

**Before Independent Hearing Commissioners  
Wellington City Council**

**I Mua Ngā Kaikōmihana Whakawā Motuhake  
Te Kaunihera o Pōneke**

In the matter of **The Wellington City Proposed District  
Plan**

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**Legal submissions on behalf of  
Wellington City Council  
Hearing Stream 4**

**20 June 2023**

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# Legal submissions on behalf of Wellington City Council

## Hearing Stream 4

### 1 City Outcomes Contribution

1.1 These submissions address various legal matters relating to the City Outcomes Contribution provided for in the PDP. In particular:

- (a) How does it work?
- (b) It is ultra vires the RMA?
- (c) Is it a qualifying matter under s 771 of the RMA?

### 2 How does it work?

2.1 As notified, CCZ-P11 requires over and under height large-scale residential, non-residential and comprehensive development in the CCZ to provide a City Outcomes Contribution.<sup>1</sup> As Council officers are proposing to accept submissions seeking the removal of a height limit in the CCZ, that height limit is proposed to become a threshold over which a City Outcomes Contribution is required.

2.2 The City Outcomes Contribution addresses five key areas relating to objectives in the Strategic Direction chapter and well-functioning urban environments in Wellington City generally:

- (a) Provision of public space and amenity;
- (b) Higher levels of building performance with reduced carbon emissions;
- (c) Higher levels of building resilience;
- (d) Increasing the amount of assisted housing, being housing of different styles, tenures and therefore affordability; and
- (e) Accessibility of buildings.

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<sup>1</sup> The City Outcomes Contribution is also required in other centres but to simplify matters these submissions focus on the CCZ. The same position applies to the relevant provisions in relation to other centres.

### 3 Is it ultra vires the RMA?

- 3.1 Some submitters assert that the City Outcomes Contribution is ultra vires, in the sense that it is not permitted by the RMA.
- 3.2 Making planning regulations requiring those developing land to provide for outcomes enabling better functioning urban environments is lawful. The purpose of a district plan is to assist a territorial authority to carry out its functions in order to achieve the purpose of the RMA.<sup>2</sup> The functions of a territorial authority are set out in s 31, are deliberately stated in open and broad terms,<sup>3</sup> and include:
- (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district;
  - (b) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district;
  - (c) the control of any actual or potential effects of the use, development, or protection of land.
- 3.3 This situation is no different to that in the *Infinity* case. In that case the High Court found that provisions requiring developers to contribute to an affordable housing outcome were lawful. As noted in that case, the issue for decision-makers is whether the proposed provisions are justified on their merits – in other words, whether the provisions are the most appropriate way to achieve the purpose of the Act. Notably, the subsequent promulgation of the NPS-UD makes the vires issue even clearer than it was at the time *Infinity* was decided.

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<sup>2</sup> RMA, s 72.

<sup>3</sup> *Infinity Investment Group Holdings Limited v Queenstown Lakes District Council* HC INV CIV-2010-425365, 14 February 2011 at [40] per Chisholm J.

3.4 The other main criticism levied at the proposed provisions is that the link between height as a trigger and the provisions is unclear.<sup>4</sup> The link is addressed in the evidence of Ms Stevens. The provision of a City Outcomes Contribution seeks to both encourage higher development while also ameliorating some of the adverse effects of higher, more dense, development. The link is not a complete or direct one, as would justify every new development being required to provide a proportionate City Outcomes Contribution, but uses the height threshold as a proxy for the point at which the adverse effects of higher development justify requiring additional amelioration. I do not see that indirectness as the absence of a clear link, but as an example of the sort of tradeoffs that are required when devising a regulatory framework to address the complexities of land development. Put another way, any planning rule that sets thresholds above or below which certain outcomes flow can be criticised as being over or under-inclusive, but that does not mean there is no clear link. The proposed provisions strike a balance between not imposing certain obligations on all development, and ensuring that development carrying higher levels of adverse effects ameliorates those effects.

#### **4 Is it a qualifying matter?**

4.1 The City Outcomes Contribution is not a qualifying matter. A qualifying matter is one that makes the MDRS or the relevant building height or density requirements under policy 3 of the NPS-UD less enabling of development.

4.2 In the CCZ, policy 3(a) requires that the plan enable “as much building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification”. The City Outcomes Contribution does not alter the building heights enabled which, as now recommended by reporting officers, are not restricted.

4.3 As explained in previous legal submissions,<sup>5</sup> matters which may generally be seen as imposing a restraint on development, but which do not result

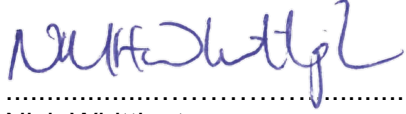
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<sup>4</sup> See also *Infinity* at [41].

<sup>5</sup> See Hearing Stream 2, Reply Submissions, in Appendix 2 to the Right of Reply of Josh Patterson, at Part 2: [Right or reply responses Mr Josh Patterson \(wellington.govt.nz\)](https://www.wellington.govt.nz).

in the modification of building heights and densities are not considered by the Council to be qualifying matters.

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