1. **S77E and relationship with Newbury**
    a. The history of financial contributions have been applied through a lens of Newbury principles
    b. Two cases support this
        i. McNally v Manukau City Council (2007)
        ii. Tauranga City Council v Minister of Education (2019)
    c. Both were prior to current wording of s77E and 108AA however that doesn't change the fundamental principle that FCs are required to establish Newbury principles that, when applied in the context of a financial contribution requirements, means that any financial contribution can only be charged in response to an adverse effect of the development on which the financial contribution is charged

2. **Genesis of S77E**
    a. Came from the Resource Management (enabling housing supply and other matters) Bill
    b. Report of the Environment Committee dated December 2021 states:

> ***Financial contributions***
>
> i. ***We note that the RMA authorises financial contributions and that they provide funding to address the adverse effects of a development on the environment****. We were advised that the use and application of financial contributions has been ambiguous, despite case law confirming that financial contributions can be charged for permitted activities. The bill would make it clear that a territorial authority may include provisions in its district plan to charge financial contributions for any class of activity, excluding a prohibited activity.*

    c. So s77E and 108AA weren't amendments that wiped away the principle that FCs must have a nexus to adverse effects, it was about clarification they apply to permitted activities. It would have to be clear to remove the pervious Newbury principles and case law like Tauranga City above.
    d. This is a fundamental difference with PC24 – that case does not get the Council home. Additionally, PC24 was in a pre-NPSUD era and was not assisted by that more specific national policy direction which we have now, and which on the evidence the plan change is contrary to.

3. **What other ways could the Variation overcome the issues of blanket application / distortion**
    a. Without a nexus, the Variation is ultra vires so any form of those mandatory rules would suffer the same issue.
    b. The closest repair job might be to retain the objectives in a modified form, as suggested by Serjeant and Ferguson – and this allows for a continued approach to development agreements. It is unfortunate to have got this far into the process and spent this much resource, on a plan variation from the outset the legal profession said was unlawful.
    c. It is unclear what is broken in the system - where on the one hand, the development agreement approach has delivered meaningful amounts to the Trust to develop in the order of 244 homes, but on the other hand, the Council now says that needs to be applied in a blanket (unlawful) mandatory way.

4. **NPSUD**
    a. Is directive, and complete on the matter of AH within part 2 of the Act. Going back to Part 2 for a different answer to what the NPSUD says, doesn't help.
    b. No evidence to say the NPSUD is invalid, uncertain or incomplete – to the contrary, recent Court decisions (Middle Hill) have interpreted its global approach to increase supply, choice of supply, infrastructure, and competitive land markets.
    c. If there is uncertainty in its meaning (evidence) – let's understand it's promulgation by background documents – why ignore clear advice on AH given to central government and Government's specific response not to include IZ policy (and submitted against the AUP)
    d. If we are not sure that the NPSUD is working – that might not be that it is broken, it might be that it has not yet been implemented properly by this Council – we don't have evidence of this. Does not give recourse to Part 2 to get a different answer