Before the Independent Hearings Panel

Under	the Resource Management Act 1991
In the matter of	submissions on the Inclusionary Housing Variation to the Queenstown Lakes Proposed District Plan

Statement of evidence of Berin John Smith on behalf of the Darby Partners Limited Partnership

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Introduction

1 My full name is Berin John Smith.

2 I hold the position of Planning Manager at Darby Partners Limited Partnership (**DPLP**).

3 I hold the qualifications of Bachelor of Science in Earth Science and Resources and Environmental Planning from the University of Waikato and a Masters in Resources and Environmental Planning from Massey University. I have 29-years of experience in resource management planning, predominantly in private resource management consent consulting work but including approximately ten years working in-house for land development companies (Todd Property (formerly Landco) and DPLP). My present role at DPLP is to manage the consent risks and processes that confront the various development projects it manages on behalf of its various related development entities. While I have significant and relevant planning qualifications I have not provided this evidence in an expert capacity.

4 Prior to, and during, the course of my employment with DPLP I was a resident and property owner on Waiheke Island for approximately 15 years. Consequently, I am personally familiar with the housing affordability issues affecting popular tourist destinations and the social and economic challenges with and from outsourcing sectors of the workforce from outside of a community. I was the sole (and unsuccessful) submitter on the 2006 Hauraki Gulf Islands District Plan review, who, in the absence of any direct provision for affordable housing construction being included in that review, sought the inclusion of a policy basis for that to be included in the future.

5 This evidence is provided on behalf DPLP. The full list of entities related to the DPLP umbrella being represented will be provided by Counsel in submissions in relation to the Inclusionary Housing Plan Change to the Queenstown Lakes Proposed District Plan (**PDP**) (**Plan Change**).

Scope of Evidence

6 In preparing this evidence my focus has been to review the proposed District Plan change rule set to understand what problems are presented by the current drafting of the present provisions imposing affordable housing financial contributions (**AHFC**). DPLP and the various development entities it represents (and which I am involved with), are primarily involved in the supply of land for development in the form of vacant residential or rural-residential properties, or large-lot subdivision creating land parcels for future residential development, rather than conducting residential building

development. Consequently, my evidence focusses on the subdivision-related provisions[1] rather than those relating to building development rules.

7 My evidence addresses issues with implementation of AHFC payments and associated administration at the consent stage and subsequent 224(c) certification stage.

8 I have reviewed the following documents in preparing this evidence:

(a) Inclusionary Housing Plan Change - Section 32 Report, QLDC, 18 July 2022

(b) The Economic Case for Inclusionary Zoning in QLDC, Sense Partners, 13 July 2022.

(c) Social Impact Assessment – Proposed Inclusionary Housing Plan Variation, Beca, 13 November 2023

(d) The Queenstown Lakes District Council's (**Council**) expert evidence, including the s.42A report.

Executive Summary

9 In summary, it is my opinion that the proposed Plan Change has a number of fundamental issues. In particular:

(a) The proposed rules will frustrate the subdivision process and compound existing compliance-related delays supplying land for development purposes to the market. Those delays result in a financial cost to the subdivider that is additional to the proposed AHFC. Those costs will ultimately be passed onto homeowners in way that will compound the local affordability problem.

(b) The proposed rules are contrary to, and will not achieve, the overarching proposed objective of the development of a prosperous, resilient and equitable economy.

Strategic Objective 3.2.1

10 The first thing that strikes me about the plan change is that it is intended to achieve the new proposed Strategic Objective of *"The development of a prosperous, resilient and <u>equitable economy</u> in the District"* [my emphasis]. That is a laudable and appropriate objective in the face of both the various

[1] As appended to the Council s.42 Report in an amended form.

factors contributing to housing affordability and the various social outcomes when housing affordability stress arises in a community and the opportunity to 'share the load' so to speak. The Introductory section of 40.1 - Purpose helpfully identifies various factors affecting the District's housing market where it states:

> 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. [my emphasis]

11 Mr Mead repeats those themes in Paragraphs 3.1 and 3.2 of his s.42A report.

12 The Sense Partners assessment2 identifies higher labor turnover arising from the local housing affordability is "a real cost to business". Sense estimates that this results in economic costs to the local economy of $105-$200m a year. The Council s.32 Evaluation[3] states:

> "High turnover is not just an issue for private sector businesses. Attracting and retaining public sector workers (teachers, police, health workers) is very important for community well being." [my emphasis].

Those sectors, therefore are the beneficiaries of a properly functioning housing market offering sufficient diversity that avoids affordability issues, or, where those issues are present, the correction or any relief of them. As a consequence of those various aspects contributing to, and affected by, housing affordability I would have expected a broad set of District Plan provisions to be applied under the objective of achieving an "equitable economy" rather than just narrowly to the land and housing supply market, as proposed.

