

RMA HEARINGS PANEL REPORT



To: Independent Hearings Panel

From: Damien McGahan, Principal Aurecon and Melissa Needham, Manager,
Aurecon on behalf of the Waipā District Council

Subject: **Addendum (2) to Section 42A Hearing Report on Proposed Plan Change 26
(Section 18 Financial Contributions)**

Date: 13 October 2023

Hearing Date: 20 September 2023

1. INTRODUCTION

1.1.1. This addendum to the Section 42A report for Plan Change 26 (Section 18 Financial Contributions) has been prepared in response to matters raised at the hearing held on 20 September 2023.

1.1.2. All additional amendments are contained in **Appendix A** – Recommended track change amendments to Plan Change 26 (Section 18 Financial Contributions) and a clean copy of Plan Change 26 is provided in Appendix B (please refer to Appendix B for accurate paragraph numbering).

1.2. ASSESSMENT OF OTHER MECHANISMS OF REQUIRING FINANCIAL CONTRIBUTIONS FOR PERMITTED ACTIVITIES

1.2.1. During the hearing the Panel discussed mechanisms for requiring financial contributions (FCs) for permitted activities. An assessment of the different mechanisms is put forward for the Panels consideration.

1.2.2. The options are assessed in **Table 1** following and include:

- **Option 1 (PC26)** – Requiring financial contributions for all activity statuses and introducing a restricted discretionary activity status consenting pathway for non-compliance.
- **Option 2** – Requiring financial contributions for all activity statuses with no specific consenting pathway for non-compliance.
- **Option 3** – Requiring financial contributions for activities that require resource consent only (not for permitted activities).

Table 1 Evaluation of Options – Different mechanisms for requiring financial contributions

	Option 1 (PC26) Requiring FCs for all activity statuses and introducing a restricted discretionary activity status consenting pathway for non-compliance	Option 2 Requiring FCs for all activity statuses with no specific consenting pathway for non-compliance.	Option 3 Requiring FCs for activities that require resource consent only (not for permitted activities).
Outline of option	<p>This option would apply to all activity statuses including permitted activities.</p> <p>This option was requested by Kāinga Ora in their tabled evidence and was recommended in the s42A report. The consenting pathway established requires a restricted discretionary consent if an applicant objects to payment of a FC.</p> <p>This option means that should payment of a FC be withheld the Council could:</p> <ul style="list-style-type: none"> • Require the applicant to obtain a restricted discretionary activity status resource consent for refusing to pay the FC. • Prevent building work proceeding if resource consent is required (s37 Building Act). <p>If payment of a FC is a condition of consent a section 357A objection could be lodged to the condition with the Council. However, no</p>	<p>This option introduces FCs into the Plan for permitted activities but does not provide any specific consenting pathway for non-compliance with the performance standards¹.</p> <p>The default activity status for activities not listed in the activity status tables is non-complying under the operative Waipā District Plan².</p> <p>This option means that if the rule requiring payment of an FC is not met the Council could:</p> <ul style="list-style-type: none"> • Require the applicant to obtain a non-compiling activity resource consent. • Prevent building work proceeding (s37 Building Act). <p>If payment of a FC is a condition of consent a section 357A objection could be lodged to the condition with the Council.</p>	<p>This option would only apply FCs to residential dwellings that require resource consent and would not apply to permitted activities.</p> <p>Section 357A of the RMA allows the right of objection to a consent authority against certain decisions or requirements. An objection can be made to certain resource consent decisions made under section 88 of the Act and for applications made to change or cancel a condition of consent.</p> <p>In this option, all activities required to pay financial contributions would have the right to object to the condition requiring payment on their resource consent under s357A of the Act.</p>

