

# **Update and Summary of Evidence**

## **Timothy Paul Allan**

### **1 March 2024 hearing appearance**

#### **Introduction**

1. My name is Tim Allan and I provide this evidence on behalf of myself (submitter 116). I am also authorised to give evidence on behalf of submitters 112, 113, 114, 115, 118 and 143.
2. As outlined in my evidence, I am uniquely qualified to provide evidence based on my experience and knowledge of the social and affordable housing sectors from a public policy, provision of social housing and from the challenges the private sector has in delivering social and affordable housing.
3. I prepared the statement of evidence dated 19 December 2023 in which I confirmed that my statement complied with the Environment Court Code of Conduct for expert witnesses. No other witnesses (including QLDC) have directly rebutted or queried my evidence. It stands as submitted.
4. Since I prepared my submissions and evidence, I have reviewed the Councils rebuttal evidence, Council's legal submissions presented by Nick Whittington dated 23 February 2024 and the Council's expert witness summaries.

#### **Scope**

5. I believe that access to appropriate housing is a basic human right.
6. I concur that there is a housing affordability challenge in New Zealand that is particularly acute in Auckland, Tauranga and Queenstown which are all desirable places to live and visit. All these centres have experienced significant population growth.
7. I have the utmost admiration for Julie Scott and the team at the Queenstown Lakes Community Housing Trust. I also acknowledge that the Trust could achieve more with more resources and any criticism of the Councils proposed Plan Change is in no way a negative reflection on the work and objectives of the Trust which is named as the proposed delivery agent for the Council.
8. As stated in my evidence, I consider the Council has poorly defined the causes of the lack of affordable housing which mostly result from an ongoing shortage of serviceable and developable land and ruled out better approaches for political reasons. I note the Council has chosen the least effective option. As we are procedurally past the consideration of alternatives, I will not provide alternative solutions and limit my evidence to the proposed Plan Change now before the Panel.

## Summary of my Submissions and Evidence

9. The key points made in my submissions and subsequently in my evidence is that:
10. The council conflates Inclusionary Zoning and Affordable Housing into something called Inclusionary Housing. Inclusionary Housing is defined by Community Housing Aotearoa as:

*“Inclusionary Housing (IH) is a planning tool commonly used overseas that requires or provides incentives for private developers to incorporate affordable housing into developments.”<sup>1</sup>*
11. I have used the Community Housing Aotearoa definition as the Councils Section 32 report specifically referred to this report and its definitions. The full definition is attached as Appendix 1 for your convenience. While this is commonly known elsewhere in New Zealand and globally as Inclusionary Zoning for consistency I will use the term Inclusionary Housing.
12. My evidence also recorded that the Council has conflated Affordable Housing with Inclusionary Housing. These are different and helpfully the Community Housing Aotearoa report provides a definition on the same page 10 attached as Appendix 1.
13. While the council purports to be creating Inclusionary Housing, the proposed plan change does not meet the definition of Inclusionary Housing nor does it function as an Inclusionary Housing policy as defined by Community Housing Aotearoa and it is not placed based as it applies to the entire District. It is simply incorrect to claim the proposed Plan Change provides Inclusionary Housing.
14. Ultimately the operative parts of the proposed Plan Change are a cash (or land in lieu) redistribution from first-home owners and new-to-the-district residents, to the Council. I have covered the expected market response in paragraphs 58 – 62 of my evidence. It is also worth noting that nearly all these cash payments will be funded from borrowings by these home purchasers.
15. These funds so raised will:
  - a. have reasonably anticipated consequences, such as;
    - i. reducing the number of new homes being built in the District and in particular reduce the number of starter homes and those on smaller, more affordable sections; and
    - ii. the resulting reduction in supply will further increase the price of existing homes giving existing home owners a windfall gain;
  - b. provide cover for central government agencies such as the Ministry for Social Development and Kainga Ora to continue to avoid or minimise their responsibilities in the District; and
  - c. be woefully inadequate, providing just one affordable home for every 65 new homes built.
16. The council will receive these funds into their general account and then propose, though they are not legally required, to transfer the funds to the QLCHT for the purposed of creating additional affordable housing. Accordingly there is insufficient nexus between the collection of cash from first-home owners or new-to-the-district and the beneficial creation of affordable housing by the independent QLCHT.

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<sup>1</sup> Pg 10 of Community Housing Aotearoa report.