13 The proposed plan change plainly cannot achieve that equity objective when large causal and benefiting sectors of the economy are not obliged to

[2] Section 32 - The Economic Case for Inclusionary Zoning in QLDC, 13 July 2022.

[3] Paragraph 7.20 - Queenstown Lakes District Proposed District Plan Section 32 Evaluations For: Inclusionary Housing, 18 July 2022

participate and will be allowed to effectively freeload off the contributions made by land and housing suppliers. In my view therefore, the plan change fails to meet its own objective from the outset.

Workability / Certainty of Exemptions

14 Council has previously entered into an agreement with Jacks Point Limited and Henley Downs Holdings Limited[4] for a combined financial and land contribution. As recommended to be amended, Policy 40.2.1.4 provides an exemption to any affordable housing contribution where

> "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" (as recommended to be amended).

15 That exemption 'test' is repeated in Rule 40.6.1.3.

16 Bluntly, it will be impossible for a *real-time* resource consent application to demonstrate compliance with a resource consent standard, determine associated activity status and allow both an applicant and Council officers to identify the correct consent processing pathway under the RMA against having "satisfied" an objective (Objective 3.2.1.10) that reads:

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

17 Without having to delve further into the difficulties interpreting the other objective and policies, to rely on its agreement with Council in any way, how would Jacks Point and Henley Downs now demonstrate that the outcomes of its agreement will now, ex-post-facto, deliver the perpetual future maintenance of a "*diverse and economically resilient community representative of <u>all income groups</u>"*? In particular:

- What is the definition of *"diverse community"* (financial, ethnic, cultural, religious, age composition?) to be applied and assessed by the applicant and the Council?

[4] Jacks Point Stakeholders Deed, 29 August 2003.

- What is the definition of *"economic resilience"* to be applied and assessed by the applicant and the Council?
- How does provision for "*low to moderate income households"* make the leap to ensure long-term housing for *"all income groups"* that includes minimum wage earners such as school leavers?
- Furthermore, from Council's perspective, how is it supposed to decide that the above would be met (or not) without exposing itself to legal challenge?

18 Fundamentally, in my view, the exemption framework under Rule 40.6.1.3 is unworkable.

Trigger for and Costs of Payment

19 Rule 40.4.1 specifies that payment of an AHFC due as a consequence of subdivision is a pre-condition of Council issue of a s.224(c) certificate. That timing bears no correlation with when that subdivision would affect housing affordability or when the subdivider would generate income from the lot(s) created.

20 For example, it is usual practice to obtain a separate title to land for funding security purposes but for no other reason. In such circumstances, the land concerned would not be released onto the market nor would the subdivider generate income from its sale at that time. Payment of any contribution would be made from either existing equity or from financing. Both circumstances generate an additional finance cost over and above the 5% AHFC monetary value initially payable (assuming the les than 20 lots scenario applies). Furthermore, those costs are additional to, and cumulative with, the construction and professional services costs of compliance with consent conditions that are prerequisites to the issue of s.224(c) certificate and the payment of the development contributions typically applicable (whether also covered by equity or financing) in the first place.

21 Furthermore, Rule 40.4.1 specifies that, where land is to be provided as an AFHC *"all* [unspecified] *necessary legal agreements…must be completed".* The s.224(c) application process should not be subject to a process involving the completion of unspecified private legal arrangements with

Council for land that it is acquiring. That process could frustrate the issue of s.224(c) and the issue of title to other lots due to matters outside of the consent holder's control.

22 The rules should enable that administrative process between the Council and the consent holder to be completed separate to, and following, the s.224c process in the same way, for example, that those processes have long applied to the vesting of public parkland or land for public utility services. If Council is concerned that the release of the s.224(c) may actually endanger its acquisition of the land concerned then there is the opportunity to introduce a rule allowing Council to register an instrument on the freehold register title concerned protecting its interest in that land (only) rather than delaying the subdivider realizing the entire subdivision.

23 However, because Council land acquisition for AHFC purposes forms the basis for determining compliance with the District Plan Rules and the issue of consent in the first place, the completion of that land transfer to Council would be clearly tied to that compliance and associated consent conditions. Consequently, it would be unnecessary to take the step of registering such an instrument and Council should be able to rely on compliance and enforcement processes already in place under Part 12 RMA / Part 11 of the NBEA.

40.5 Rules – Activities

24 Rule 40.5.1 imposes a permitted activity status on subdivision making an AHFC where that subdivision *"…is capable of containing residential lots or units"*. Given the current 'tiny home' trend and the District Plan's broad definition of residential unit, unless subject to a natural hazard, it would be very rare to find an allotment that is not "capable" of somehow accommodating a residential unit and it would be extremely difficult to argue otherwise. Effectively therefore, because Council's Engineering Code of Practice requires services to be provided to all new lots in residential development areas, the payment of an AHFC applies to *all* subdivision, in the locations / zones specified.