¹ For example, Western Bay of Plenty, Section 11, Financial Contributions

² Part A – How to use the Plan - section 5.10

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	Option 1 (PC26) Requiring FCs for all activity statuses and introducing a restricted discretionary activity status consenting pathway for non-compliance	Option 2 Requiring FCs for all activity statuses with no specific consenting pathway for non-compliance.	Option 3 Requiring FCs for activities that require resource consent only (not for permitted activities).
	objection can be made in respect of permitted activities		
Effectiveness and efficiency in achieving objectives of proposal	This option is effective in providing FCs for all new dwellings that may be developed under the MDRS, therefore meeting the objective of Section 18 for development to fund improvements affected or generated by additional demand. Additional development opportunities, including additional permitted activities, are enabled by the MDRS.	This option is effective in providing FCs for all new dwellings that may be developed under the MDRS, therefore meeting the objective of Section 18 for development to fund improvements affected or generated by additional demand.	This option is not effective in providing FCs for all new dwellings that may be developed under the MDRS, therefore not meeting the objective of Section 18 for development to fund improvements affected or generated by additional demand. This is because the MDRS will enable more permitted activity development which will not be captured by this option.
Benefits	<ul style="list-style-type: none"> • Will apply to all new residential dwelling development in the relevant zone(s). • Consenting pathways exist for all activities that wish to object to paying financial contributions or seek to review the quantum of contribution. 	<ul style="list-style-type: none"> • Will apply to all new residential dwelling development in the relevant zone(s). • Consenting pathways exist for all activities that wish to object to paying financial contributions or seek to review the quantum of contribution. 	<ul style="list-style-type: none"> • Establishes a consenting pathway to object to financial contributions for activities where resource consent is required. • Permitted activities will not be subject to financial contributions. This will save applicants upfront costs and will save the Council processing time and cost.
Costs	<ul style="list-style-type: none"> • Cost and time for processing consent may be prohibitive and discourage objections, but less so than Option 2. These costs could be reduced by narrow criteria and non-notification. • Cost and time for Council to administer financial contribution process and to process resource consents increased. • Additional upfront costs for developers. 	<ul style="list-style-type: none"> • Cost and time for processing consent, for permitted activities in particular, may be uncertain and prohibitive and discourage objections. • Costs and time for Council to administer financial contribution process and to process resource consents increased. • Additional upfront costs for developers. 	<ul style="list-style-type: none"> • As the MDRS will increase the number of permitted activity residential dwellings this option will not apply to (potentially) a large number of new dwellings introduced by PC26. The collection of funds may therefore be insufficient to address adverse effects identified. • Rates will need to fund a larger share of the adverse effects identified with the introduction of the MDRS.
Risks	The risk of this option is that the permitted activities it is aimed at capturing may be put off using the consenting pathway as it may be costly and time consuming, however this should be less so than Option 2 .	The risks with this option include: <ul style="list-style-type: none"> • The permitted activities it is aimed at capturing may be put off using the consenting pathway as it may be costly and time consuming. • That a non-complying resource consent pathway is overly restrictive, uncertain and more costly for applicants. 	The risk with this option is that it will not apply to the majority of new residential dwellings and funds collected will not be sufficient to address the adverse effects of residential intensification identified with the introduction of the MDRS. A higher ratio of funds to address adverse effects will therefore be required from rates rather than development.
Summary	<ul style="list-style-type: none"> • Meets the objective of Section 18 for developers to pay for adverse effects that they create. • Higher upfront costs for developers. • Higher time and cost for Council to administer financial contributions. • Permitted activities charged a financial contribution will have a restricted discretionary resource consent pathway should they wish to object to the FC. This may be costly, time consuming and off-putting for applicants, but less so than Option 2. 	<ul style="list-style-type: none"> • Meets the objective of Section 18 for developers to pay for adverse effects that they create. • Higher upfront costs for developers. • Higher time and cost for Council to administer financial contributions. • Permitted activities charged a financial contribution will have a non-complying resource consent pathway should they wish to object to paying. This is an overly restrictive activity status creating uncertainty for applicants and may be costly, time consuming and off-putting. 	<ul style="list-style-type: none"> • Does not meet the objective of Section 18 as a higher share of the adverse effects generated by development will need to be funded by rates. • Contribution may be ineffective and unfair as it will only apply to some new residential dwellings. • Reduces upfront costs for developers. • Lower time and costs for Council to administer financial contributions. • Those charged financial contributions will have a consenting pathway to object to paying them under s357A of the Act.

