Plan Change 12 Submission

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Introduction

1. This submission is confined to the proposed changes in the Financial Contribution ("FC") provisions of the District Plan; identified as Chapter 24 and supported by Appendix 18. It sets out a number of concerns in relation to the proposed changes to Chapter 24 in the Operative District Plan and includes suggested remedies for consideration.

2. I wish to be heard in support of this submission.

Concern 1: Use of FCs to Counter the Avoidance of DC Liabilities by the Crown

Concern

3. The operative District Plan provides for FCs to be levied on the Crown as a means of preventing it from circumventing a statutory exemption to the payment of DCs provided in the Local Government Act (2002). The proposed amendment to Chapter 24 removes this ratepayer funding protection without any supporting explanation or justification.

4. In my view, the rules in the operative District Plan for ensuring the Crown pays FCs in lieu of DCs as set out in 24.1.e(i) should be retained to ensure Crown agencies cannot and do not avoid funding an equitable and fair share of the costs associated with the growth capacity needed to service their future developments in Hamilton.

Suggested Remedy

- Retain the rules already in the Chapter 24 enabling FCs to be levied on the Crown in lieu a DCs.

Concern 2: Statutory Limitations of the Levying of a FC

Concern

5. The proposed amendments to Chapter 24 assume the Council can require the payment of FCs for any class of activity other than a prohibited activity as provided by S77E of the RMA. Unfortunately, the Council appears to have overlooked the fact that FCs can only be enforced as conditions of resource consents in accordance with S108 of the RMA or possibly by using abatement notices; issued in accordance with S322 to stop an otherwise permitted activity. Resource consents are the RMA's primary enforcement tool.

6. This means that, in the absence of a resource consent, the Council is reliant on the use of the notional "Bluff Act" (or the belated use of an abatement notice) on

developments not requiring a resource consent to ensure the payment of FCs it intends to impose. As a consequence, non-consented developments can potentially avoid the payment of FCs, whilst all other developments cannot. The associated risks undermine the proposed purposes of the FCs and their use by the Council.

Suggested Remedy

- Before amending Chapter 24, seek written confirmation from the MfE that FCs can be legally enforced under the RMA in the absence of either a resource consent or the threatened use of abatement notices.

Concern 3: Formula for Calculating FCs

Concern

7. The formula for calculating FCs is provided in Appendix 18 and involves the application of an inflation adjusted unit cost (determined on a city wide basis) to a supposedly equity adjusted demand measure; referred to as a "PUD". Underlying assumptions include:

   a. one PUD represents the demand of a standard residential dwelling and 100 sqm GFA for non-residential buildings; and

   b. equity between different types of development can somehow be achieved by adopting transport demand conversion factors sourced from the Council's DC Policy.

8. This approach is highly problematic and unreasonable for the following reasons:

   a. The city wide approach for the streetscape and Te Ture Whaimana purposes provide no recognition of the substantial costs that greenfield developments are now required to incur to satisfy resources consent conditions for adverse environment effect mitigation relative to comparable historical and/or brownfield development. As a consequence, greenfield developments will be paying proportionately higher costs to mitigate adverse environment effects and to provide for betterment than identical developments located in brownfield locations. This represents an administratively driven cost transfer from greenfield to brownfield development by the Council.

   b. The proposed adoption of an equity multiplier based on transport demand conversion factors set out in the DC Policy has no underlying logic for assessing a FC other than as a deliberate attempt to transfer costs from residential to non-residential types of development in Hamilton. Transport demand conversion factors have no more relevance to the generation of adverse environmental effects than the materially lower demand conversion factors set in the DC policy for other Council-owned infrastructure including water, wastewater or stormwater.

   c. To compound the fundamental inequities attributable to the use of equity multipliers, they result in the over recovery of costs for both the Network

Renewal and Te Ture Whaimana purposes; as illustrated in the table below for the term of the LTP:

Purpose	FC Cost $M	Charge $/PUD	PUD x Multiplier	FC Recovery $M
Streetscape	36.00	2,998	12,011	36.00
Te Ture Whaimana	**47.48**	1,763	27,992[1]	**49.34**
Network Renewals	**2.85**	106	27,992[2]	**2.96**

d. The demand attributed to non-residential development is based on a GFA definition in the DC policy that is subtly different to the GFA definition set out in the interpretations section of the operative District Plan. This has been achieved by adding an extra definition in Chapter 24 specifically intended to increase FC revenue from non-residential development. The approach will likely cause totally avoidable confusion and ongoing mistrust about the Council's overall motives for the changes to Chapter 24 within the broader development community and amongst their various advisors.