25 When greenfields land is converted to urban residential subdivision it often does not translate immediately to small serviced residential lots. Instead, there can be at least one intermediate step creating bulk lots (defined by

roading, for example) that are then converted to residential lots. Sometimes, that step creates large-size lots for multi-unit development and further post-construction subdivision. In such circumstances a three-stage subdivision process has been carried out. Conceivably a fourth stage of subdivision can be carried out by a unit title subdivision of a multi-unit apartment building (where allowed)[5]

26 Rule 40.5.1 is flawed because it requires the payment of AHFCs on every stage of subdivision leading to a final title corresponding with a residential unit in a way that will impose substantial additional costs over and above a single 5% contribution. There is no rule that allows an applicant for subsequent stages of subdivision (or Council) to apply an exemption based on prior AHFC payment of subdivision of the same land.

27 Rule 40.5.2 does not provide a consent pathway for an exemption based on prior stages of subdivision having already made because the Discretionary Assessment Matters listed under Rule 40.7.1 do not cover those circumstances. Even if Rule 40.7.1 was amended to include such an exemption, that would remain inappropriate because penalizing an otherwise permitted activity application (under this rule set) to full discretionary consent status because of an applicant's desire to address Council double, triple or even quadruple dipping AHFC contributions on re-subdivision of the same land is unreasonable.

40.5 Rules – Other Activities

28 As I identify earlier in this statement, the plan change expressed the Strategic Objective of *"The development of a prosperous, resilient and equitable economy in the District.* Contrary to that objective, Rule 40.5 only narrowly applies to the residential subdivision and development. It does not apply to any other commercial activity throughout the District (whether contributing to the problem or benefiting from relief of it) that could be included in that rule to 'spread the AHFC load'. The inclusion of other commercial sectors of the community would achieve an equitable economic outcome rather than just burdening the residential supply sector (on PDP land only, not operative) with that responsibility in a way that, as identified

[5] Noting that the building itself would be exempt under Rule 40.6.1.2.a. but not subdivision of it.

by Mr Ries, will be passed on and contribute to the increased costs of residential housing in the District.

29 While possible, I note that this approach would not be the complete, or most efficient, solution. That is because already consented activities and existing use rights are protected by s9 / S10 RMA and subparts 1 and 3, of Part 2 NBEA. Consequently, any application of an AHFC requirement to those other activities could only be applied to new activities or those existing activities increasing in scale that trigger a new / varied consent, or permitted activity standard in the same way proposed to be applied to subdivision and residential development activities. Over time such a rule could continually capture new or expanding activities (only) in the same way it captures new subdivision and residential development activities.

40.6 Rules – Standards

30 Firstly, while Rule 40.5 applies an activity status to subdivision "containing residential lots", Rule 40.6.1 applies standards separately to "additional serviced lots" and "additional lots". This has the potential to lead confusion and uncertainty as to what is or is not "additional" and/or "serviced".

31 More problematic is that Rule 40.6.1.1.a. applies different AHFC calculations (monetary or land) based on the number of "additional lots" created with the value of the AHFC based on the value of "serviced lots". The term "additional lots" is problematic because it does not specify whether the lots involved must be for residential purposes or not. Therefore the 1-20 or 20 or more "additional lots" threshold between Rule 40.6.1.1 a(i) and (ii) and the requirement to provide land under (ii) is presently determined by lots created for things like access lots, private and public open space lots, or lots for utility services (but such lots are not subject to the AHFC valuation component because they are "unserviced".

32 Rule 40.4 – Interpreting and Applying the Rules should be amended to provide clarity on this matter and consistent language between what type of lot triggers Rule 40.6.1.1 a(i) and (ii) should be employed.

Valuation Process

33 Rules 40.6.1.1 and 40.6.1.4 identify the process for determining the quantum of monetary AHFC to be paid upon subdivision. There are several

problems with the current framing of those rules that will lead to additional uncertainty and costs to the subdivider as follows:

(a) Rule 40.6.1.4.a is unclear as to who will commission the required valuation report. Will it be the consent holder so that they may influence the pace with which that report will be produced, or will it be the Council? Because it is a compliance standard, one would assume it is the former but, as presently written, the rule leaves it open to Council to decide to commission that valuation at its leisure and convenience regardless of the specified 3-month timeframe. That is unacceptable and the rule should be modified so that it is clear that the valuation is to be commissioned by the subdivider rather than Council.