Assessment

1.2.3. **Options 1 and 2** both establish mechanisms that are effective at achieving the objectives of Section 18, that developers pay for the adverse effects they create. **Option 2** however presents an overly restrictive non-complying consenting pathway should applicants wish to object to paying financial contributions. Although the restricted discretionary consenting pathway established in **Option 1**

may also be off-putting to applicants, it is less so than **Option 2** and can be made more certain with narrow matters for discretion and limiting of notification.

1.2.4. **Option 3** does not effectively achieve the objectives of Section 18 as it will not charge financial contributions to permitted residential dwellings introduced by the MDRS so ratepayers will bear more of this financial burden. This option will mean less upfront costs are payable by developers and there will be lower time and cost required by Council to administer financial contributions, however, the financial contributions collected will be unlikely to address the adverse effects of the additional residential intensification introduced by the MDRS.

1.2.5. **Option 1 (PC26)** is therefore assessed to be the most efficient and effective mechanism for requiring financial contributions as:

- It is effective at achieving the objectives of Section 18, as developers are required to pay for the adverse effects they create.
- It establishes the most certain and straightforward consenting pathway for applications that do not meet the financial contribution rules and performance standards.

Recommendation

1.2.6. It is recommended that the approach proposed in PC26 is maintained and all activities, including permitted activities, are subject to financial contributions and that a restricted discretionary consenting pathway is established for applications that do not meet the financial contribution rules and performance standards (**Option 1**). It is noted that some of the potential costs with this option can be reduced with narrow restricted discretionary criteria and limiting notification for all applications (addressed in section 1.4 below).

1.3. ASSESSMENT OF A MAXIMUM AMOUNT FOR FINANCIAL CONTRIBUTIONS

1.3.1. PC26 (as amended by the s42A report dated 28 July 2023 and the Addendum (1) dated 31 August 2023) proposes that the new financial contributions be calculated using a formula and that they be capped to a maximum amount of:

- \$1,800 per dwelling for the residential amenity financial contribution (inclusive of the \$500 tree charge)
- \$1,500 per dwelling for the Te Ture Whaimana financial contribution.

1.3.2. The Panel raised questions about the maximum quantum amount of both financial contributions and if any other district plans contained maximum financial contributions quantum or caps.

1.3.3. Other Councils that changed financial contributions as part of their IPI plan changes that included fixed quantum or maximum caps in their notified IPI provisions include:

- Hamilton City Council - residential amenity \$2997.71 per PUD and Te Ture Whaimana \$1,762.851 per PUD.
- Western Bay of Plenty District Council – ecological protection and/or enhancement shall be \$501 + GST per lot or dwelling and shall be adjusted annually in accordance with the CPI through Councils Annual Plan and budget.

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- Hutt City Council - reserves contribution shall be 7.5% of the value of each new allotment to a maximum of \$10,000 per allotment in residential areas and \$5,000 per allotment in rural areas.
- Upper Hutt City Council – residential intensification where two or more dwellings are proposed a contribution of 4% of the value of the new residential unit or allotment up to a maximum of \$10,000 per residential unit or allotment.
- Christchurch City Council – if the tree canopy requirements are not met payment of a financial contribution for trees and land is required at a rate of \$2,037.00 per tree (online calculator available for number of trees and amount of land).

1.3.4. These few examples show a wide range of approaches to financial contributions by local authorities.

1.3.5. In relation to the other questions raised by the Panel on how the maximum cap might be changed and how often it might need to be changed, an evaluation of options has been undertaken.

1.3.6. The evaluation of options is undertaken in **Table 2** Error! Reference source not found. following and includes:

- **Option 1 (PC26)** – Formula and maximum cap in the district plan.
- **Option 2** – Formula in the district plan and maximum cap in an external document such as the annual plan.
- **Option 3** – Formula only in the district plan.
- **Option 4** – Formula and maximum cap with inflation adjustment in the district plan.

