BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 12 to the Operative Hamilton City District Plan

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STATEMENT OF EVIDENCE OF KATHRYN ANNE DREW

ON BEHALF OF PETER AND DONNA FINDLAY

INTRODUCTION

1. My full name is Kathryn Anne Drew. I am the Planning and Land Development Manager at Bloxam Burnett & Olliver Ltd (**BBO**), a firm of consulting engineers, planners, and surveyors, based in Hamilton and Tauranga.

2. I have a Bachelor of Resource and Environmental Planning (Hons) from Massey University and have more than 20 years of experience in resource management and planning-related positions.

3. I am a full member of the New Zealand Planning Institute and a member of the Resource Management Law Association. I am a Certified Commissioner under the Ministry for the Environment's 'Making Good Decisions' course.

4. I have been involved in a wide range of planning work within the Waikato region over the last 20 years, including a variety of land development projects, sand quarries, landfills, and industrial and residential land use planning.

5. I have experience in preparing resource consent applications, assessment of environmental effects, and presenting expert planning evidence at hearings. My experience in relation to this hearing, is that I prepared various submissions on Plan Change 12 (**PC12**) on behalf of other parties and have provided advice to various clients undertaking redevelopment within Hamilton City.

6. Concerning this hearing, I am authorised to give evidence on behalf of Peter John Findlay and Donna Margaret Findlay (**Findlays**) on **PC12**.

7. My colleague, John Olliver, prepared the original submission and further submissions on behalf of the Findlays. I have reviewed those submissions in the preparation of this evidence.

8. In preparing this evidence I have also reviewed the relevant statements of evidence of expert witnesses giving evidence on behalf of HCC and the supporting plan provisions.

Code of Conduct for Expert Witnesses

9. I confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses, as contained in section 9 of the Environment Court's Practice Note 2023, and I agree to comply with it.

10. The data, information, facts and assumptions that I have considered in forming my opinions are set out in my evidence that follows. The reasons for the opinions expressed are also set out in the evidence that follows.

11. I confirm that the matters addressed in this brief of evidence are within my area of expertise, with the exception of where I confirm that I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from my opinions expressed in this brief of evidence. I have specified where my opinion is based on limited or partial information, and I have identified any assumptions I have made in forming my opinions.

Scope of evidence

12. My evidence will address the following matters:

    (a) An overview of the Findlay property and proposed zoning framework under PC12;

    (b) The relief sought in their primary submission and further submissions; and

    (c) Specific changes sought to the PC12 provisions and the reasons for those changes.

THE FINDLAYS PROPERTY

13. While the Findlay submissions are made on the PC12 provisions, as a whole, they have been made in the context of what may be achievable for the redevelopment of a specific property.

14. The Findlays property is located at 1140 Victoria Street and 1 Gwynne Place ('**Findlay Property'**), in central Hamilton. The properties separately adjoin

Victoria Street and Boundary Road and a recreation reserve to the north that separates the site from the Waikato River.

15. The site is held in two registered certificates of title, with a combined land area of 4105m². There are three existing dwellings across the site. There is separate access points for each title – one to Victoria Street and another to Gwynne Place. The location of the site is shown in **Figure 1** below.

16. The Gwynne Place property was previously located at the end of Hardley Street, however it was annexed after construction of the Boundary Road Bridge that occurred from 1975-1978.

Figure 1: Site Location

17. The sites are currently zoned Residential Zone – Residential Intensification Zone (**RIZ**). Under PC12 the zoning is proposed to be Residential Zone – High Density Residential Zone (**HDRZ**). The current and future zoning, signals that density is reasonably expected and anticipated due to the sites proximity to the City Centre.

18. Given the sites location, the Findlay's aspire to develop the site comprehensively into a number of residential units or potentially mixed-use. While detailed concept plans have not been prepared, concepts have been that provide for between 27-60 apartments across the site. While the potential for more apartments exists, the ultimate outcome and residential typology will be

determined through site-specific investigation due to access, contour, proximity to the Waikato River and the Boundary Road Bridge, together with development economics and feasibility, and the needs of the property market

19. The Findlay Property adjoins a Council wastewater pumping station, significant transport infrastructure, associated road reserves and the Waikato River and its supporting reserve. The condition of the council reserves (being that they are overgrown and weed infested), and the location of Council infrastructure are such that if these remain as is, there is a high risk that development density and design outcomes sought by HCC may be undermined.

