

To: **Vida Christeller**
CC: John McSweeney, John
McDonald, Phil Becker; Kate Pascall

From: Andrew Wharton and John
McSweeney
City Design and Place
Planning

Date: 09/04/2021

Purpose: Advice

Mandatory inclusionary zoning in the district plan - suggestion to discuss with Liam Hodgetts

Background

1. Adam McCutcheon and Andrew Wharton's initial 25 February memo set out how the new district plan could help address housing affordability. The memo recommended:
 - The district plan should not include mandatory inclusionary zoning.
 - The district plan should include some voluntary inclusionary zoning and supporting objectives and policies for assisted and social housing. Our current district plan does not have these provisions.
 - Partnering with Ministry for the Environment on how the new Natural and Built Environments Act can have new planning and financial tools to better enable a range of affordable housing products.
2. Adam, John McSweeney and I met with you on 10 March to discuss the memo. Your direction was to progress with assisted housing (inclusionary zoning) provisions.

***Inclusionary zoning** means land use planning rules that require or enable a share of new housing construction to be affordable by people with low to moderate incomes. The term implies that most district plan zoning is "exclusionary". Residential zones' minimum lot sizes, single house requirements, maximum heights and yard setbacks prevent affordable houses from being built.*

***Affordable housing** for Wellington City is explained in our 25 February memo. The Council uses the Wellington Housing Affordability Model (WHAM) to understand what housing is affordable, and for whom. Many demand and supply factors influence house rental and buying affordability, while the district plan can only affect a few of the supply factors.*

Andrew would like to use a different term for the housing product created by inclusionary zoning specifically. Houses may be generally "affordable" at a market price or rent due to their location, quality or size. Other methods in the district plan and Housing Action Plan already promote affordable housing.

***"Assisted housing"** has been suggested for the category between social housing and market housing. It would include long-term rentals at a lower than average market rate, shared ownership/equity houses, and leasehold houses where the land is owned by the assisted housing provider.*

***However, Build Wellington is concerned** that this new term will be more confusing, and is too close to "assisted living" i.e. rest homes. The Council is also expecting provisions for "affordable housing", not "assisted housing".*

***Social housing** means houses owned by the government, local government or non-profit provider that are rented for free, or at low rates based on income or need.*

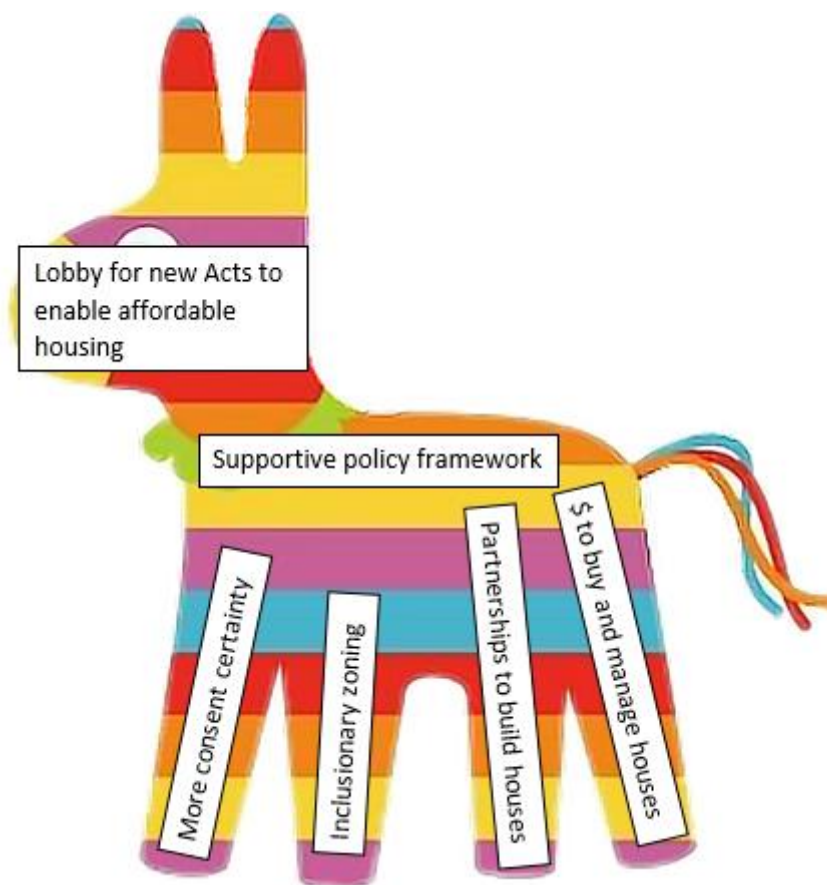
3. We met with you and staff from Build Wellington and Place Planning, and lawyer Nick Whittington, on 23 March to discuss a “piñata model”¹ for assisted housing that included an inclusionary zoning option.
4. The actions from this meeting were for Andrew to draft up some district plan provisions for internal and legal testing, and to draft a report for the Planning for Growth Steering Group and Executive Leadership Team (ELT) to consider. The reviewed ‘skeleton’ draft provisions are attached to this memo.
5. However, a report asking for wider organisational and councillor support for mandatory inclusionary zoning is in conflict with our advice to you, which is that the district plan should not have these rules at this time.