Table 2 Evaluation of Options – Financial contributions fixed quantum amounts

	Option 1 (PC26) Formula and maximum cap in the district plan	Option 2 Formula in the district plan and maximum cap in the annual plan	Option 3 Formula (only) in the district plan	Option 4 Formula and maximum cap with inflation adjustment in the district plan
Outline of option	This option is proposed in PC26 and includes a maximum capped amount that the financial contribution does not go above and a formula that determines the total financial contribution to be paid, including any discount from the maximum amount.	This option proposes a method outside of the district plan to determine the maximum amount. There are examples of councils ³ whose district plans refer to their financial contribution quantum ³ been reviewed in their annual plans. Review of the maximum amount would be part of a Special Consultative procedure under the LGA through the annual plan process.	This option relies on the formula that is already proposed in the Plan provisions without a maximum cap. The quantum of the financial contributions would be required to be calculated (by a Council officer) each time a new dwelling in the Medium Density Residential Zone and the Commercial Zone for the Te Ture Whaimana financial contribution was received.	This option is an addition to Option 1 (PC26) and includes a maximum capped amount and formula in the district plan. The maximum capped amount would be dated and would refer to annual adjustment for inflation being undertaken by the Council.
Effectiveness and efficiency in achieving objectives of proposal	<ul style="list-style-type: none"> • Provides an effective means for development to fund the adverse effects it creates. • Does not provide an efficient review process to ensure the maximum amount specified 	<ul style="list-style-type: none"> • Provides an effective means for development to fund the adverse effects it creates. • Provides an efficient review process to ensure the amount collected continues to reflect the costs incurred by the development. 	<ul style="list-style-type: none"> • Provides an effective means for development to fund the adverse effects it creates. • Provides an efficient review process to ensure the amount collected continues to reflect the costs incurred 	<ul style="list-style-type: none"> • Provides an effective means for development to fund the adverse effects it creates. • Provides a limited review process to ensure the amount collected continues to reflect the

³ South Waikato District Plan section 10.9, Western Bay of Plenty District Plan Section 11

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	Option 1 (PC26) Formula and maximum cap in the district plan	Option 2 Formula in the district plan and maximum cap in the annual plan	Option 3 Formula (only) in the district plan	Option 4 Formula and maximum cap with inflation adjustment in the district plan
	continues to reflect the costs incurred by the development.		by the development.	costs incurred by the development.
Benefits	<ul style="list-style-type: none"> Provides certainty to applicants on the maximum amount of financial contribution. Provides a simple calculation method for Council and applicants. Certainty of approach means there will likely be fewer objections. 	<ul style="list-style-type: none"> Provides certainty to applicants on the maximum amount of financial contribution, but less so than option 1 and 4 (district plan). Provides a simple calculation method for Council. Allows Council a more cost-effective mechanism to review the financial contribution maximum amounts. 	<ul style="list-style-type: none"> Allows maximum flexibility for Council to calculate the cost of financial contributions on a case-by-case basis. Review of the formula may not be necessary on a regular basis. 	<ul style="list-style-type: none"> Provides some certainty to applicants on the maximum amount of financial contribution. Provides a simple calculation method for Council.
Costs	<ul style="list-style-type: none"> The maximum capped amount may need to be adjusted overtime as costs increase. Review of the maximum capped amount (by plan change) will be time consuming and costly. 	<ul style="list-style-type: none"> Council must commit resource to review the financial contribution amounts annually. The quantum of the financial contribution amounts will be open to submissions on an annual basis, but in a limited means compared to a plan change process. The maximum quantum amounts for the financial contributions will sit outside of the district plan process. 	<ul style="list-style-type: none"> Does not provide certainty to applicants on the amount of financial contributions. Does not provide a simple calculation method for Council and applicants. Likely to be more objections because there is a lack of certainty provided with this option. 	The means to review the maximum capped amounts further than inflation are limited without undertaking a plan change which is time consuming and costly.
Risks	The risks with this option are that the financial contribution amounts need to be updated regularly, which will be costly and time consuming and that the amount recovered is too little and projects cannot be completed.	<ul style="list-style-type: none"> A risk with this option is that the set limit of annual adjustment can impact how the other components of the annual plan are reviewed and directions set on the consultative process. A risk with this option is that reviewing the financial contributions annually will add additional workload to Council's annual plan review process and will open the financial contribution quantum for (limited) criticism annually. A risk with this option is that this method is not intended by the Act to be used for reviewing financial contributions. Although it exists in other district plans it may have been unchallenged. 	<ul style="list-style-type: none"> A risk with this option is that financial contribution amounts will be uncertain and may be opposed more regularly. A risk with this option is that additional Council resource will be required to calculate financial contributions on a case-by-case basis. 	<ul style="list-style-type: none"> A risk with this option is that double-dipping for inflation occurs as the formula takes into account adjustment for inflation already. A risk with this option is that the inflation adjustment is limited in its review powers and plan change review is required in any case, however this would likely be required less frequently than with Option 1.
Summary	<ul style="list-style-type: none"> Does not provide an efficient review method. Provides certainty for applicants. Likely to be fewer objections due to certainty. Provides simple calculation method for Council. 	<ul style="list-style-type: none"> Provides an efficient review method, however depending on the annual adjustment that needs to be made may impact how the annual plan review runs and whether a special consultative process is required. Provides some certainty for applicants. Provides simple calculation method for Council. Annual Plan process for review is outside of the District Plan. Option opens the amount to submissions annually (but to a limited extent). Council must commit resource to annually reviewing the FC amount. 	<ul style="list-style-type: none"> Provides an efficient review method. Provides maximum flexibility for Council to calculate amount. Does not provide certainty for applicants. May be subject to more objections due to lack of certainty. Does not provide a simple calculation method for Council and applicants. 	<ul style="list-style-type: none"> Provides an efficient but limited review method. Provides some certainty for applicants. Provides a simple calculation method for Council. Risks double-dipping for inflation. Due to the limited review method offered by the option a full review may be required by plan change in any case, but likely on a less regular basis than Option 1.

