

25 August 2023

Via Email: [competition.policy@mbie.govt.nz](mailto:competition.policy@mbie.govt.nz)

## **SUBMISSION TO THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT ON ITS REVIEW OF ANTI-COMPETITIVE LAND AGREEMENTS**

Thank you for the opportunity to present this submission on the review of anti-competitive land agreements.

The Queenstown Lakes District Council (QLDC) is supportive of the work considering land competition and agreements.

This submission outlines key points that impact QLDC as a local authority such as:

- expand the review to include land agreements that restrict housing supply and affordability,
- covenants lessen land competition and lack scrutiny,
- sunset clauses are needed – covenants that may be appropriate at the time of application become outdated over time,
- covenants can promote positive outcomes,
- responding to land banking in lieu of covenants cannot fall to local authorities.

To support the content of the submission, general recommendations for consideration are included at the end of the submission. In particular, QLDC recommends that the remit of the review be expanded to include land agreements that limit the use of urban land for housing and business activities.

QLDC does not wish to be heard at any hearings that result from this consultation process. Thank you again for the opportunity to comment.

Yours sincerely,



David Wallace  
**GM – Planning and Development**

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## 1.0 Context of the consultation topic in relation to Queenstown Lakes District Council.

- 1.1 The Queenstown Lakes District (QLD or the district) is one of the fastest growing areas in New Zealand Aotearoa. The average daily population is 66,532 (visitors and residents) and the peak daily population is 102,648<sup>1</sup>. The district's population has grown 72% over the past ten years alone.
- 1.2 The district is also one of New Zealand Aotearoa's most unaffordable regions to rent or buy housing. Average house sale prices were \$1.7M for the year ending March 2023<sup>2</sup>. This is almost double the next most expensive area in Otago/Southland, which is Central Otago at \$634k<sup>3</sup>. The average property value in the district is 14 times the average household income, whilst the national average is nine<sup>4</sup>. The district is also one of New Zealand Aotearoa's most unaffordable regions to rent.

## 2.0 Expand the review to include land agreements that restrict housing supply and affordability.

- 2.1 The commercial feasibility for the development of commercial centres increases when population densities are at an appropriate scale. In the QLD, part of the challenge for the commercial viability for business competition lies in the density of population. Population density and growth are impacted by the availability of affordable and accessible housing for residents.
- 2.2 Private covenants impact the way our communities develop. They can have the effect of adding an additional layer of planning controls which are not subject to regulation or public scrutiny. The discussion document focusses on land agreements restricting business activities. QLDC submits that the review should be expanded to consider land agreements which limit the use of urban land for housing and business activities, including those that restrict development.
- 2.3 The QLDC Homes Strategy ratified by Council in 2021 identifies that covenants can be a barrier to affordable housing and identifies the following action: "advocate for methods to address developer covenants which unduly limit housing affordability" <sup>5</sup>. Council supports and reinforces this action, which would have a significant impact on the development outcomes for the Queenstown Lakes District and would support the review scope including a review of land agreements that restrict housing supply and affordability in urban areas.

## 3.0 Covenants lessen land competition and lack scrutiny.

- 3.1 Research on Building Better Homes, Towns and Cities in response to a National Science Challenge found that the Queenstown Lakes District is second only to Auckland in terms of the incidence of private land covenants in New Zealand Aotearoa<sup>6</sup>. While the correlation between private restrictive covenants and housing affordability is relatively untested in New Zealand Aotearoa, in the QLD the incidence of restrictive covenants is almost ubiquitous with new residential developments and are part of the package of tools used to influence real estate market outcomes. This practice has been ongoing in QLD for many years, and examples include

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<sup>1</sup> <https://www.qldc.govt.nz/community/population-and-demand> (estimated population on 30/6/2022 from March 2022 Demand Projections).

<sup>2</sup> <https://qem.infometrics.co.nz/queenstown-lakes-district/indicators/houseValue?compare=new-zealand>

<sup>3</sup> Ministry Housing and Urban Development - Urban Development Dashboard Urban Development (shinyapps.io) (date accessed: 19 January 2023).

<sup>4</sup> Infometrics: [https://ecoprofile.infometrics.co.nz/queenstownlakes%2bdistrict/StandardOfLiving/Housing\\_Affordability](https://ecoprofile.infometrics.co.nz/queenstownlakes%2bdistrict/StandardOfLiving/Housing_Affordability) (date accessed: 19 January 2023).

<sup>5</sup> [https://www.qldc.govt.nz/media/wr0ogtau/queenstown-lakes-homes-strategy\\_final.pdf](https://www.qldc.govt.nz/media/wr0ogtau/queenstown-lakes-homes-strategy_final.pdf) (date accessed: 2 August 2023) at page 24.

