

**BEFORE THE HEARINGS COMMISSIONERS FOR WAIKATO DISTRICT COUNCIL
AT NGARUAWAHIA**

IN THE MATTER of hearing submissions and further
submissions on the Proposed Waikato
District Plan under the Resource
Management Act 1991

BETWEEN Andrew and Christine Gore

Submitter

AND Waikato District Council

Local Authority

**MEMORANDUM REGARDING LEGAL AND PLANNING PROCEDURAL ISSUES WITH
SECTION 42A FRAMEWORK REPORT**



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**MEMORANDUM REGARDING LEGAL AND PLANNING PROCEDURAL ISSUES WITH
SECTION 42A FRAMEWORK REPORT**

May it please the Hearings Panel

1. This memorandum is filed following the Panel's minute and directions dated 5 March 2021 in response to the memorandum from Peter Fuller raising concerns about the Waikato District Council's (**Council**) section 42A Framework Report (**Report**).
2. Andrew and Christine Gore (**Gore/s**) submitted on Council's proposed district plan. A part of the Gore submissions calls for the rezoning of their property at 295 Kay Road (**Property**). In support of their submissions, the Gores have prepared a section 32AA evaluation.
3. The Gores agree with Mr Fuller that the three lens approach promulgated in the Report risks confusing the relevant legal tests, leading to uncertain and potentially erroneous outcomes affecting further specific section 42A reporting by Council's offices.
4. In summary, the Gores submit:
 - (a) There appears to be no legal authority for Lens 1;
 - (b) The Lens 2 approach appears to be modelled on the relevant statutory legal tests, but risks conflating those tests with unrelated matters;
 - (c) The Lens 3 approach may result in inefficiencies, including unnecessary duplication.
5. The inherent risk with the three lens approach is the potential for it to skew the correct legal tests (largely articulated by Lens 2) as authors attempt to "balance" the three lenses.
6. The Gores agree with Mr Fuller that Lens 1 really articulates an internal best practice cross-check for authors, while Lens 3 articulates a planning best practice cross-check. These checks are important, but do not ultimately form part of the correct legal test.

7. The Gores are supportive of Mr Fuller's memorandum and echo his clients' concerns.

DATED at Hamilton on 9 March 2021



A handwritten signature in blue ink, appearing to read 'R L M Davies', is written above a horizontal dashed line.

R L M Davies
Counsel for Andrew and Christine Gore