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DEMOCRACY ACTION, FS 2746

SUMMARY OF PROPOSED AMENDMENTS TO CH. B

ORAL HEARING, 20 NOVEMBER 2014

ALTERNATIVE POLICIES FOR SCHEDULING OF SITES AND PLACES OF VALUE AND/OR SIGNIFICANCE TO MANA WHENUA AND THE CIA PROCESS

EXPLANATION

The attachment includes the amendments we gave to the Panel at the 005 hearing. We have also included a proposed alternative system to the scheduling of sites of significance to Mana Whenua and the CIA process.

The amendments are relevant only to sites and places of significance as we propose the overlay and provisions relevant to sites and places of value to Mana Whenua are removed. Any sites and places of value that can be substantiated by the Council using the proposed policies could be included in the former sites of significance to Mana Whenua.

The alternative process is aimed at giving more certainty to property owners, iwi and the Council. Rather than have the CIA process at the resource consent making stage, it would be done at the time the site is scheduled (i.e. at the planning stage or when there is an amendment to the plan).

HOW IT WOULD WORK

When a site is proposed for scheduling a CIA (or something similar) would be done prior to it being scheduled. This would be made publicly available and affected property owners and the public would be able to object to it.

The following steps would occur:

- The council would have a list of iwi authorities and the areas of Auckland they have an interest
- When a new site is notified for scheduling, the Council would check whether it is already protected under the Heritage New Zealand Pouhere Taonga Act 2014 – if so it would decide whether there is also a need for a CIA;
- Using their list of iwi authorities, the council would make enquiries as to whether any iwi authority considered a CIA was necessary; if so:

- The CIA would be prepared by an iwi authority or a person or entity nominated by the iwi authority with confirmation of this nomination provided in writing by the relevant iwi authority representative.
- The CIA would be done using:
    - Reference documents;
    - Engagement with Maori in the area;
    - Hapu or iwi planning documents
    - Cultural values assessments
    - Treaty Settlement documents and related legislation
    - Maori Land Court Records
    - Historical publications
    - Archaeological assessments already done
    - Any other relevant information
- The iwi together with Council specialists would:
    - Describe the consultative process used in preparing the report
    - Identify the extent of the geographical area where the site could be adversely affected by activities requiring resource consents:
    - Delineating the areas where there is a high risk, moderate risk, and low but appreciable risk to these values.
    - Identify the activities requiring resource consents that would be likely to have an adverse effect on the site;
    - Explain why the activity would be likely to have this effect;
    - Estimate how serious this effect would be in correlation to the extent of the activity; and
    - Propose ways in which the effect could be mitigated or avoided.
- The CIA would be part of the plan notification of the new site. This would be publicly notified and property owners in the surrounding area would be specifically notified. The public and property owners would be able to object to the site being scheduled and/or the content of the CIA.
- The Council would cover any costs in doing the CIA.

- The Council would be the final decision-maker on whether or not the site is scheduled and whether the CIA (or multiple CIAs) is attached.

- There would need to be some flexibility to take into account new evidence found after the scheduling. For example there could be new evidence showing the site is more fragile than first thought and more likely to be damaged by work on a neighbouring property. Or the neighbouring properties could change from being a rural area to being a built up industrial area.

- When there is opposition to resource consent application from Tangata Whenua on grounds of adverse cultural impact the opposition shall be disregarded if the likelihood of impact has not been fairly disclosed in the cultural impact assessment notified in respect of the site or place except in extraordinary circumstances

- Where there is any ambiguity in a cultural impact assessment and it is relevant to a resource consent application, the presumption would be resolved in favour of the applicant

REASONS

Sites of value:

We recommend the sites and places of value to Mana Whenua are removed from the overlay and any that can be substantiated by the Council be included in the former sites of significance to Mana Whenua. The duplication of the provisions is not justifiable and diminishes the respect for and credibility of the PAUP.

The Council justified the listing of the 3600 sites and places of value to mana whenua on the need to use the precautionary approach. Case law and the NZ Coastal Policy Statement suggest that this approach should only be used:

- on a case by case basis rather than as part of a blanket approach;

- Where the likely effects of activities are unavoidably unknown;

- Where there are possible significant adverse effects if the risk comes to pass; and

- Where it is interim, until definitive study has delineated the risks and characteristics.

The precautionary approach should not have been used as:

- The Council could have done site checks and checked the CHI prior to listing the sites. Knowing the likely effects was not “unavoidable”. The Council could have taking these, or similar, steps but chose not to. By the Council’s own admission, in many cases the impact from earthworks to the site is likely to be minimal.

- The listing of the 3600 sites was done using a blanket approach rather than on a case by case basis. The proposed permanent powers to interfere with uses are remote from the purpose of precautionary protection

For this reason, the 3600 sites should be removed from the Overlay.

Cultural impact assessments:

The requirement for CIAs in various parts of the PAUP should be removed. Requiring resource consent applicants to consult with iwi is contrary to s 36A of the RMA which makes it clear an applicant does not have a duty under this Act to consult any person about the application. The current CIA process is vague, costly, time consuming, and leaves a property owner with many uncertainties.

If a CIA process (or something similar) was done at the planning process or prior to the scheduling of each site this would:

- Ensure private property owners are not impacted unnecessarily
- Allow affected property owners and the public a chance to object to the CIA at the time it was scheduled
- Give more certainty to property owners as to what they can do with their properties
- Be available to a potential purchaser of a property before they buy the property
- Avoid protecting a site which is already sufficiently protected under the Heritage New Zealand Pouhere Taonga Act 2014.
- Avoid requiring resource consent applicants to consult with iwi contrary to s 36A of the RMA
- Achieve consistency in terms of requiring a robust evidence based methodology
- Avoid issues with corruption or conflicts of interests by iwi authorities doing CIAs who have an interest in the property
- Be done on a case by case basis
- Be more efficient in terms of:
    - not requiring a large buffer zone when there is no need
    - save resource consent applicants in terms of cost and stress of getting a CIA and any delays caused by it
    - save Council and iwi time and money as they would not need to consult each time a resource consent is near a site

- Allow the Council and iwi authorities to specify suitable conditions to better protect sites of significance
- Be more in line rule of law principles on clarity and certainty
- Allow the Council to meet its duties under Part 2 of the RMA and Policy 2 of the NZCPS