PC12 SUBMISSIONS

20. The Findlay's primary submission focused on the following four matters:

    a) Objectives, policies, rules and methods relating to Chapter 4 - Residential Zone and specifically the rules applicable for development in the High Density Residential Zone;

    b) Objectives, policies, rules and methods relating to Chapter 23 – Subdivision;

    c) Financial contributions – Chapter 24 and Appendix 18; and

    d) Assessment criteria in Appendix 1.3.

21. That submission is recorded as being submission 281 and has been summarised in the summary of submissions as having 24 points.

22. The Findlay's also lodged further submissions supporting or opposing existing submissions made. Those submissions are numbers 532 through to 543 and cover matters relating to:

    a) The need for notification;

    b) Design specific controls for the zone including building heights, setbacks from SNA's, fencing standards, impermeable surface area and parking;

    c) Supporting and opposing the activity status sought for certain activities; and

    d) When financial contributions apply.

PC12 EVIDENCE

23. For the purpose of this evidence, I have focussed on the specific rules for the HDRZ, in Chapter 4, the subsequent subdivision provisions in Chapter 23 and the imposition of financial contributions (Chapter 24 and Appendix 18).

24. Before delving into that detail, I want to bring to the Panels attention that, as drafted, PC12 requires all new development within the HDRZ to obtain a resource consent as at least a restricted discretionary activity – regardless of what that activity is.

25. I understand that this approach has been adopted because HCC seeks to control the design and layout of sites and buildings to ensure that the development provides for high quality urban design and visually attractive buildings, with adequate on-site amenity and privacy[1]. Although Council's discretion is limited to the following assessment criteria:

    - B - Design and layout, and
    - C - Character and Amenity

26. While the intent is understood in principle, the point I want to make is that a resource consent and the costs associated with securing a consent is a fundamental step in the development/redevelopment of land within the HDRZ. This adds costs and potential uncertainty to any development outcome. In my opinion, if HCC want density in the HDRZ they need to make the plan provisions more enabling and permissive in terms of outcomes and resulting activity status to remove costs and uncertainty from consenting processes. I expand on these points below in this evidence.

<u>Types of Activities</u>

27. The Findlay's primary submission (281.23) sought a change to the activity status for a variety of non-residential land uses, and specifically requested that uses such as offices up to 1,000m² gfa, restaurants, cafes and ancillary offices be provided for as restricted discretionary activities in HDRZ.

28. As currently proposed offices are a non-complying activity (Rule 4.4.3.1(w)) and restaurants are a discretionary activity (Rule 4.4.3.1(z)) in the HDRZ.

29. As outlined in Chris Bishop's speech to the Real Estate Institute of New Zealand, on the 4 July 2024, Cabinet has agreed to a number of changes under the Going for Housing Growth pillar of land supply, including the introduction of new rules that will require councils to enable mixed-use developments in our cities. Further, strategic transport corridors, such as Boundary Road, are considered appropriate and necessary locations to enable growth through density and the government intends to strengthen density requirements around such transit corridors.

30. While Cabinet's intentions have not been yet been disclosed in detail or notified, the Council has an opportunity to front-foot this matter in the HDRZ. Doing so

[1] As recorded in Chapter 4.4 – High Density Residential Zone and specifically 4.4.1 Purpose.

would likely serve its high density growth aspirations well as any reliance on a further plan change would inevitably delay the form of growth sought and needed.

31. In my opinion, the HDRZ could support such mixed-use opportunities because the zone is applied to areas that are within a walkable catchment of the edge of the Central City Zone. Secondly, there are numerous examples of mixed-use, offices or other non-residential activities that are already been carried out in the proposed HDRZ. For example, the three properties directly adjoining the Findlay Property to the west are all used as commercial offices already. Similarly, Ulster Street (north of Maeroa Road) is scattered with several non-residential uses reflective of its proximity to the City Centre and location on a key transport route.