Action requested

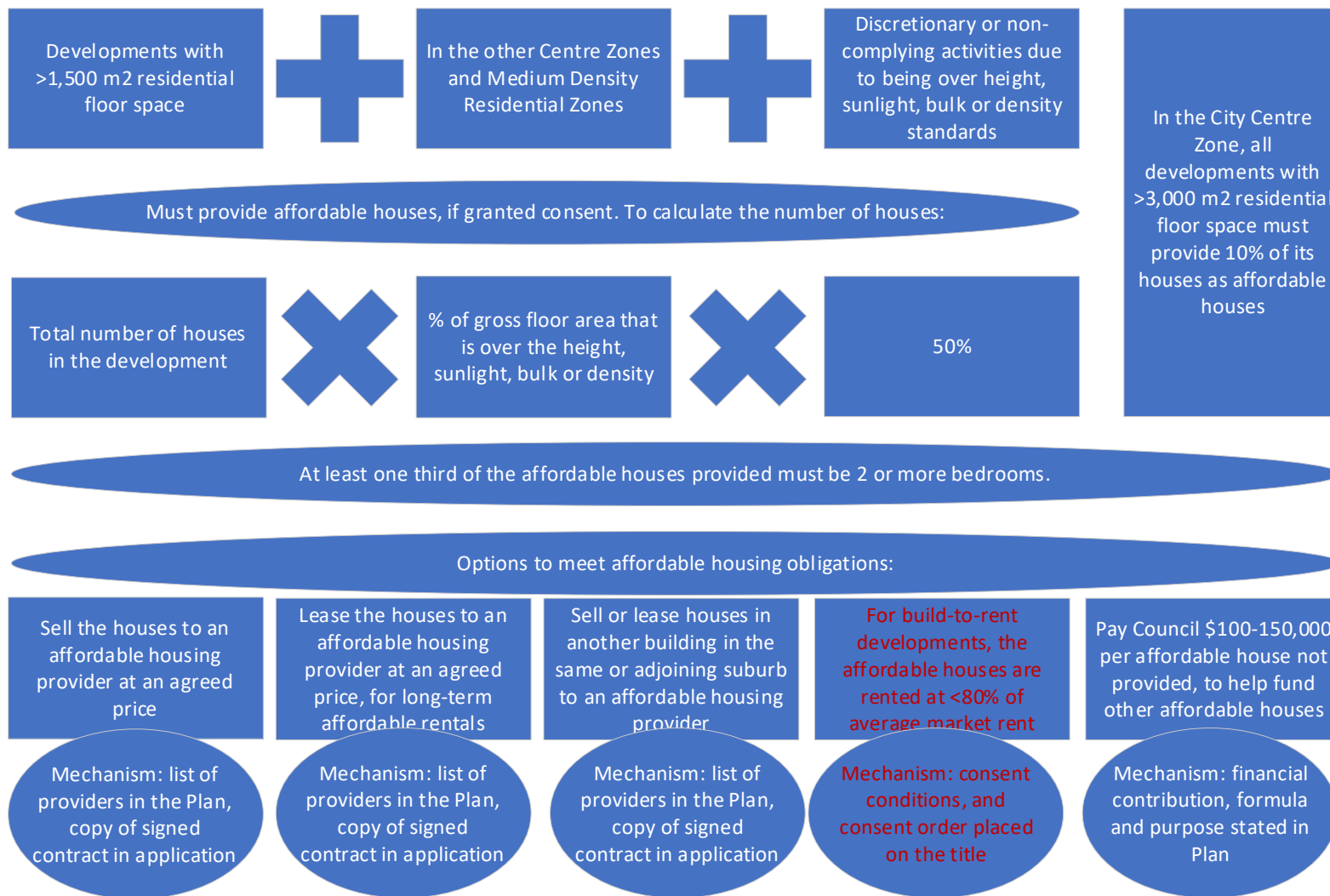
6. We support Council’s involvement in assisted housing, but consider it is better enabled through partnerships with developers and central government, district plan incentives, controlled activity rule for 100% assisted housing, and targeted funding options.
7. As ELT and Council will need to consider the mandatory inclusionary zoning option, we suggest that this memo and our earlier advice be discussed with Liam Hodgetts before proceeding further.

