LEE SHORT Submission 8634
AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL
ORAL HEARING: TOPIC 037: MANA WHENUA SITES: 4 JUNE 2015

My submission today addresses these sections of the Proposed Auckland Unitary Plan

Part 1 Chapter B 5.4
Part 2 Chapter E Overlay Objectives and Policies >>Section 5.1 Sites and Places of Significance to Mana Whenua and 5.2 Sites and Places of Value to Mana Whenua

PART 3 - REGIONAL AND DISTRICT RULES» Chapter G: General provisions»2 General rules and special information requirements»2.7 Information requirements for resource consent applications»

And 2.7.4 Cultural impact assessment: When an assessment is required

This oral submission is an expansion of my written submission, number 8634

First of all let me make it quite clear I support protecting our heritage and preserving sites of significance – that is those sites that have already been through a formal procedure involving organisations such as the Archaeological Association. These sites must be protected.

Sites and Places of Value to Mana Whenua 5.2

On the 28th of August 2013, just one month before notification of the Auckland Unitary Plan, the Auckland Council Plan committee agreed to amend the mana whenua provisions in the draft plan to include a statutory layer of 4611 sites of Maori origin that require resource consent for earthworks within 50m of a site. The number of sites was reduced to 3600, on the basis that only those sites with confirmed location data to be included in the Overlay

In my opinion this is a questionable method of introducing a rule with immediate effect, and without prior notification. One Councillor has even suggested the inclusion of the mandatory requirement to obtain cultural impact assessments as subterfuge, and I have heard from other Councillors that they were simply not made aware of the immediate changes, and the impacts on citizens that resulted from their consent to approve the plan.

The NZ Archaeological Association, in its submission to the Auckland Unitary Plan states that the sites of value which were added to the schedule were included without any prior assessment or evaluation, that is apart from those that are also included in the Historic Heritage Place schedule of significance. They go on to say that many have no confirmed location.

In addition to properties affected by the 3,600 sites of value, those properties within Significant Ecological Areas are now also required to seek CIAs for any land disturbance or vegetation clearance

In a letter I received on 23 October 2014, from Auckland Council's Chief Planning Officer Dr Roger Blakeley, he acknowledged that "it is possible some of the sites no longer exist". And in April last year John Duguid, Unitary Plan manager was quoted as admitting that the 3,600 sites of value which were added to the plan just before it was notified were poorly mapped and some simply wrong.

In this same letter Dr Blakely states that the Council is not in a position to undertake site visits in respect of the 3600 sites of value. And that:
"The Council's heritage staff are undertaking a desk top review of the information available for each site or place of value in the Overlay in order to assist with preparation of the Council's position for the hearings on the man whenua provisions".
Dr Blakely then states that
"Evidence that particular sites no longer exist can be presented by submitters at the hearing".

To this end a group of concerned citizens, calling ourselves Democracy Action, has begun an informal investigation of the sites of value which have been included in the Plan. We have visited and photographed over 100 sites so far, a sample of which I present to you today.

In our opinion many of the alleged sites we have investigated have no visible signs of cultural heritage, and if such sites did at some stage contain verifiable evidence, it certainly appears to be long gone. You will see from our photographic evidence that these sites now consist of various land uses such as landfills, subdivisions, residential housing areas, and industrial sites.

I would like to point out that these samples are a randomly chosen examples of sites. They have not been 'cherry picked' to prove a point.

I oppose provisions contained within this section of the Plan:

- I question the veracity of Mana Whenua claims over sites and areas of value, which were introduced without prior notification.
- That these recently introduced sites need not be founded upon objective science or verifiable facts, but on the say-so of iwi authorities, with some concerning spiritual and physical realms. One may reasonably ask: how can regulations affecting a significant number of citizens be enacted on anecdotal hearsay, unverified by written record?

While I understand the wish to protect cultural heritage, the requirement to obtain cultural impact assessments from iwi groups impacts on the property rights of thousands of Auckland citizens who have a site or place of significance or value on their property, or have property in close proximity to a site.

By Dr Blakely's reckoning, somewhere between 4,084 and 18,041 property owners could be affected.

And many more citizens are likely to be affected in the future. The plan states that the number of sites identified to date (3,600) could be added to.

As of 2013, archaeological surveys have only been undertaken over 35 per cent of land within the Auckland region. I would also like to point out that an iwi group, in their submission to the Proposed Plan, February 2014, consider only 1.6% of potential Maori cultural heritage has currently been scheduled.

Even though the Plan has not been formally adopted, there have already been calls from iwi groups to add further sites, as you would have found during this submission process. And further, I bring to your attention a letter received by a resident of Paratai Drive, sent by Ngati Whatua on 9th April, informing the resident that his property and the neighbouring properties, from 68 to 110A are of interest to the iwi as a site of significance. This site is not included in the Proposed Plan's sites of significance or value.

Cultural impact assessments 2.7.4

The Proposed Auckland Unitary Plan goes beyond what is required by the RMA

The Council is not merely seeking to conform to the RMA but has decided to go far beyond what is legally required in order to innovate and pioneer an entirely new interpretation of its obligations in existing law.

The Council has clearly set out to introduce a new rule by making a mandatory requirement to seek cultural impact assessments with regard to sites of significance and value. Section 36A of the RMA states that there is no duty under this Act to consult about resource consent applications and notices of requirement.

This requirement also goes beyond the intent of the RMA.