32. Having a blend of activities with the HDRZ is therefore not out of step with what is already occurring in the areas earmarked to be HDRZ. I appreciate that enabling offices, restaurants, cafés and similar activities on a HDRZ site without the residential component may conflict with Council's objective of prioritising the Central City Zone for commercial activities and prioritising the HDRZ for housing density, however, the rule framework could be drafted to enable a scale of mixed-uses at a similar scale to that adopted in the Central City Zone – City Living – Precinct 2.

33. For these reasons, it is my opinion that additional activities could be added to Rule 4.4.3.1 to enable mixed use activities, as a restricted discretionary activity within the HDRZ. Specific matters of discretion around size and scale could also be added similar to that already enabled in the Central City Zone – City Living – Precinct 2.

<u>Activity Status Table</u>

34. The Findlay's primary submission (281.17 and 281.18) sought changes to the activity status for single dwellings and duplexes, so they were permitted, and similarly, their further submission (537) supported the Kainga Ora's request (160.166) to enable up to six residential units per site as a permitted activity.

35. PC12 proposes (at Rule 4.4.3.1) that single detached residential units are a non-complying activity, duplexes are a discretionary activity, and 3 or more units (including terraced housing and apartments) are a restricted discretionary activity.

36. For the record, the current zoning for the Findlay site (RIZ) provides for a single dwelling as a discretionary activity, duplexes as a restricted discretionary activity and integrated residential developments[2] as a non-complying activity.

37. The activity status changes in PC12 are making the consenting framework will be more onerous for lower-density outcomes across the site.

38. The aggregate of the above appears more cost prohibitive and presumptuous in the absence of comprehensive assessment of site specific and other factors relevant to development feasibility and the economics of development within the HDRZ, including discrete sites such as the Findlay Property.

39. The evidence of Mr Roberts records[3], in relation to this matter, that:

> *"it is important to consider the objectives and policies of each zone when determining the appropriate status for residential units on a site. In the HDRZ, the objective is to provide for high density living of at least 6 storeys. While it may be appropriate to allow for two residential units on a site with discretionary permitted one unit on a site is unlikely to be consistent with the overall objectives of this zone."*

40. While I concur with Mr Robert's statement that it is important to consider the objectives and policies of each zone, it is my opinion that the activity status should be more permissive (restricted discretionary) or at worst retained as discretionary, as currently provided for in the RIZ. A lower activity status would enable the appropriate level of discretion to be applied, as opposed to having to demonstrate that the outcome passes the non-complying activity gateway test. In my opinion, a lesser activity status is also appropriate, as it reflects the fact that there is an absence of a comprehensive/detailed assessment of the feasibility of all sites within the HDRZ to confirm that the density sought is actually achievable on all sites. Furthermore, the only outcome of a higher activity status is more cost for landowners/developers, through consenting, to justify to the Council that the lower density is the right outcome. A lower activity status would also align with Objective 4.4.2.1(b) and Policy 4.4.2.1(a) which seeks to ensure that the HDRZ provides for a range of housing typologies consistent with the intended density.

41. The retention of the discretionary or non-complying activity status may have the unintended consequence of discouraging development, meaning that sites may

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[2] Means a development containing a mixture of residential units, and specifically more than one of the following types: single dwellings, duplex dwellings and/or apartment buildings on a site which is designed in a comprehensive way. The development may include shared facilities such as open space, access, parking and manoeuvring, and may have other communal activities (e.g. recreational facilities, office administration) for the exclusive use of the residents of the development and their visitors…

[3] M Roberts – EIC – Issue 2 - page 60

remain vacant or underutilised, which would conflict with the purpose of the NPS-UD and PC12 to increase the supply and range of housing.

42. The activity status also does not easily enable site specific characteristics to be considered. For example, a site may be zoned for high density living but its density is constrained in its development potential due to access, topography and likely geotechnical setbacks from the top of bank, all of which could be the case with the Findlay Property.

43. In my opinion, the more appropriate activity status for single dwellings is restricted discretionary.

44. For similar reasons to that noted above, it is my opinion that the activity status for duplexes should also be restricted discretionary activities at most, but ideally as permitted activities. As a permitted activity the outcome would be consistent with the activity status applied to the General Residential Zone and the Medium Density Residential Zone.