Assessment

- 1.3.7. **Option 1** has limitations due to the review process offered however overall provides the most certainty for applicants and Council. Due to the certainty offered by this option it is likely to raise fewer objections.
- 1.3.8. **Options 2 and 4** provide what appear to be easier options for Council to review amounts, however, there is uncertainty with these review methods in relation to impact on the annual plan process and the risk of double-dipping for inflation.
- 1.3.9. **Option 3** provides maximum flexibility for Council to calculate the appropriate amount in each case, however the calculation method is uncertain for applicants and may therefore be subject to more objections and the calculation method is more complex for Council.

Recommendation

- 1.3.10. It is recommended that the approach proposed in PC26 is maintained and that a maximum cap and formula are listed in the district plan (**Option 1**). This option provides maximum certainty to applicants and Council.

1.4. SPECIFIC EDITS TO SECTION 18

Matters of discretion for new consent pathway

- 1.4.1. The matters of discretion for the restricted discretionary pathway for non-compliance with the financial contributions were questioned at the hearing as to whether they could be more focussed on the financial contribution amount payable rather than the general provisions throughout Section 18.
- 1.4.2. It is agreed that any objection to financial contributions will likely be focussed on the amount to be paid. The intent of the consent pathway is to focus any objections on the amount to be paid rather than the financial contribution methodology. This would simplify and shorten the consenting process as much as possible. Removing public and limited notification would also simplify any consenting process. It is therefore recommended that the matters of discretion be simplified, and notification be limited as follows (see section 1.4.17 for additional changes to reduce repetition):

Activities that fail to comply with residential amenity financial contribution rules and/or performance standards will require a resource consent for a restricted discretionary activity.

Any application for resource consent for the above activities will be considered without public or limited notification or the need to obtain the written approval from affected parties.

Discretion will be restricted to the following matter:

- ~~The extent to which the proposal is consistent with the objectives and policies in Section 18 (financial contributions).~~
- ~~The extent to which the proposal complies with the performance standards in Section 18 (financial contributions), and the reasons for non-compliance.~~
- ~~The effects that the development will create in relation to the residential amenity financial contribution.~~

- The mitigation measures provided, or the value of other contributions provided, in relation to the residential amenity financial contribution.

Definition of discount factor

1.4.3. The Panel also queried whether a definition of the discount factor should be included in the Section 18 provisions as well as more guidance/criteria on how the discount will be applied. This is considered a beneficial addition to assist both applicants in their understanding of the discount factor options and Council in administering the provisions. A definition and performance standard for the discount factor are recommended to be included in PC26. Council also proposes to develop a standard operating procedure that sits outside of the district plan to assist Council officers in administering the financial contribution provisions and calculating discount factors.