In February 2014, then-Labour Party Maori Affairs Spokesman, Hon. Shane Jones, criticised Auckland Council's rule. In the New Zealand Herald he is reported as having said:

> *"As someone who was involved in the core group which wrote the Resource Management Act in 1988-1989 never in our wildest dreams did we imagine it would lead to 19 new consent authorities over the Tamaki Makaurau area."* [1]

Mr Jones warned that unless the process was handled well, the community could end up having a jaundiced view of Maori heritage. I agree with this opinion.

[1] Shane Jones slams new iwi approval rule, NZ Herald, 28 February 2014, http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11211496

Quality Planning *- a partnership between the New Zealand Planning Institute, the Resource Management Law Association, Local Government New Zealand, the New Zealand Institute of Surveyors and the Ministry for the Environment, which is overseen by a governance group, chaired by the Ministry for the Environment, and an operational group, chaired by Local Government New Zealand, state on their website that:*

"There is no statutory requirement for applicants or the council to prepare or commission a CIA."

Enquiries to council officers have revealed that applications for resource consents which require the seeking of CIA are running at about 6 to 10 per day. Many of these applications for CIAs involve a number of iwi.

As no set fee has been established for this service, there is potential for significant extra costs. For instance, a councillor has told me that cultural impacts assessments sought for a public drinking fountain in the city cost the Council almost as much as the fountain itself.

I know of a group who have been frustrated by resource consent process since 2012 and the recent PAUP notification has added extra delay. They are now involved in a CIA process resulting from the PAUP, which is further frustrating progress towards a resolution.

A recent New Zealand Herald article described a scenario where a property developer was required to seek the approval of 13 Mana Whenua groups to re-establish a window in a modern 17-storey Auckland CBD office building.

As the building was located close to a site listed as a Mana Whenua site of significance, the resource consent required consultation with 13 iwi. Without the consent, the Council made it clear to the property owner that the window could not be put back. The process involved considerable staff time, and added $4,500 to the cost of the consent.

In responding to questions posed by lawyers acting for Democracy Action, the Council's Chief Planning Officer confirmed the requirements outlined in the article were correct. Ignoring the requirements, even for something as mundane as reinstalling a shop window, is illegal and risks prosecution by the Council.

I have also have looked at submissions from

AUCKLAND UTILITY OPERATORS GROUP

City Link
Counties Power
FX Networks
WaterCare
Spark
Vodafone
Transpower
Vector
Chorus

They write of frustration and delay in dealing with the new unitary plan regulations relating to mana whenua

"The UFB rollout is substantially affected by extensive areas of Auckland subject to Sites and Places of Significance and Value to Mana Whenua, and Extent of Heritage Place (Maori origin) overlays, including the buffer areas around these features."

"My experience on this project has been that the ability of some iwi to adequately engage and respond in consenting processes under the Unitary Plan is very mixed due to the extensive volume of applications now requiring their attention, which many iwi are not adequately resourced for. It can also be a very costly and time-consuming process for applicants in a process where there is largely no control over costs or timeframes."

"The delays that have been experienced with CIAs to date can represent a considerable time delay and cost implication on resource consent decision-making. These time delays and costs can also be experienced where ultimately there is no need to obtain a CIA. Hence in this case it is not effective or efficient."

The provisions in the PAUP I have outlined fail to deliver certainty in law, and place an unfair burden on affected citizens. How can you have any certainty when rules, such as included in these provisions are based on mythology and spiritual concepts?

Law needs to be transparent, and to be able to be applied fairly and consistently, and to be able to be subject to legal challenge.

It is quite easy to see how this poorly crafted, uncontrolled and uncertain rule could lead to wide spread abuse

I oppose the mandatory requirement to seek cultural impact assessments for these reasons:

- There is no statutory requirement for applicants or the council to prepare or commission a CIA.
- There was no opportunity for affected parties to voice their concerns before this rule became operational on notification of the Plan
- The system is open to abuse. With the requirement that iwi be the providers of CIAs, there is the potential for conflict of interests to arise.
- In The PAUP, Chapter H 5.2.2.3, rule 2(b) requires other experts giving advice Council to declare "potential conflicts of interests". Why is this not the case with iwi providers of cultural impact assessments in Auckland?
- There is very no regulation of the process, and a lot of uncertainty.
- The Cultural impact assessment requirements are too onerous
- The requirements are open to wide interpretation, with multiple meanings, and sometimes with differences in meaning from group to group e.g. the use of the term 'Mana Whenua values'. This goes against one of the most fundamental requirements of any law, i.e. that the law provides certainty as to what it means.
- The number of instances when a CIA is required places an unwarranted burden on the community:
- The scope of assessments is far too broad.
- There is potential for significant project delays and costs.

- The unknown effect on property prices.

I seek to have these provisions withdrawn and rewritten in such a way that:

- Respects the property rights of all citizens
- Provides a fair balance between the protection of cultural heritage and private property rights
- The terminology used in the plan is clear and unambiguous, to protect citizens from the arbitrary use of power
- That the council be responsible for all cultural impact assessments, both those required for resource consent applications, and those for sites of significance or value.
- That the applicants for resource consents deal directly with the council, and not be required to deal with individual iwi/s on a case-by-case basis.
- The sites of significance or value to be graded into categories of significance, to be accorded varying degrees of protection and obligation.
- The Council explain to all affected parties the consequences and the obligations required when a property is designated a Site of Significance or Value.

On the 20th of November 2014 Democracy Action provided the Hearings Panel a document setting out alternative policies for scheduling of sites. I stand by this advice and encourage the Hearings Panel to adopt the recommendations there-in as part of its report to the Auckland Council.

Lee Short
4th June 2015