### **Response to Rebuttal Evidence of Mr Eaquib**

17. The Arthurs Point windfall case study referred to by Mr Eaquib at para 8.1 of his rebuttal evidence is indicative of the poor quality and emotive expert evidence put to this panel.
18. It is readily apparent to any knowledgeable person that Mr Eaquib has erroneously applied a civil cost applicable to infrastructure on flat land to a complex and steep hill site. The cost structures are not comparable because the costs of installing infrastructure on hill sites are much more complex and expensive.
19. It is also straight forward to obtain the actual figures for the adjacent site. The Bullendale SHA 1 development manager advises that the actual on-site infrastructure costs in 2017/18 was \$165,000 per lot.
20. Correcting Mr Eaquib figures to include the actual costs, shows a gross value uplift of \$6.3m. This is not a windfall gain as Mr Eaquib states, as he has made another error and failed to deduct the cost of the land. Therefore, the corrected sum is \$2.7m not the \$14.1m stated by Mr Eaquib.
21. Even this amount of \$2.7m is not the windfall gain as Mr Eaquib failed to account for the costs of obtaining the resource consent, transferring value to the Housing Trust, covering the holding costs on the land and initial development costs and making an allowance for fair profit and risk which all must be deducted before any windfall gain or 'rent' in economic terms can be determined. I expect there is no windfall gain at all on this development.
22. The conclusion that there is no windfall gain is validated by the fact that the this development was granted Resource Consent in 2020 and has not proceeded in the last 4 years.
23. Perhaps the Council would like to make another attempt to illustrate the windfall gain point. I suggest they use the aptly named Longview sub-division at Lake Hawea for which Mr Eaquib's development figures may be more relevant (as it is a flat site in the location he sourced his figures) and factor in the costs of an 1 - 2 year delay in the council providing a sewerage connection to the land that has been developed as per the evidence of Mr Lane Hocking.
24. I suggest that to the extent there could have been any windfall gain on the Longview subdivision, it has been destroyed by the Council's failures to provide basic infrastructure resulting in a massive escalation in holding costs.
25. This highlights the point that Mr Eaquib has overlooked in his analysis – which is that it has excluded the holding costs arising from slow regulatory decision making and the delayed physical delivery of adequate horizontal infrastructure.
26. He has also failed to consider the economic principle that in a well-informed market true windfall gains are impossible to achieve as the market calibrates to the information available about the risks and returns that may be available. It is therefore not correct for Mr Eaquib to state or suggest that there is a transfer of wealth or a "windfall" gain occurring on every planning based land use change.

28. Mr Eaqub will be familiar with the principle that in order for investors to be attracted to risk, there must be a return that is commensurate with that risk level. He has failed to discuss the possibility that a return not commensurate with the estimated risk level means there is no incentive to develop or invest.
29. He has failed to evaluate the consequence of additional costs to development, which can only lead to a further increase in pricing and that cost is passed on to new purchasers. That price increase will simply serve to exclude the lower income households as I have outlined in my evidence, and it means that the burden or costs of new housing is borne by those who are purchasers of newly constructed homes only which does not evenly distribute the costs across the whole population.
30. Mr Eaqub has not analysed how this proposed Plan Change will contribute to the stated 'market failure' by increasing the costs of development. Therefore I consider his evidence is incomplete in this regard and it should be given limited weight as it has not fully considered the possible adverse outcomes of the proposed policy.

### **Council's expert witness summaries**

#### *Summary of submission*

31. Firstly I note, Mr Meads has failed to correctly summarise my submission and has failed to address the issues raised in his section 42A report. This is not surprising as Mr Meads is using the wrong tool, namely the Resource Management Act (RMA), to implement social policy in the form of cash transfers and the physical provision of affordable housing. These concerns are better addressed through proper tax and social policy development.
32. If the Panel has relied on the council to summarise my submission then they will benefit from reading my submission directly. It is less than 4 pages.

#### *Summaries of Evidence*

33. The Summaries of Evidence provided by David Mead, Amy Bowbyes, Shambeel Eaqub and Charlotte Lee all acknowledge that this proposed Plan Change is at best part of the solution and that other actions are required to address the Affordable Housing crisis.
34. The RMA does not deal in piecemeal activities. It is also permissive and not requiring legislation. Nevertheless, the RMA does require that the benefits of a proposal, in and of itself, must outweigh the environmental costs of the activity.
35. While the proposed Plan Change is clear on how the direct costs are to be levied. The indirect costs and reasonably anticipated consequences have not be adequately analysed. Furthermore, the claimed benefits are to come through future discretionary actions which the Council is not compelled to undertake and may not be able to, even if it is willing to doing so.
36. As stated in my evidence, for an Inclusionary Housing policy to be approved within the framework of the RMA it must be complete with defined and attributable benefits and not simply a cash raising mechanism for other Council activities which may, or may not, address the Affordable Housing crisis.