1.4.4. The following definition is recommended to be added to Section 18:

Discount factor means a factor that can be applied to the calculation of the residential amenity and Te Ture Whaimana financial contributions that can reduce the total amount of financial contribution required to be paid. The decision on the appropriate discount factor to apply to each financial contribution calculation will be determined by the Council on a case-by-case basis.

The discount factor will be based on development specific attributes or the value of other contributions for the same purpose as outlined in the relevant performance criteria.

The discount factor cannot include consideration of development contributions paid as these are already excluded from the calculation of financial contributions. The discount factor has no weight or bearing on Development Contributions payable.

1.4.5. The following discount factor performance standards are recommended to be added to Section 18:

18.5.2.3 For the purpose of rule 18.5.2.2, a discount factor will be considered by Council in the following circumstances:

- Where the applicant proposes on-site mitigation measures which contribute to the purposes of the financial contribution in Rule 18.5.1.7;
- By way of example, but without limiting subparagraph (a), land provided to Council for reserves purposes (in addition to any statutory requirements) or protected planting.

18.5.2.5 For the purpose of rule 18.5.2.4, a discount factor will be considered by Council in the following circumstances:

- Where the applicant proposes on-site mitigation measures which contribute to the purposes of the financial contribution in Rule 18.5.1.8;
- By way of example, but without limiting subparagraph (a), land provided to Council for stormwater management or riparian purposes (in addition to any statutory requirements); stormwater control measures; protected riparian planting, wetland creation, protection, restoration or enhancement (in addition to any statutory requirements); on-site sediment reduction measures (in addition to any statutory requirements); or waahi tapu and sites of significance restoration, protection or enhancement.

Refund of financial contributions

1.4.6. At the hearing it was noted that the financial contribution updates to the Act do not include provision for refund of financial contributions for permitted activities when an activity does not

proceed. This ability is provided for under section 110 of the Act for financial contributions paid as a condition of consent. It is recommended that a similar ability as established by section 110 of the Act is added to PC26 requiring Council to refund financial contributions paid for permitted activities that do not proceed as follows:

Refund of financial contribution in certain circumstances

Rule - Refund of financial contribution and return of land where activity does not proceed

18.5.2.18 Subject to 18.5.2.19, where a financial contribution has been paid under rule 18.5.2.17(c) the Council will refund or return to the applicant, or his or her personal representative, any financial contribution paid or land set aside where:

- (a) The activity does not proceed; and
- (b) The building consent lapses under section 52 of the Building Act 2004; and
- (c) The applicant requests a refund of the financial contribution.

18.5.2.19 The Council may retain any portion of a financial contribution or land referred to in 18.5.2.18 to the value equivalent to the costs incurred by the Council in relation to the activity and its discontinuance.

Specific wording edits

- 1.4.7. A number of specific wording amendments to the provisions of Section 18 were raised at the hearing. These are discussed in turn below. Recommended changes are shown in **Appendix A**.
- 1.4.8. Section 18.2.2 the use of the word 'required' and the word '**Either**' in bold text. It is agreed the use of the word 'required' is not needed in this sentence. There appears to be no reason why the word '**Either**' is in bold text in this paragraph.
- 1.4.9. Section 18.2.3(a)(v), it is agreed that this point does not follow the other points and should be located under the list as point 18.2.3(b).
- 1.4.10. The wording of Objective 18.4.1 was questioned as it was considered too directive for an objective. A recommended amendment to the Objective wording follows:

Objectives – General purpose of financial contributions

18.4.1 Financial contributions are required ~~in accordance with the Financial Contributions Rules and performance standards~~ in order to:

- (a) ...

- 1.4.11. Policies 18.4.2.3, 18.4.2.4 and 18.4.2.5 were questioned as they were written like rules. Recommended amendments to the Policies follow:

18.4.2.3 Financial contributions in the form of money ~~must~~ shall be paid before the proposed activity or development occurs.

