

**BEFORE THE PROPOSED KAPITI COAST DISTRICT PLAN HEARINGS PANEL**

**IN THE MATTER OF**                      **The Resource Management Act 1991**

**AND**

**IN THE MATTER OF**                      **The Proposed Kapiti Coast District Plan**

---

**CLOSING STATEMENT BY REPORTING OFFICER TO MATTERS RAISED DURING**  
**SECTION 12.1 FINANCIAL CONTRIBUTIONS OF CHAPTER 12:**  
**GENERAL AND DISTRICT WIDE PROVISIONS**  
**26 SEPTEMBER 2016**

---

## **1.0 Introduction**

- 1.1 I have considered the evidence, summary statements and submissions of submitters during the course of the hearing and make the following comments in response.
- 1.2 Section 2.0 of this response focuses on the specific issues raised by submitters in relation to Section 12.1 of Chapter 12 provisions. Section 3.0 of this response responds to specific questions raised by the Panel that are not addressed in the responses under Section 2.0. As I do not recommend any further changes to Section 12.1 beyond those I recommend in my s42A report, I have not appended any recommended changes to Section 12.1.
- 1.3 The following submitters tabled evidence, summary statements, letters/emails which I addressed (in full or part) as part of our opening statement:
- Bunnings Ltd (#232)
  - NZ Transport Agency (#457)
  - Progressive Enterprises (FS#129)
- 1.4 In order of appearance, submitters or their representatives who attended the hearing were:
- NZ Transport Agency (#457)
  - Progressive Enterprises (FS#129)
- 1.5 I note that Progressive Enterprises largely responded to the evidence provided by the NZ Transport Agency in advance of the hearing.
- 1.6 This closing statement focuses on matters raised by the above submitters during the hearing. There is no new evidence introduced within this closing statement, beyond responding to questions posed by the Panel at the hearing. Both my opening and closing statements should be considered together, alongside my s42A report. I do not recommend any further amendments to Section 12.1.

## **2.0 Issues Raised by Submitters**

- 2.1 This section deals with the specific issues raised by NZ Transport Agency and the response from Progressive Enterprises. I have structured this section around the matter raised by the NZ Transport Agency.

### **Funding of the State Highway**

- 2.2 The NZ Transport Agency queried the matter of funding of the State highway. To clarify, the s42A report focused on the funding of any upgrades to the State highway, as only upgrades or new infrastructure are a relevant matter under the Resource Management Act (RMA). The RMA provides for a contribution to be taken where there is additional demand placed on infrastructure (or open space as another example) as a result of an activity. That is, the activity generates an effect that a financial contribution will directly address. A financial contribution (or a development contribution under the Local Government Act (LGA)) cannot be taken for maintenance works.
- 2.3 Mr Trotter further addresses funding of the State highway in Attachment 1. Mr Trotter provides clarification on how local roads are funded and the role of Council and the NZ

Transport Agency. He also addresses the MacKays to Peka Peka expressway, in relation to the consideration of the financial contributions relief sought by NZ Transport Agency.

2.4 In summary his conclusion is:

*“that the impacts of development on Kapiti Road and the SH have already been tested and allowed for and I struggle to understand what the financial contributions collected by the NZ Transport Agency would be used for bearing in mind that there is a brand new, future proofed piece of infrastructure, in the form of a four lane expressway which is due for completion in mid-2017.*

*Again, I would reiterate (as per Appendix 2 of S42A report) that in my opinion a more satisfactory way of dealing with development impact is through the resource consent process and a negotiated SH mitigation between NZTA and a developer and nothing that I have heard at the Chapter 12 hearing has changed my opinion on this.”*

2.5 I agree with Mr Trotter in this regard.

#### **What Financial Contributions can be taken for**

2.6 I concur with Progressive Enterprises that a financial contribution can only be taken in the form of land or money, as prescribed in s108(9) of the RMA. A financial contribution cannot be taken in the form of works; rather any works required to mitigate an adverse effect can be legitimately required as a condition under s108 itself. I also concur with Progressive Enterprises that a condition of consent cannot involve obligations on third parties, or mitigation to occur on third party’s properties. That is, a consent is between a consent holder and the Council and cannot include any obligations on third parties. I agree with Progressives that under the scheme of the RMA, a financial contribution cannot be taken for money towards any upgrading works required on the State highway network.

