

Memo to: Commissioner Caunter, Chair of the Inclusionary Housing Hearing Panel

From: Commissioner Fletcher, Panel Member

In response to: MEMORANDUM ON BEHALF OF GDL: RECUSAL REQUEST by Mr James Gardner-Hopkins of 8 March 2024

Questions to Mr Oliver Regarding the New Zealand Treatment of Development and Financial Contributions:

1. At paras 2-4, Mr Gardner-Hopkins outlines parts of my discussion with Mr Oliver and suggests that I “entered the fray”.
2. Mr Gardner-Hopkins omits to mention the context of the discussion and several significant parts of that discussion. As Mr Oliver pointed out in his supplementary evidence the recording of that day was lost due to technical difficulties.
 - The discussion was in the context of Mr Oliver’s evidence at paras 26-27, where he discusses the international statistical standards’ treatment of, and the distinction between, fees and taxes, and refers to specific paragraphs of both the Eurostat (ESN) and United Nations (et al) System of National Accounts (UNSNA), and at paras 39-40, where he discusses the international treatment of fees vs taxes, using United Kingdom examples, and then states, at the beginning of para 40, that New Zealand follows these international statistical standards.
 - I pointed out to Mr Oliver that he had referenced the international statistical standards and the UK treatment of different transactions but had not stated how New Zealand classifies Development and Financial Contributions (DCs and FCs), and I asked why he had not. In response he gave no reason as to why he had not included the New Zealand treatment, but stated that New Zealand followed the international standards and classified DCs and FCs as taxes. I recall that I asked him a second time to confirm the New Zealand treatment of DCs and FCs. He gave the same answer both times.
 - I then disclosed that I had worked in the National Accounts division of Statistics New Zealand (Stats NZ) for 22 years, most of which was in a

senior technical role. The National Accounts division is responsible for the interpretation of the UN System of National Accounts (UNSNA) and its implementation within the New Zealand System of National Accounts (NZSNA). In effect, the classification of transactions like DCs and FCs in the NZSNA was one of my specialty areas of expertise.

- Having disclosed my knowledge and expertise of the matter under discussion, I advised Mr Oliver that he was incorrect in his statement that New Zealand classified DCs and FCs as taxes, and that they were classified as unrequited capital transfers. I further disclosed that as a check on my memory I had confirmed my knowledge in a phone call to Stats NZ.
 - I then requested Mr Oliver to make his own enquiries as to the New Zealand treatment of DCs and FCs, and to report back to the Panel his findings, together with any additional comment he had in light of his findings. This request was formalised by yourself as Chair.
3. Mr Oliver, as an expert witness giving evidence on the international and New Zealand statistical treatment of transactions (FCs and DCs), with explicit reference to specific paragraphs in the international standards, should have been aware that the National Accounts division of Stats NZ was responsible for interpreting UNSNA and implementing the statistical treatment of transactions in the NZSNA. Further, he should have known the New Zealand treatment of DCs and FCs, or made the effort to find out, and included it in his primary evidence as a material and relevant fact. That he did not include it in his evidence was an obvious gap in what was otherwise very relevant evidence to the matters we are considering. Noting that omission when I first read his evidence, I confirmed my memory of the treatment of those specific transactions.

Apparent Bias

4. At para 23 Mr Gardner-Hopkins suggests that I have formed a view or made a determination regarding the substantive matters that we must decide.
5. My understanding of the thesis underlying the Variation going into the hearing can be summarised as:

- Enablement of urbanisation or increased urbanisation creates a planning value uplift to the landowner.
 - Under the ODP such enablement occurred through developer-initiated plan changes and resource consents which gave QLDC leverage to require contributions to affordable housing and so capturing some of the uplift for the community.
 - Under the NPS-UD and the PDP council will be enabling sufficient urban capacity for future growth and there will be less opportunity to obtain contributions from developers towards affordable housing in the community. The planning value uplift arising from the enablement of further urbanisation will be provided to the landowners by the community as a windfall gain.
 - Levying Financial Contributions on developers through the Variation will provide on-going contributions to affordable housing.
 - Faced with the Financial Contribution requirement, developers will push the costs imposed back on to the landowners in their purchasing of land for development, providing some capture of the urbanisation uplift for the community. This will be equitable, given the windfall gain provided by the community to the landowners through the increased urbanisation enabled by the Council.
6. In summary, a general thesis of the evidence of the developer witnesses was that the Variation would result in increased cost and reduced supply of housing, that the answer to the affordable housing problem in the district was to enable more land for urbanisation and/or increased urbanisation, and the developer community would be part of the solution not the problem.
7. As the economist on the Panel, I took on the testing of these theses. I asked the same line of question of every relevant witness and some counsel, not just those identified by Mr Gardner-Hopkins at para 20. This included all three economists, most (if not all) developer witnesses and most (if not all) planners.
8. My discussions with these witnesses included not just whether there was value uplift on urbanisation, and at what points in the process of (increased) urbanisation of a piece of land, but also included:

- Whether there was a sufficiency of land currently enabled (as evidenced in the housing capacity assessments);
 - whether it was genuinely infrastructure ready and feasible;
 - Whether the developers would seek to, or be able to, push the cost of the Financial Contributions back to the landowner, and under what circumstances;
 - What impact that might have on the supply of land for development; and
 - What the impact on the price and supply of developed sections/houses might be.
9. As noted by Mr Gardner-Hopkins my questions at least once were couched in terms of equity and fairness between the community providing the uplift and the developer/landowner benefiting from the uplift. Commissioner Beattie also raised questions in these terms.
10. Mr Gardener-Hopkins (at para 15,22 and 24) raises the spectre of my “investigations”, implying that they were many. I have read the variation documents, the evidence, many of the materials referred by reference within the evidence, and, in light of the omission in Mr Oliver’s evidence, I checked that my memory of the treatment of the specific transactions was correct. There were no “investigations”.
11. I have no agenda or position to promote (refer Mr Gardner-Hopkins’ para 16) and confirm I approached all reading and the hearing with an open mind. That remains the case.



Ken Fletcher
14 March 2024