45. For these reasons, it is my opinion that the following activity statuses should adopted in Rule 4.4.3.1:

    e. Single detached residential unit – restricted discretionary
    f. Duplex residential units – restricted discretionary

<u>Maximum Net Site Area</u>

46. The Findlay's primary submission (281.19) opposed Rule 4.4.5.1(a) which requires a maximum net site area of 100m², per unit, for terraced housing. The submission records that 100m² per unit is unnecessarily restrictive, and inflexible and will not result in a diversity of housing typologies.

47. For the record, the current zoning for the Findlay site (RIZ) provides a variety of minimum net site areas depending on the housing typology and ranges a maximum size of 350m² for single dwellings to an average of 150m² for apartments.

48. As set out in Mr Robert's evidence[4], it is understood that the maximum density approach has been adopted to ensure efficient use of sites that may have terraced housing. It also records that the 100m² may restrict flexibility in designing terraced houses. In this respect, I note that Mr Roberts has recommended that the maximum net site size for terraced housing is increased to 150m² to provide for increased flexibility.

[4] M Roberts – EIC, Issue 4 – Page 72 and 73

49. While I appreciate that the use of the maximum net site areas is being proposed to ensure higher density outcomes are achieved, I question whether there actually needs to be a specific maximum provision that applies to terraced housing. There is no such maximum being proposed for apartments, so why is HCC adopting such for terraced housing?

50. In my experience, developers are going to deliver as much density as they can and where they can, but there are some situations where those density outcomes may be affected by the underlying conditions of a site. In those situations, a maximum may not be able to be achieved but the outcome is still an appropriate outcome for the receiving environment. For example, the Findlay's Property is such that large portions of the site slope down towards the Waikato River. As demonstrated in **Figure 2** that portion of the site is also subject to the Waikato Riverbank and Gully Hazard Area overlay. These are areas of the site where development potential is highly constrained and undevelopable, but whereby ownership and management of the land is still required. Paragraphs 18-19 above also highlight other relevant factors that may affect density.

Figure 2: Waikato River and approximate extent of gully hazard overlay (shown in yellow)

51. It may accordingly be an appropriate design outcome for this portion of the site to provide for terraced housing along the edge of the upper terrace and for the land between the unit and the property boundary (i.e. down the bank) to be included in the site area for the terraced house. In such a situation, the land area

will be significantly larger than 150m², which will not meet this rule, but is the most appropriate outcome.

52. It is my opinion, that the more appropriate approach for assessing the appropriateness of the site area is through the restricted discretionary activity consent that is required for all development and for terraced housing (as per Rule 4.4.3.1(g)). There does not need to be an arbitrary maximum figure applied to achieve the density outcomes sought. The density will be driven by what can feasibly be achieved on the site. Furthermore, the restricted discretionary activity assessment will be guided by Policy 4.4.2.1(c) which places a density requirement on the development outcome of 65 residential units per ha, so for densities less than this the resource consent application will need to justify why that outcome is appropriate.

53. For these reasons, it is my opinion that Rule 4.4.5.1 can and should be deleted.

Building Coverage

54. The Findlay's primary submission (281.21) opposes the 60% building coverage set out in Rule 4.4.5.2(a) and requests that the coverage be increased to 80%.

55. Mr Robert's evidence does not recommend any changes to Rule 4.4.5.2(a) other than changing the description from maximum building coverage to site coverage.

56. It is my opinion that 80% is a more appropriate building coverage to achieve the objectives and policies of the HDRZ. Using the Findlay Property as an example, it has a site area of 4105m², including an access leg. The density expectation for the site is 26 dwellings (using 65 dwellings per ha). If you used 4,000m² at the baseline then a site coverage would be 2,400m² at 60% or 3,200m² at 80%. A site coverage of 2,400m² and the 150m² maximum site area for terraced housing could result in 16 residential units. At a site coverage of 3,600m² and the 150m² maximum site area terraced housing could result in a site coverage of 24 residential units. This equation is very crude and does not consider increased height, but it highlights that an increased site coverage should be enabled to help achieve the density outcomes sought for the zone.

57. For this reason, I request that Rule 4.4.5.2(a) be increased to 80%.

Permeable Surface and Landscaping

58. The Findlay's primary submission (281.22) opposes the 20% permeability requirement set out in Rule 4.4.5.3 and requests that the permeability be reduced to 10%. The justification for this submission is similar to that described

above in relation to site coverage i.e. the rule proposed will reduce the opportunity to achieve the intensity of development of sought.