2.7 I agree with the three scenarios where there may be adverse effects on third party’s properties outlined by Progressive Enterprises in paragraph 31. The fourth option which Progressive Enterprises mentioned at the hearing is where an applicant proposes an Augier condition, whereby a condition could be imposed requiring works to occur if offered by the applicant.

2.8 In short, if there are at least minor adverse effects on the State highway network arising from development, these should be identified at s95 of the RMA (notification) stage with the NZ Transport Agency being identified as an affected party. The NZ Transport Agency can then get involved with the consent process either as a submitter or in providing written approval. It is clear from the NZ Transport Agency’s document “Cost Sharing with the NZ Transport Agency”<sup>1</sup>, tabled at the hearing by Mr Trotter, that the Agency has a defined approach to how it engages in resource consent processes where the effects of development on the State Highway network require mitigation. The document states that “The NZTA enters into cost sharing agreements to ensure that the financial costs and wider network benefits of mitigation works is met by appropriate parties”. I recommend that the Panel read through this document in conjunction with this closing statement. I note under “Contributions” that it does state that the NZ Transport Agency’s position is to support plan provisions that require financial contributions towards State Highway improvement measures. However, as

---

<sup>1</sup> <https://www.nzta.govt.nz/resources/cost-sharing/> 1 June 2012

discussed earlier and outlined by Progressive Enterprises, this is not provided for under the scheme of the RMA.

- 2.9 In respect to public transport, to expand on my opening statement, I consider that the upgrading of facilities could only occur if those were within Council ownership (through money for upgrading as a financial contribution, or works as a condition of consent) or by way of the three scenarios identified in paragraph 31 of Progressive Enterprises submission presented at the hearing, where they are within Greater Wellington Regional Council ownership.

#### **The Contribution sought by NZ Transport Agency**

- 2.10 In the evidence provided in advance of the hearing, the NZ Transport Agency proposes a financial contribution for commercial development based on a square metre calculation and activity thresholds, which would be to address demand on the safety and efficiency of the wider transport system (State Highway, council roads and public transport). They seek that that the Development Contributions Policy be amended to remove the current requirement for a roading contribution for commercial development and to rely on financial contributions for commercial development demands on the transport system.
- 2.11 In terms of this proposition introduced through evidence, I consider:
- a. That the Panel has no scope to consider such a proposition as it was not a relief sought in the original submission;
  - b. That it would be contrary to natural justice and fair process to introduce such a provision, given that no other party to the hearing would have foreseen such a contribution based on the original submission and no one has had the opportunity to make a further submission on it; and
  - c. The NZ Transport Agency has not provided an evidence base for such a provision that would meet the relevant tests under s32.

#### **The Local Government Act and Council's Development Contributions Policy**

- 2.12 I concur with Progressives in paragraph 19 that the provisions sought by NZ Transport Agency could not be adopted under the Council's Development Contributions Policy. In particular, Sections 197AA, 197AB, 199(1) and 204 of the LGA specify that contributions are for the Council to recover costs relating to servicing new growth. To assist the Panel, I have attached the relevant sections of the Act as Attachment 2.
- 2.13 In short, there is no ability under the LGA for contributions to be taken for non-Council assets. There is also clearly no ability to undertake maintenance works through Development Contributions.

#### **Final comment**

- 2.14 In my opinion the NZ Transport Agency is seeking a new means of funding the State highway network that is not provided for through either the LGA or the RMA. If this is the case, then this is a matter that the NZ Transport Agency would better address through legislative means, such as an amendment to the Land Transport Management Act 2003 which contains specific provisions on planning and funding of the land transport system.

- 2.15 Whether the roading contribution for the local network is adequate or not in terms of projected growth is a matter best addressed through the forthcoming review of the Development Contributions Policy, and is not a matter relevant to Section 12.1 of the PDP.