(b) Rule 40.6.1.4.a specifies that the valuation underpinning the AHFC is to be carried out by a *"Registered Valuer (as mutually agreed by the "Council and the applicant)"*. Firstly, use of the wording "applicant" could lead to an interpretation that the agreement needs to be reached prior to consent being granted rather than by the consent holder following consent approval and within 3 months of the required payment (at the much later date of s.224(c) approval). Secondly, a *Registered Valuer*[6] *is a Registered Valuer*[6]. The rules should not provide the Council with an unfettered power of veto over which Registered Valuer the consent holder may choose to engage to comply with a subdivision standard. The negotiation implicit in that undefined "mutual agreement" process has the potential to frustrate the subdivision and generate additional costs to the subdivider. In the absence of any evidence as to why and how one Registered Valuer should be preferred over another (or a process for carrying out that exercise), that mutual agreement component should be deleted from the Rules.

(c) Because the timeframe for Council processing of a s.224(c) application is uncertain and can take many months[7], the requirement for the valuation to be prepared within three months that the AHFC *is due to be paid* under Rule 40.6.1.4.a is problematic. That is because, under Rule 40.4.1, AHFC payment is due before *approval* under s.224(c). It is usual (and desirable) practice for monetary financial contributions payments to be made by a subdivider as the final step to s.224(c) application approval once the application processing process is otherwise completed. This is because it gives the subdivider the

[6] Operating under the New Zealand Institute of Valuers Standards and the Code of Ethics

[7] Depending on the complexity and/or quality of the application.

absolute certainty that, once he/she makes payment, s.224(c) certification will be issued without any significant delay. There is no certainty between the time a valuation would be produced and when a requirement for AHFC payment corresponding with the completion of s.224(c) process is triggered. Consequently, a consent holder may be faced with non-compliance with the 3-month compliance requirement of Rule 40.6.1.4.a and the time and costs to commission another valuation if s.224(c) processing exceeds 3 months (which is not unusual for large-scale subdivisions). To address this problem, with respect to the subdivision process, instead of preparation 3 months prior to *AHFC payment*, Rule 40.6.1.4.a should be amended to require the supply of a valuation that is prepared within the 3 months *prior to the date of the s.224(c) application.*

(d) Rule 40.6.1.4.a is unclear what happens when the payment of an AHFC is made in the form of land and what constitutes that "payment". If this option is chosen by an applicant, then the parcel (or parcels) of land need to be defined very early in the subdivision process. That requires a valuation be carried out at the pre-application stage so that the land to be used for AHFC can be properly sized and shown on proposed and approved subdivision scheme plans. The final issue of title to the land occurs many many months (and sometimes years) depending on when the consent holder is able to gain consent and then satisfy all s.224c conditions (or in fact if the consent holder decides to give effect to the consent). In such circumstances, and assuming that "payment' comprises the transfer of the land involved to Council, it would be unreasonable to require the consent holder to obtain a renewed valuation within the 3-month pre-payment window. Where the transfer of land is chosen by the applicant as an AHFC, the timing of the valuation should be 3 months prior to the lodgment of the application concerned so that the land to be employed for that purpose can be defined and approved in the application at the outset.

Exemption Applying to Development Regardless of Value.

34 There appears to be an inherent flaw in the operation of the exemption applying to multi-unit development carried out on land where an AHFC has been paid as part of subdivision. In particular, in my experience the AHFC paid on a lot (whether at a 1% or a 5% sales price valuation) would reflect a valuation based on reasonable residential use rather than the future highest value use. Rule 40.6.1 would not operate efficiently where a high-quality luxury multi-unit development was carried out on pre-AHFC paid

land because Council would be unable to capture additional AHFCs from that higher-value end use.

35 If Mr Mead is to be believed, a subdivider would absorb and not pass on any AHFC to a developer purchaser[8]. That would, in effect, leave the subdivider shouldering the full cost and the high-end use developer with no burden whatsoever. At the first land transaction, that is contrary to the equitable economic objective of the plan change. Furthermore, the lost opportunity to collect AHFC on that higher-value development would leave the scheme short-changed to deliver on it's wider objectives. In my opinion that reflects a significant flaw and inefficiency in the current proposed rule set.

Conclusion

36 For the reasons I have set out in this statement I am of the opinion that the proposed plan change is fundamentally flawed in terms of achieving stated objectives, and the workability of the rules in practice. In particular:

(a) by only targeting only one sector of the local economy with AHFCs and not others the proposed plan change will not achieve an equitable economy; and

(b) there are a number of uncertainties and problems within the proposed plan change provisions that, cumulatively with existing compliance-related processes, will further frustrate and delay the delivery of land to the housing market. Alongside any AHFC, the costs of those delays will compound costs to the subdivider that it will seek to recover when it on sells the land.

Berin Smith

19 December 2023

[8] Paragraph 4.22 Section 42 report