59. The evidence of Dr Junqueira[5] records that the provision is proposed to manage the cumulative effects of hard surfaces in an urban environment when a rain or storm event occurs, and is not proposed to manage amenity effects. A change is also recommended around terminology whereby instead of a permeable surface, it is now impermeable and similarly the rule is changed from a minimum to a maximum. That maximum is now 80% of the new site area.

60. While I appreciate that the standard is to manage the cumulative effects of hard surfaces, it is clear from Dr Junqueira's evidence that the requirement is not amenity focused but is driven by stormwater management. As such, it is my opinion that stormwater effects from built form outcomes are more appropriately managed through other plan provisions and not an impermeable surface area requirement. There are many ways to manage stormwater that do not require permeable surface area. The suitability of a site's stormwater approach will also be assessed and determined through the associated consenting process that will be required to develop a site, such as the Findlay's Property.

61. For this reason, I request that Rule 4.4.5.3(a) be amended to a maximum of 90% of the net site area. A consequential change will also be required to Rule 4.4.5.3(b) to reduce the requirement for planting is correspondingly reduced to 10% of the total site area.

<u>Fencing Standards</u>

62. The Findlay's primary submission (281.24) opposes the fencing standards for the HDRZ given the location of the zone near the Central City Zone and potential issues around security and crime. The Findlay's specifically sought that fences up to 1.8m in height are permitted on all boundaries, as is enabled in the current plan provisions for the site.

63. The evidence of Mr Roberts has recommended some changes to Rule 4.4.5.7 – Boundary Fencing and Walls as such fencing relates to the transport corridor boundary. These changes have recognised that some fencing may be required along the transport corridor boundary but has limited that to 0.9m. There is also an option for 1.2m fencing on 50% of the boundary provided that it is 50% permeable.

[5] Dr Junqueira EIC – Issue 3 – page 14

64. While I appreciate that the premise of restricting the fencing height along a transport corridor is to maintain a level of transparency and connectivity with the street, there also needs to be consideration around the safety of the property and individuals within the property. The Findlay's have experienced these issues because of the prominent location of their site relative to the city centre and the Boundary Road bridge.

65. For these reasons, it is my opinion that Rule 4.4.5.7 can and should be amended to enable higher fencing (i.e. up to 1.8m) without losing the balance between privacy and community engagement that the plan provision seeks to achieve. This can be achieved by requiring the fencing to be visually permeable – albeit not at the 50%.

Subdivision

66. The Findlay's primary submission (281.12 and 281.13) opposes the minimum lot size of 1200m² proposed in Rule 23.7.1(d) and opposes Rule 23.7.2.4 because the drafting of the requirement was unclear.

67. In relation to Rule 23.7.1(d) – which is now Rule 23.7.2 – Allotment Size and Shape, no changes to the standard have been proposed. Ms Thomson's evidence specifies that removing or amending the provision would be inconsistent with the objectives and policies for the zone that intends that development occurs comprehensively and in an integrated way to achieve the higher densities proposed[6]. The s32 analysis also supports this statement identifying that the 'benefit' of the minimum lot size plan provision is that it is of a lot size that discourages standalone dwellings but encourages the comprehensive design and development of higher densities[7].

68. While I understand the premise of the approach, I question the need for a size to be specified. Subdivision to create vacant lots is a restricted discretionary activity (as set out in Table 23.3c). In my opinion, the restricted discretionary activity assessment would enable the suitability of the subdivision and the associated lot sizes being proposed to be examined as opposed to setting the standard at the arbitrary figure of 1200m².

69. In preparing this evidence, I examined what other Tier 1 Councils are doing in this space. In this regard, I note that the recently adopted Tauranga City Council Plan Changer 33 – Enabling housing supply has no subdivision standards for vacant lot subdivisions. Similarly, the Wellington City District Plan has no standards. The Auckland Unitary Plan however does, and I note that their

[6] Ms Thomson EIC – Issue 3, page 18
[7] PC12 - Appendix 2.3 Evaluation of Objectives, Policies and Rule, page 101

minimum lot size is 1200m². While it appears the PC12 standard aligns with the Auckland Unitary Plan approach I question whether this is now an outdated approach in light of what other Councils have more recently been adopting.