### **3.0 Responses to specific questions from the Panel**

#### **Could the Council apply a credit system for financial contributions?**

- 3.1 I was asked whether in the situation where a developer had paid a financial contribution for a particular development and decided not to proceed with it, the amount paid could be credited for another site for another development (by the same developer). I have sought advice from Ms Straker, Council's Manager Financial Planning and Performance. Her advice is that it would be possible to run a credit system for developers, but that would add additional administration and complexity. In her opinion, in 90% of the circumstances, a developer who is not proceeding with a particular development would want their money back for their use, rather than it sitting in Council's accounts until such time as they pursue another development, which may be some time later. I also note for subdivision, financial contributions are generally paid at the final certification stage of a development to enable the issuing of certificates of title for the new lots (pursuant to section 224(c) of the RMA), meaning the developer is likely to have already invested significantly in the development through the installation of services, forming roads etc. prior to paying any financial contributions to the Council. Given this, I consider it would be a relatively rare occurrence for a developer to decide not to proceed with a development after having paid financial contributions to the Council.
- 3.2 Ms Straker also advises that the Council does run a 'credit tracking' system for reserves credits where a developer vests land of a greater value than is required by the development after the resource consent has been approved. When they build the next development, the Council allows them to use this credit to offset their future invoice (or amount of land to vest), as long as it is within a certain area boundary of the original development.

#### **Was the assessment by Finance and Parks and the financial implications for community / papakainga housing provided to Te Ohu Taiao prior to the s42A report being finalised?**

- 3.3 In respect to the assessment by Finance and Parks, this is an ongoing and yet to be completed piece of work (the work relating to a wider review by Parks and Finance on future growth demands). Advice from Ms Straker is that this work has not yet progressed to a point where there was relevant information to be shared with Te Ohu Taiao. The decision was made that this information would better be shared at the time of either a future plan change (if financial contributions are to be retained in the future) or as part of the forthcoming review of the Development Contributions Policy to introduce a reserves and open space development contribution.
- 3.4 In respect of the financial implications for community / papakainga housing, the decision was made that there was no further explanation required to Te Ohu Taiao. This was for the reason that there were no submissions received on the PDP that would enable a different approach to be taken for community or papakainga housing, and the provisions in the PDP as notified would apply to all forms of housing development. In effect, there would be no more information to provide Te Ohu Taiao beyond what they had already seen in the submitter

engagement version of the PDP. As I stated at the hearing, any specific provisions relating to community or papakainga housing would be more appropriately addressed during either a future plan change (if financial contributions are to be retained in the future) or as part of a review of the Development Contributions Policy to introduce a reserves and open space development contribution.



.....  
Gina Sweetman

30 September 2016

## Attachment 1: Comment from Neil Trotter

The NZ Transport Agency is seeking to have a policy included in the PDP which allows them to take financial contributions for the State Highway (SH) network.

At the hearing the NZ Transport Agency presented the opinion that funding availability is changing and that going forward there is to be a much more restrictive regime in place for providing funding to local authorities. The examples quoted were the One Network Road Classification and not fully funding depreciation amongst other things. In my opinion, the NZ Transport Agency are confusing and blurring the lines between Councils asset management and road maintenance funding and funding for capital projects. There is a clear process for funding capital projects for local authorities which involves applying for funding under the National Land Transport Fund and meeting certain funding criteria as set down by NZ Transport Agency; this is as set out in the memo of Neil Trotter and Sean Mallon (Appendix 2 of S42A report). The maintenance of local roads is not dependant on other funding sources as it is 100% funded from a combination of council rates and NZ Transport Agency funds.