## Legal Submissions

37. Mr Whittington in the Councils legal submissions attempts to respond some of the issues I raised with the proposed Plan Change. Therefore it warrants some consideration.
38. While I will leave the legal opinions to the experts, my submission and evidence relate directly to the factual underpinnings of Mr Whittington's legal submission.

### *Reliance on proposed plan change being Inclusionary Housing*

39. Mr Whittington states the proposed Plan Change is Inclusionary Housing (paragraphs 2.2 - 2.6). To make this leap Mr Whittington makes up his own definition of Inclusionary Housing in para 3.5 and 3.6 which are repeated below for your convenience.

3.5 In the Queenstown-Lakes District the supply of housing is unresponsive. Therefore, a territorial authority considering how to amend its district plan to address the issue of housing affordability would need to ensure:

- (a) any plan change increases the supply of affordable housing; and
- (b) any plan change is not likely to inappropriately constrain development capacity in the long-term.

3.6 A mechanism that promotes those ends is inclusionary housing.

40. This definition is inconsistent with recognised definitions of Inclusionary Housing and with the definition contained in the Councils own reference document, namely the Community Housing Aotearoa report.
41. Even if this definition had any validity, it is questionable that the reduction in the private supply of the housing (biased to the starter / affordable end of the market) will be offset by the single affordable home provided from the funds raised by the tax or levy on a total of 65 first-home buyers or new-to-the-district purchasers. Therefore meeting the first limb is debatable.
42. In terms of the second limb, this proposed Plan Change is certain to inappropriately constrain development capacity in a permanent and irretrievable way as, for example, larger homes are built on sub-dividable sections.

### *Infinity case*

43. Putting aside the flawed assumption that this Plan Change achieves Inclusionary Housing the reliance on the Infinity case is inappropriate as in this case the Council was 'upzoning' land and it is well established in practice and in case law that there are few (if any) limitations on the conditions the council can impose when granting a benefit such as 'upzoning'.
44. As acknowledged, by Mr Whittington this proposed Plan Change results in 'downzoning' or as he euphemistically describes "the previously less constrained development of land"<sup>2</sup>. Therefore there is no benefit to trade-off against.

### *Independent Hearing Panel (IHP) on the Auckland Unitary Plan*

45. In section 8 Mr Whittington clarifies that the IHP when deciding to remove the Inclusionary Housing [actually Affordable Housing] provisions from the Auckland Unitary Plan did not rule that they could not be legally introduced and continued on to provide speculative reasons

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<sup>2</sup> Para 2.4 and 6.3 of Mr Whittington's legal submission

why the IHP removed the Inclusionary Housing provisions. I prefer to rely on the reasoning provided by the IHP itself. The reasons the panel provided were:

“The Panel was persuaded by the submissions of the Ministry for Business, Innovation and Employment (MBIE) and Housing New Zealand Corporation, among others, that the affordable housing provisions as proposed by the Council would likely reduce the efficiency of the housing market due to effectively being a tax on the supply of dwellings and be redistributive in their effect. The panel is of the view that the imposition of land use controls under the Resource Management Act 1991 is not an appropriate method for such redistributive assessments and policies.”

46. In essence the IHP did not need to consider the legality of the Affordable Housing provisions as the provisions did not measure up and were rejected. The IHP recognised correctly that some zoning provisions have a cost and may result in market failure. Furthermore, this cost falls disproportionately on the ‘unhoused’.
47. This leads back to my submission and evidence where I provided the Ministry advice and analysed this proposed Plan Change against it. For your convenience I repeat paragraphs 4.2 – 4.4 of my submission.

#### Design flaws in the Proposal

- 4.2 The Section 32 report advises 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. Specifically they advised:
- a) 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).
  - b) If well designed and signalled well in advance the cost of IZ will primarily fall on landowners in the long-term.
  - c) “Costs” are therefore a reduction in future value gain, rather than a direct out-of-pocket
  - d) Costs would get factored into land values and pricing of developable land, recognising the desired outcome from IZ.
  - e) 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.
  - f) Careful consideration of transition to and introduction of IZ is essential to mitigate this potential risk.
- 4.3 Evaluating the QLDC proposal against the recommend best practice IZ outlined above the submitter notes:
- a) The Proposal is not Inclusionary Zoning and is cash based. It is not place-based.
  - b) As the Section 32 report states the Queenstown property market is dysfunctional. The underlying reason for this is that while the Wakatipu basin is not physically constrained the Queenstown community desires to protect the landscape values, thus creating a practical constraint on where people can be housed. Therefore the costs of this housing levy will only fall on landowners provided there is land use change or up-zoning. As neither of these changes are proposed the cost will fall on new home owners and benefit existing home owners through rising house prices.
  - c) There are no transitional provisions in this plan therefore the risk of short-medium impacts on the supply of housing are almost certain.
- 4.4 In conclusion, the Proposal fails to follow any of the best practice advice received from the Ministry of Environment and Ministry of Housing and Urban Development.