70. In relation to Rule 23.7.2.4 (now Rule 23.7.1 – Subdivision Suitability), Ms Thomson's evidence[8] concurs that the provision as notified was unclear and potentially more onerous than intended. Ms Thomson has recommended changes to the wording of the provision to reflect this. I have reviewed those changes and support them. I also note that there are still some cross-references to Rule 23.7.2 that need to be updated to Rule 23.7.1[9].

Financial Contributions

71. The Findlay's primary submission (281.14) opposed the changes proposed to Chapter 24 and Appendix 18 relating to financial contributions and specifically recorded that as they did not relate directly to residential intensification, amendments were beyond the scope of PC12. The other concerns raised in the submission include the fact that:

    a) there was no evidential basis for the effects on intensification that are required to be mitigated and therefore subject to financial contributions; and

    b) there needed to be a better explanation, justification and methodology to clarify the relationship between development contributions and financial contributions and how this will be managed and implemented.

72. The evidence of Ms Douglas records that financial contributions for non-residential activities have been withdrawn from PC12, as this was considered out of scope. I support this.

73. In relation to the issue of perceived double dipping, Ms Douglas states that the proposed financial contributions do not cover the same matters captured by development contributions. In this respect, they are proposed to cover three waters and transport network connections, Te Ture Whaimana and residential amenity. While Ms Douglas's evidence provides clarification of how the Te Ture Whaimana contribution will be spent, the same has not been done for the other two topics. Consequently, it is difficult to reconcile how the financial contributions differ from development contributions which have similar lenses.

74. In my opinion, the effects that require mitigation are unclear and similarly, there is no clarity as to how someone could mitigate the adverse effects of their

[8] Ms Thomson EIC – Issue 2, page 16
[9] See the note under 23.7.1(b)

development on their site, so that they are not liable for financial contributions (as suggested by Ms Douglas).

75. I am also struggling to ascertain and reconcile effects that require mitigation under the term residential amenity when the imperative is to increase density, for properties such as the Findlay's.

76. As currently devised, the specificity and broad application of Financial Contribution charges proposed appear to be a blunt instrument that is not discrete by 'site' or 'effects' and do not appear capable of being equitably or discretely applied. In essence, rule provisions appear based on costs that are unpredictable and not precisely known, and the basis on which any refund calculation and methodology is similarly not known and highly uncertain.

77. The Findlay Property sit alongside the Waikato River and neighbourhood parks and reserves that are long established, highly mature, and 'optimal' in terms of the Hamilton experience. These do not appear capable of being added to and further, the nexus between 'infill' development, these parks and reserves and the growth of other neighbourhood reserves is highly uncertain and appears almost incapable of precise determination.

78. While the above is but one example, the effects of development and its nexus to financial contributions being proposed is vague at best, and at their worst, incapable of precise determination, namely the connection between cause, effect, and cost. Intuitively, the financial contribution regime proposed appears and feels like a development contribution, or a new form of tax, levy or local government charge being imposed on growth.

79. In my opinion, when the section 32 Report is read alongside Ms Douglas' evidence there is a lack of critical analysis of the benefit of the proposed regime and costs in securing that benefit. In terms of efficiency and effectiveness, it is hard to see how the provisions are justified, beyond a desire for the Council to increase revenue.

80. For these reasons, it is my opinion that the imposition of financial contributions as proposed in PC12 is questionable and unjustified.

CONCLUSION

81. For the reasons set out above, I request the following changes to the PC12 plan provisions:

(a) Enable mixed-use activities in the HDRZ by providing for such in Rule 4.4.3.1.

(b) Retain the activity status for single dwellings and duplex dwellings, in the HDRZ as a restricted discretionary activity.

(c) Delete Rule 4.4.5.1 – Minimum Net Site Area.

(d) Increase building coverage, in Rule 4.4.5.2(a), to 80%.

(e) Increase impermeability, in Rule 4.4.5.3(a), to 90% of the net site area.

(f) Remove the minimum lot size area for vacant lot subdivision in the HDRZ in Rule 23.7.2.

(g) Remove financial contributions for infill development.

Kathryn Drew

24 July 2024