An indicative mandatory inclusionary zoning model

8. The numbers and thresholds in the model below are only indicative. They will change based on advice from Build Wellington and others. The gist is that all large apartment buildings in the city centre (including Te Aro and Adelaide Road) would be required to sell/lease/give at least 10% of their apartments to WCC or an assisted housing provider. Multi-unit developments in other Centre Zones and the Medium Density Residential Zone that exceed height or bulk standards would be required to sell/lease/give half of the extra apartments/terrace houses enabled by exceeding those standards to WCC or an assisted housing provider. The text in red was not included in the draft district plan provisions as New Zealand’s build-to-rent industry is nascent, and introducing rent controls here would add extra complexity and legal risk.



¹ Piñata model is like a straw-man, but the participants testing the model are unsure of its form.



9. Our concerns about proceeding with mandatory inclusionary zoning in this district plan, prior to any new functions and powers in the Natural and Built Environments Act, are summarised below.

Risk 1 – fairness

10. Mandatory inclusionary zoning requires the environmental issue (affordable housing) to be subsidised by multi-unit housing developers. But these housing developers are not causing the issue, and in fact are helping resolve the long-term issue by putting more, and more variety, of houses into the market. This targets the wrong people to fix the issue.

Risk 2 – effect on overall supply and affordability of housing in Wellington

11. Inclusionary zoning could act as a tax on new medium and high-density housing. This risks reducing the overall supply of housing due to lower developer margins. In overseas examples, this has happened sometimes, and sometimes not. The risk reduces when inclusionary zoning is paired with density bonuses, financial incentives and use of public assets. In New Zealand, our options to use these as part of consenting housing developments are limited under the RMA.
12. The Productivity Commission's report Using Land for Housing 2015 found that inclusionary zoning policies have little impact on the overall supply of lower-priced housing. The lower-priced homes are often off-set by higher prices on non-targeted affordable homes.

Risk 3 – administrative costs and constraints

13. Council would have to invest considerable effort to run and monitor processes to ensure assisted housing remains affordable, only goes to eligible households, and houses are not on-sold or sub-let for market prices. Contracts and covenants may be needed as well as consent conditions to keep house values or rental returns at an affordable level long-term.
14. WCC would need to decide whether it wanted to manage this assisted housing, share the housing with other providers (Kāinga Ora, Salvation Army etc.), or set up a non-profit housing trust. Queenstown-Lakes has created a non-profit housing trust to manage their "community housing". Auckland Council found it had a wide range of existing providers who could be used. Selecting one or a few would not be fair to the others. Wellington City is in the same situation. However, we have drafted the provisions so that the negotiations about who would manage the assisted housing happens is negotiated between the developer and the assisted housing provider *before* the resource consent application is lodged. This should reduce some administrative costs.

Risk 4 – legal challenge

15. Mandatory inclusionary zoning has not been tried before in New Zealand. The exception is Queenstown, but its affordable housing system applies only to development beyond what is enabled by their district plan (as a discretionary/non-complying activity). Also, Queenstown's rationale for requiring affordable housing² does not apply to Wellington.
16. The three risks above make it highly likely that mandatory inclusionary zoning provisions will be challenged in the Environment Court. Even if the district plan provisions are found to be *vires*, Environment Court appeals are merit appeals. Provisions can be overturned on this basis. The RMA Section 32 appropriateness, effectiveness and efficiency analysis, including the cost benefit analysis, may not be sufficient to justify the mandatory inclusionary zoning.

² Queenstown Lakes District Council's justification for its affordable housing rules is that, as a resort town, its high-income houses and holiday homes, tourist accommodation and businesses generate a demand for workers who need housing. Normally a town/city would be able to zone for increased density in brownfield and greenfield areas to enable this housing. But Queenstown's growth is limited by its outstanding landscapes which must be protected under the RMA. So the development causing the affordable housing issue is required to provide some land for affordable housing, affordable housing units or money, part of which goes to a non-profit assisted housing trust.