

**BEFORE THE WAIKATO DISTRICT COUNCIL INDEPENDENT HEARING  
PANEL**

**UNDER** the Resource Management Act 1991

**AND**

**IN THE MATTER OF** Submissions on **Variation 3: Enabling  
Housing Supply** to the Proposed Waikato  
District Plan

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**MEMORANDUM FOR POKENO WEST LIMITED & ORS ON SCOPE FOR  
FINANCIAL CONTRIBUTIONS POLICY**

***28 February 2023***

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**May it Please the Panel**

1. This memorandum has been prepared in response to the procedural hearing on Variation 3: Enabling Housing Supply (**V3** or the **Variation**) to the Proposed Waikato District Plan (**PWDP**) on Friday 24 February in Hamilton.
2. The purpose of this memorandum is to raise a potential issue regarding scope and/or jurisdiction to introduce financial contributions into the PWDP.
3. Towards the end of the Hearing last Friday counsel for the Council suggested that the Council was investigating introducing a financial contributions regime. This was in response to submissions and the provisions that had been notified in the Hamilton City Council and Waipa District Council plan changes. While no formal determination was sought or made, my recollection is that the Panel did not consider there were any legal issues arising from the introduction of a financial contribution regime into the PWDP.
4. This position was no doubt based on the apparent wide discretion the Panel has under clause 99 of Schedule 1 of the Amendment Act to not be confined to submissions and to respond to matters raised in the Hearing (refer to section 5 of Councils' Joint Opening Submissions of 8 February 2024).
5. Following the brief exchange at the Friday Hearing I have perused the Amendment Act provisions in more detail, and, in my respectful submission, there is an argument that any financial contributions policy must to be in the notified IPI, following a decision of the Cr. This is the plain and ordinary meaning of the following sections:

*80E Meaning of intensification planning instrument*

*(1) In this Act, intensification planning instrument or IPI means a change to a district plan or a variation to a proposed district plan—*

*(a) .....*

*(b) that may also amend or include the following provisions:*

*(i) provisions relating to financial contributions, if the specified territorial authority chooses to amend its district plan under section 77T:*

*77T Review of financial contributions provisions*

*Each specified territorial authority may, if it considers it appropriate to do so, include financial contributions provisions, or change its financial contributions provisions (as applicable) in the district plan, and, if it does so, may notify them in the IPI required to be notified in accordance with section 80F.*

6. The process to introduce a financial contributions policy is prescribed in the Act and the Council did not “choose” to pursue those provisions. This can be distinguished from consequential or other related provision amendments which have more flexibility regarding scope.
7. Therefore, in my submission it is arguable that, even with the wider jurisdiction of the Panel, there is no scope to introduce a whole new financial contribution regime by way of submission or based on what is heard.
8. It is noted that as a general legal interpretation principle, the specific overrides the general, and in terms of the financial contributions regime, the process is specified, and arguably the general Panel discretion cannot override this.
9. Financial contributions policies do have broad reach, and are often controversial, and specifying the process in the notified IPI may have been the intent of Parliament to ensure that affected parties had adequate notice of a proposed new regime.
10. This matter is being raised as a jurisdictional/scope question with the Panel, Council, and other parties now, for clarification, to try and ensure that the proceedings are efficient and proceed on a sound legal basis. If upon further submission and investigation, the introduction of a contributions policy by way of submission or being raised in the hearing, was found to be lawful, then the parties can invest in developing a policy or opposing it, as per their positions.
11. There would also be significant legal difficulties if, once implemented, the Council had been taking money using a provision that was then found to *ultra vires* the Act.
12. This memorandum has not commented on the merits of a financial contributions policy per se, just the process for the introduction of such a regime.

13. For the record I note that the clients that I represent understand that fair and reasonable contributions that are targeted, are appropriate to pay for infrastructure and other services. It is also noted that the Council has a development contributions policy under that LGA that it can amend, using the special consultative procedure, and connection charges, so it does have the ability to charge for development costs in other ways.
14. Counsel has raised this scope question informally with counsel for the Council yesterday.

**Proposed way forward:**

15. Should the Panel consider that there is a scope issue to be resolved (and of course subject to its timetabling directions), it is proposed that the question raised could be addressed in a similar manner to the inclusionary zoning/affordable housing scope question (refer to Par 8 of the Cr Memo of 23 February). The timetable could be as set out below:
- a) Any party who considers that submissions seeking financial contributions are beyond the scope of the PWDP IPI and the jurisdiction of the Panel, is to provide written legal submissions by 10 March 2023;*
  - b) Submissions on behalf of any submitters in support of their relief being within scope to be lodged by 17 March 2023;*
  - c) Submissions by the Council and any other party in response to be lodged by 24 March 2023; and*
  - d) Subject to the need for a scope hearing, the Panel will issue its determination by 31 March 2023.*

**DATED** this 28th day of February 2023



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