18.4.2.4 Financial contributions in the form of land ~~must~~ shall be vested in Council prior to completion of the activity or development.

18.4.2.5 Financial contributions ~~will~~ shall be applied to the purpose for which they are required.

1.4.12. Rule 18.5.1.4 (a) and (b) were questioned as they were essentially the same. It is agreed that these points could be simplified by being combined as follows:

18.5.1.4 Financial contributions will be required for the purposes set out and on the basis that:

(a) Financial contributions for all ~~residential~~ development will be calculated for the specific purposes and in accordance with the methodology in the applicable rules and performance standards, ~~and~~

~~(b) Financial contributions for all other developments will be calculated for the specific purposes and in accordance with the methodology in the applicable rules and performance standards.~~

1.4.13. It is agreed that the words ‘These costs will include’ in Rule 18.5.1.6 should be moved back a tab as they relate to both (a) and (b) above.

1.4.14. It is agreed that the note at the end of Rule 18.5.1.8 ‘*Calculations for contributions shall be as set out in the performance standards*’ should also be included at the end of Rules 18.5.1.6 and 18.5.1.7.

1.4.15. The Panel questioned whether cumulative effects needed to be added specifically to the provisions as they are covered by the types of “effects” encompassed by the meaning of effects under the Act. This point is not disputed; however, cumulative effects were considered to be especially important for the new financial contributions which relate to the ongoing effects of additional residential intensification, and for this reason were highlighted with the Policy on cumulative effects (18.4.2.8) and in two other direct references in PC26 (18.5.1.7 and 18.5.1.8). It is therefore recommended that the direct references to cumulative effects in PC26 be retained.

Repetition

1.4.16. A number of provisions are repeated in Section 18, and it was queried during the hearing if the repetition could be reduced. Some of the repetition is to duplicate the layout of existing Section 18 which repeats sections for each financial contribution.

1.4.17. It is agreed that it would be beneficial to remove some repetition from Section 18 to make it simpler and easier to read.

1.4.18. The following recommendations are made to reduce repetition in Section 18:

- The Rule – timing and calculation of payment (Rules 18.5.2.5; 18.5.2.9; 18.5.2.11; 18.5.2.14; 18.5.2.17; 18.5.2.20; 18.5.23) applying to each financial contribution is recommended to be consolidated into one rule applying to all financial contributions in the performance standards.
- The consenting pathway and matter of discretion for each financial contribution is recommended to be consolidated into one consenting pathway and matter of discretion that apply to all financial contributions.

1.5. RESPONSE TO SUBMISSIONS ON EXISTING FINANCIAL CONTRIBUTIONS

1.5.1. In response to the request by Mr Akehurst for RVA/Ryman to amend the existing financial contributions in Section 18 (three waters and transport) to provide a specific ratio for retirement villages as outlined in the Section 42A report dated 28 July 2023 (sections 10.9.6 and 10.9.7) and in Addendum (1) dated 31 August 2023 (sections 1.4.8 and 1.4.10) this is not supported as:

- These contributions are specific to very limited development circumstances. For instance, the three waters contributions are only applicable when they are requested by the applicant.
- These contributions are based directly on formulas calculating demand created for the specific and limited circumstances, so any ratio would skew actual demand calculations.
- The ratios requested are based on generalised demand calculations that are not easily transferable to the potential retirement village developments that may occur in the Waipā District due to differing configurations, timing, and scales.

1.6. RESPONSE TO SPECIFIC WORDING AMENDMENTS REQUESTED BY RVA / RYMAN

1.6.1. In response to the specific wording amendments put forward in the legal submission for RVA/Ryman dated 15 September 2023 as outlined in the summary statement by Ms Needham dated 20 September 2023 the following response is provided.

1.6.2. Some of these requests correspond with the requests by Mr Akehurst which were addressed in the section 42A report dated 28 July 2023 and Addendum (1) dated 31 August 2023 and are not supported, including the addition of rule 18.4.2.7A to include retirement village specific ratios (section 1.4.6 - Addendum); and in addition, that retirement villages will not be charged the residential amenity (section 10.5.8 – s42A) or Te Ture Whaimana financial contribution (section 1.4.7 - Addendum).