48. Lastly Mr Whittington make a rather dismissive statement that aligns with my amended conclusion. Specifically in paragraph 10.3 he states “Rating is quintessentially a matter with high policy and political content ...”. In other words, it is beyond the current leadership capability to implement an effective Affordable Housing policy.

## Conclusion

49. Initially I was of the view the Council had erred when it drifted away from the principles of Inclusionary Zoning and sought to implement a well-meaning but fatally flawed levy on housing development that was mis-branded Inclusionary Housing. However, having now considered the evidence and the persistent failure to address submitters concerns I have reached a more depressing conclusion.
50. Taken in the round, I now consider the Council is insincere in addressing the Affordable Housing issues of the district and this proposed Plan Change can best be described as ‘social washing’. I have not reached this conclusion lightly, however I cannot reconcile the Councils approach any other way.
51. Below is the ESG |The Report definition of social washing slightly modified in blue to fit the context.
- “Social washing a strategy **Councils** use to promote themselves as more socially responsible than they actually are for **political** gain. This is done by utilizing various meaningful marketing tactics such as donating to charities or publicizing their sustainability initiatives in order to make it look like they care about making the world a better place. Only to discover afterward that they are not telling the whole story, or that it is just a publicity stunt.
- Social washing is also when **Councils** try to cover up their negative social impacts by promoting themselves as socially responsible and ethical. This might include a grand gesture or donation to draw attention away from something else they are doing, **or not doing**. They leverage meaningful marketing tactics, including charitable donations and sustainability initiatives to appear as if they care about the environment or society.”<sup>3</sup>
52. I remain of the view that this proposed Plan Change should be rejected in its entirety.
53. I am happy to take questions.

Tim Allan

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<sup>3</sup> <https://esgthereport.com/what-is-social-washing/>

# Definitions

## What is Inclusionary Housing?

**Inclusionary Housing (IH) is a planning tool commonly used overseas that requires or provides incentives for private developers to incorporate affordable housing into developments.** Under this regime – for projects over an agreed size or number of units - developers set aside a proportion of that development for ‘affordable housing’, land, or payment in lieu, often vested with not-for-profits for the purposes of providing affordable rental and homeownership options.

Seen in this way, IH is simply a trade between private developers and the councils who uphold and protect the interests of their communities. In exchange for meeting these social expectations, developers are granted license to operate in an area and benefit from planning uplifts associated with council activities.

There are many options for how IH is implemented by councils to meet the needs of their community. Some decisions which councils have to make include: determining the community’s housing objectives; deciding a process for how IH contributions will be calculated and transferred; and determining a mechanism for retaining the affordable homes created.

A significant aspect of IH is that it is a supply-side response which increases the volume of affordable homes in a community (Pawson et al., 2022). This will provide a counter-balancing force to the current government approach of demand-side responses which can fuel further rent and house price rises in an already expensive market.

While it is mainly discussed as a tool to create the conditions for affordable housing, IH is also a key mechanism to support the different types of homes that may be lacking in a community. For example, where there is a higher need for smaller, accessible homes for an older population. Ultimately, it is about creating communities that offer a wide range of housing options for a wide range of households.

## What is Affordable Housing?

There is no definition nor agreed upon understanding of “affordable housing” in Aotearoa New Zealand. There is also much confusion between housing affordability and affordable housing, likely due to the lack of an adopted definition. CHA’s position is that adopting a threshold for housing costs at or below 30% of gross household income is a definition of affordable that we should be measuring Aotearoa New Zealand’s performance against. Internationally, it is common for governments to adopt a formal definition and to base their housing interventions on addressing shortfalls in the provision to the agreed definition.

Although Public Housing<sup>2</sup> in Aotearoa New Zealand meets this definition of affordable housing, it is the recommendation of this paper that contributions accrued through Inclusionary Housing programmes are used to deliver affordable housing options which are not already subsidised as Public Housing. IH is intended to act as additional lever for the provision of affordable housing options which are separate from but supplementary to, existing funding approaches which subsidise the provision of affordable homes.

<sup>2</sup> Public Housing (previously “Social Housing”) is subsidised rental housing receiving the Income Related Rent Subsidy administered by the Ministry of Housing and Urban Development along with the Ministry of Social Development. The tenancies are managed by Kāinga Ora or registered Community Housing Providers.