Suggested Remedy

- Set a PUD to 100 sqm for all types of development
- Remove the Equity Multiplier from the FC formula
- Remove the GFA definition from Chapter 24 and apply the GFA definition already in the District Plan

Concern 4: Purpose of Network Infrastructure Renewal FC

Concern

9. The proposed changes to Chapter 24 provide for a FC to fund the cost of capacity upgrades to existing network infrastructure that the Council has previously decided not to fund in accordance with its DC Policy. The capacity upgrades are deceptively referred to as "Network Renewals" in an attempt to distinguish the assumed costs of capacity upgrades from the costs allocated of growth identified in the DC Policy. The term "Network Renewals" is also defined in Chapter 24 in a manner that enables existing network components to be repaired and replaced in a manner that provides new and additional development to connect.

10. The proposed definition of what constitutes a renewal defies common logic and general understandings of the term "renewal". It is also inconsistent with the

[1] Based on an average equity multiplier of 1.74 for all future retail development
[2] Based on an average equity multiplier of 1.74 for all future retail development

definition for “renewal works” in the operative District Plan in respect to transport infrastructure.

11. The Council is understood to have identified $5.7M of supposed renewal costs based on cost allocations to renewals in the Schedule of Assets supporting the DC Policy and then attributed 50% of these cost allocations to FCs. This rather arbitrary approach to cost allocation undermines the credibility of the very complicated cost allocation methodology used by the Council to allocate costs to growth in the DC Policy.

12. In addition, the renewal costs are being recovered from developments located in greenfield areas where land developers either directly fund future growth capacity needs to the most up-to-date standards set by the Council (or they contribute via DCs) at the time of consent. As a consequence, the infrastructure renewal FC has been constructed to transfer costs from future infill development to greenfield development in a manner that is unrelated to the adverse environmental effects that can be attributed to greenfield development.

Suggested Remedy

- Review the assumptions supporting the cost estimates
- Ensure the FCs are targeted to developments that are demonstrably responsible for the adverse environmental effects justifying the FCs (which will logically exclude developments located in greenfield areas).

Concern 5: Purpose of Te Ture Whaimana FC

Concern

13. In 2019, the Council has indicated it identified a total cost of $44.7M to meet Te Ture Whaimana objectives in gullies occupying 73.7 Ha of the City over a 10-year time period of the current LTP. The cost estimates have subsequently been raised to $47.2M to account for inflation in the last 3 years. The Council is now proposing to take advantage of the opportunity provided by a recent RMA amendment encompassing betterment (ie s77e.2) to recover 100% of these costs from all types of future development in Hamilton in the form of a FC.

14. The cost estimates provided are understood to include the supply, planting and maintenance of vegetation and public access into and along gullies including construction of paths, stairs, boardwalks and bridges and the installation of signage and operational costs. These projects will clearly benefit all Hamilton residents (existing and future) yet the Council considers all of the costs should be borne by future development. It is obvious that the goal of the Council is to transfer the costs of its Te Ture Whaimana objectives from ratepayers to future development without reasonable regard to who will enjoy the benefits and what adverse environmental effects are being mitigated.

Suggested Remedy

- Review the cost allocations associated with the Te Ture Whaimana FC (including consideration of the environmental degradation attributable to all historical development in Hamilton) and reset the Te Ture Whaimana FC charge accordingly.

Concern 6: Purpose of Streetscape Amenity FC

Concern

15. The Council is proposing to upgrade community parks and plant trees on existing road reserves using FCs levied on residential development. It anticipates it will incur costs of $36M over a 10 year period. As with the cost estimates for funding the purpose of the proposed Te Ture Whaimana FC, the Council does not appear to have attributed any benefits of the planned expenditure to existing residential development located in the existing brownfield areas of Hamilton. As a consequence, the Council is essentially using FCs to generate additional revenue in the first instance and then to transfer costs to future residential development for the benefit of existing ratepayers.

Suggested Remedy

- Review the cost allocations associated with the Streetscape FC to take reasonable and appropriate account of the benefits to be enjoyed by existing residential development and reset the FC charges accordingly.

Concern 7: Future FC Assessments

Concern

16. The methodology for calculating FCs set out in Appendix 18 does not take account of changes in land uses such as conversions from commercial or retail land uses to residential in brownfield areas of Hamilton. In these situations, recognition of the existing PUDs needs to be taken into account. Otherwise, some brownfield developments will incur a FC as mitigation of an adverse environment effect that they do not create.

Suggested Remedy

- Base the PUDs solely on increases in GFA (as presently defined in the Administration section of the operative District Plan) for all types of development and do not apply any unavoidably subjective equity multipliers to PUDs.