development activity. I further consider its implementation would be a mis-use of the Resource Management Act 1991.

73 I am in no doubt that PCIZ should be rejected in its entirety.

Timothy Paul Allan

DATED 19 December