1.6.3. Amendments are also requested to one of the introductory paragraphs to Section 18 (18.1.2.2) and that a Policy (18.4.2.5A) is added that reference Section 200 of the Local Government Act 2002 (LGA). These requests are not supported as they do not appear to reflect the provisions that are outlined in Section 200 of the LGA (Limitations applying to requirement for development contribution). It is acknowledged that the use of the phrase *‘to supplement development contributions for the same purpose where the development contributions are insufficient..’* in the introductory paragraph may be misleading and implies financial contributions and development contributions can be taken for the same purpose.

1.6.4. I support amending this paragraph as follows.

18.2.2 Financial contributions are distinct from, and in addition to, Council’s Development Contributions Policy and provide Council with an alternative method to obtain contributions to manage effects as a result of growth. Either financial contributions will be used on their own, or in addition to ~~supplement~~ development contributions ~~for the same purpose~~ where the development contributions are insufficient to fully avoid, remedy, mitigate or compensate for the adverse effects of the activity. **Table 18.1** below sets out the application of both development and financial contributions.

1.6.5. The other requested amendments to Section 18 (18.2.3 and 18.4.2.7) are not supported as they are viewed as a method to further assess the fairness of the contributions on a case-by-case basis. The intention is that the contribution itself will not be tested in each case it is applied, rather the development specific attributes of the development will be assessed on a case-by-case basis (discount factor).

1.7. PORT OTAGO DECISION

1.7.1. Following the Supreme Court’s decision in *Port Otago Limited v Environmental Defence Society*⁴ the Panel raised the question of whether there is a conflict between the NPS-UD and the NPS-IB that needs to be specifically recognised in PC26.

1.7.2. Although the intent of the NPS-UD and NPS-IB may at face value seem to be conflicting; to provide for housing intensification and to protect areas of significant terrestrial flora and fauna; the NPS-UD provides a specific pathway to reduce development requirements to protect significant terrestrial flora and fauna using qualifying matters⁵. The qualifying matters are outlined in detail in the plan text of PC26⁶ including specifically the preservation of the natural character of rivers and their margins, open space for public use, and maintenance and enhancement of public access to and along rivers⁷.

1.7.3. As assessed in the s42A report dated 28 July 2023 the NPS-IB is considered to strengthen the basis for the inclusion of the identified rules in PC26 that have reduced development capacity to protect significant terrestrial flora and fauna. These qualifying matters imposed increased setbacks from SNAs; limit maximum building coverage and require minimum native landscaping for sites in the River / Gully Proximity Overlay.

1.7.4. PC26 has also provided specific objectives and policies that support both housing intensification⁸ and significant terrestrial flora and fauna⁹.

1.7.5. It is therefore considered that potential conflicts between the NPS-UD and the NPS-IB are recognised in the objectives and policies of the District Plan including the changes introduced by PC26.

2. CONCLUSION AND RECOMMENDATION

2.1.1. That the additional information contained in this addendum be taken as an update to the Section 42A report dated 28 July 2023 prepared for PC26 (Section 18 - Financial Contributions) on behalf of the Waipā District Council.

2.1.2. PC26 is recommended to be amended as set out in **Appendix A** of this addendum.

⁴ Port Otago Limited v Environmental Defence Society Incorporated [2023] NZSC

⁵ Policy 4, NPS-UD.

⁶ Refer to PC26 plan change text – Qualifying Matters – Introduction (s2A.1.9 – 2A.1.29)

⁷ Refer to PC26 plan change text – Qualifying Matters - Preservation of the natural character of rivers and their margins, open space for public use, and maintenance and enhancement of public access to and along rivers (s2A.1.16 – 2A.1.18B)

⁸ Housing intensification Objectives and Policies – 2A.3.1, 2A.3.2, 2A.3.2.1, 2A.3.2.2, 2A.3.2.3.

⁹ Significant terrestrial flora and fauna Objectives and Policies – 2A.3.4.22, 2A.3.10.1, 2A.3.11, 2A.3.11.1, 2A.3.11.2.

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Appendix A

Recommended track change amendments to Plan Change (Section 18 Financial Contributions)