The NZ Transport Agency also make a case for financial contributions being used to help fund Council's capital projects. Council has to bid for NZ Transport Agency funding through the Regional Land Transport Plan process in competition and with the agreement of other local councils in the Wellington Region, this is then moderated on a national basis by the NZ Transport Agency. It is unclear in my mind how such financial contributions could be ring fenced to be made allowable for Council use and also how Council could gain access to such funds once they are held within the NZ Transport Agency. At present NZ Transport Agency funding criteria is primarily geared towards giving priority to the Roads of National Significance projects (of which MacKays to Peka Peka (M2PP) is one) and therefore in my opinion funding for the SH network under this current funding regime would always gain the upper hand in terms of priority over local road projects.

Also, the M2PP expressway is being constructed in the district. As this is a brand new piece of infrastructure it must have been designed with some growth allowance. The NZ Transport Agency would want to protect its expressway investment (approx. \$600m) and therefore would have used traffic modelling (KTM2) to assess the impact of development. The Airport development was included in this version of the model as a committed development and reported on by the NZ Transport Agency at the board of inquiry into the M2PP Expressway hearings. It would seem counter-intuitive that the NZ Transport Agency is now seeking financial contributions from development that has already been allowed for in the KTM2 model and that it obtained consent for through a board of inquiry.

In summary my conclusion is that the impacts of development on Kapiti Road and the SH have already been tested and allowed for and I struggle to understand what the financial contributions collected by the NZ Transport Agency would be used for bearing in mind that there is a brand new, future proofed piece of infrastructure, in the form of a four lane expressway which is due for completion in mid-2017.

Again, I would reiterate (as per Appendix 2 of S42A report) that in my opinion a more satisfactory way of dealing with development impact is through the resource consent process and a negotiated SH mitigation between NZTA and a developer and nothing that I have heard at the Chapter 12 hearing has changed my opinion on this.

## Attachment 2: Excerpts from the Local Government Act 2002

### 197AA Purpose of development contributions

The purpose of the development contributions provisions in this Act is to enable territorial authorities to recover from those persons undertaking development a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service growth over the long term.

### 197AB Development contributions principles

All persons exercising duties and functions under this subpart must take into account the following principles when preparing a development contributions policy under [section 106](#) or requiring development contributions under [section 198](#):

- (a) development contributions should only be required if the effects or cumulative effects of developments will create or have created a requirement for the territorial authority to provide or to have provided new or additional assets or assets of increased capacity:
- (b) development contributions should be determined in a manner that is generally consistent with the capacity life of the assets for which they are intended to be used and in a way that avoids over-recovery of costs allocated to development contribution funding:
- (c) cost allocations used to establish development contributions should be determined according to, and be proportional to, the persons who will benefit from the assets to be provided (including the community as a whole) as well as those who create the need for those assets:
- (d) development contributions must be used—
  - (i) for or towards the purpose of the activity or the group of activities for which the contributions were required; and
  - (ii) for the benefit of the district or the part of the district that is identified in the development contributions policy in which the development contributions were required:
- (e) territorial authorities should make sufficient information available to demonstrate what development contributions are being used for and why they are being used:
- (f) development contributions should be predictable and be consistent with the methodology and schedules of the territorial authority's development contributions policy under [sections 106, 201, and 202](#):
- (g) when calculating and requiring development contributions, territorial authorities may group together certain developments by geographic area or categories of land use, provided that—

- (i) the grouping is done in a manner that balances practical and administrative efficiencies with considerations of fairness and equity; and
- (ii) grouping by geographic area avoids grouping across an entire district wherever practical.

#### **199 Basis on which development contributions may be required**

- (1) Development contributions may be required in relation to developments if the effect of the developments is to require new or additional assets or assets of increased capacity and, as a consequence, the territorial authority incurs capital expenditure to provide appropriately for—
  - (a) reserves:
  - (b) network infrastructure:
  - (c) community infrastructure.

#### **204 Use of development contributions by territorial authority**

- (1) A development contribution—
  - (a) must be used for, or towards, the capital expenditure of the reserve, network infrastructure, or community infrastructure for which the contribution was required, which may also include the development of the reserve, network infrastructure, or community infrastructure; but
  - (b) must not be used for the maintenance of the reserve, network infrastructure, or community infrastructure.
- (2) Subsection (1) is subject to [section 205](#).