<sup>6</sup> [https://www.buildingbetter.nz/wp-content/uploads/2022/12/Fredrickson\\_Saville-Smith\\_2018\\_covenants\\_risk\\_to\\_supply\\_of\\_land\\_for\\_affordable\\_housing\\_rb.pdf](https://www.buildingbetter.nz/wp-content/uploads/2022/12/Fredrickson_Saville-Smith_2018_covenants_risk_to_supply_of_land_for_affordable_housing_rb.pdf) (date accessed: 2 August 2023)

private covenants that restrict building height and subdivision, which can inhibit urban intensification opportunities enabled by the district plan and result in inefficient use of urban land. The majority of the time these covenants are added to titles without QLDC being party or aware of the restrictions.

- 3.2 The true number of restrictive covenants in the district is unknown, as information on covenants is not recorded in a central inventory and it is difficult to understand the impact when they are only recorded on individual land titles.
- 3.3 Research by the Research and Evaluation Unit from Auckland Council found that 12% or 60,757 ha of land in Auckland was subject to restrictive covenants, leading to a decrease in the potential housing yields across the city<sup>7</sup>.
- 3.4 The National Policy Statement on Urban Development (NPS UD) is prescriptive in its requirements for a well-functioning urban environment, and there is ongoing significant investment across the motu by local authorities to ensure that there is appropriate provision for communities to continue to grow in line with the NPS UD. Private covenants on land are a limiting factor in the ability to deliver the objectives set by the NPS UD. Due to the lack of accessible data on private covenants, they are not able to be factored into Housing and Business Capacity Reports prepared under the NPS UD, however private covenants may have a significant impact on the delivery of residential and business capacity enabled by district plans.

#### 4.0 **Sunset clauses are needed - covenants which may be appropriate at the time of application become outdated over time.**

- 4.1 QLDC submits that sunset clauses on restrictive covenants are appropriate and should be applied, particularly for land agreements which seek to provide amenity or subdivision controls at the cost of future development. For example, residential subdivisions developed on larger lots in suburban settings sometimes have covenants restricting more dense future uses. Examples include prohibition of further subdivision or multi-unit developments. Councils are required by the NPS UD to amend their district plans to enable intensification of existing urban environments, however private covenants can inhibit intensification from occurring.
- 4.2 One trigger point for sunset clauses to consider may be at the time of upzoning for affected titles as well as adjacent titles.

#### 5.0 **Covenants can promote positive outcomes.**

- 5.1 As noted on page 42 of the discussion document land agreements can have beneficial outcomes, and these should be maintained. For example, covenants which restrict the use of certain types of heat sources (fires) can lead to improved air quality. QEII covenants as well as covenants which ensure ongoing affordability or cultural protections, or covenants to reduce reverse sensitivity effects (for example) can provide positive results and are supported by QLDC.

#### 6.0 **The response to land banking in lieu of covenants cannot fall to local authorities.**

- 6.1 On page 42 the document discusses the risk of land banking becoming more prevalent if land agreements are removed for commercial entities, and that local authorities could respond to address land banking through local measures such as rating. QLDC submits that the ability for local authorities to respond to land banking at a level which could compel trade competitors to act through the rating system is limited.

### **Recommendations:**

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<sup>7</sup> [https://betterdecisions.goodhomes.co.nz/wp-content/uploads/2019/09/4-Fredrickson\\_2018\\_land\\_covenants\\_in\\_Auckland\\_AC.pdf](https://betterdecisions.goodhomes.co.nz/wp-content/uploads/2019/09/4-Fredrickson_2018_land_covenants_in_Auckland_AC.pdf) (date accessed: 2 August 2023)

In support of this submission, QLDC has of the following recommendations for consideration:

- R.1. That the review is expanded to include land agreements that restrict housing supply and affordability.
- R.2. That the review specifically considers how restrictive land agreements inhibit achieving the outcomes sought by the NPS UD for the efficient use of urban land for housing and business activities.
- R.3. That the review provides clarification and guidance on the issue of private covenants (existing and future) that limit increasing density.
- R.4. That a central inventory of private restrictive covenants/restrictive land agreements is established so that information is more readily available. The inventory should include spatial mapping (GIS) that shows the land where the restrictive covenants apply. The inventory should include all existing restrictive covenants, and all new restrictive covenants. The inventory should be open source.
- R.5. That applications for new restrictive covenants/restrictive land agreements be required to be approved and can be declined by a central agency if they fail to meet certain criteria. This could include considering if the covenant restricts the use of land in a way that limits opportunities for improving housing affordability or supporting competitive land and development markets impeding the implementation of any national policy statement.
- R.6. That sunset clauses are introduced for amenity covenants, and that appropriate trigger points such as upzoning be considered.
- R.7. That best practice on covenant drafting and reviewing be made widely available, and that standards for covenants be considered.
- R.8. That the ability to provide positive outcomes (such as QEII covenants or covenants to reduce reverse sensitivity effects) through land agreements be retained.