

**ORAL HEARING: 30 October 2014 on Regional Policy Statement (Topic 005)**

**Summary of points for submissions specific to Chapter B provisions:**

- 6127 Kent Baigent
- FS 2746 Lee W and Susan C Short
- 8634 Lee W Short
- 4099 Democracy Action

| RPS policy   | Summary |
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| <b>Chapter B</b>   |         |
| <p>Overall recommendations:</p> <ul style="list-style-type: none"> <li>• Replace all references to “Mana Whenua” in the PAUP with “Tangata Whenua” and use definitions from RMA</li> <li>• Remove all parts which are inconsistent with the Auckland Plan or would implement the Auckland plan in ways which are contradictory to Rule of Law principles and common law.</li> </ul> <p>This definition misstates the accepted meaning of mana whenua, and the definition of it in the RMA. It creates uncertainty. The PAUP definition turns Mana Whenua into a noun denoting a class of peoples. Mana whenua is properly a power or authority capable of being exercised. The Resource Management Act 1991 Section 2 defines mana whenua meaning “customary authority exercised by an iwi or hapu in an identified area.” It defines tangata whenua as “in relation to a particular area...the iwi, or hapu, that holds mana whenua over that area.”</p> <p>The PAUP is incorrect in asserting that mana whenua is defined as tangata whenua under the RMA. The opposite is true. It is only possible to determine what groups are tangata whenua by asking whether they exercise mana whenua over the given area.</p>  |         |
| <p>Overall recommendations:</p> <ul style="list-style-type: none"> <li>• Remove all parts which are inconsistent with the Auckland Plan or would implement the Auckland plan in ways which are contradictory to Rule of Law principles and common law.</li> </ul> <p>Strategic Direction 1 of the Auckland Plan is to “create a strong inclusive and equitable society that ensures opportunity for all Aucklanders”. This is inconsistent with Policy no. 3 in Ch B 5.1 of the PAUP which is “Recognise and take into account partnership arrangements and agreements between Mana Whenua and the council when making resource management decisions.”</p> <p>Strategic Direction 6 in the Auckland Plan is to “develop an economy that delivers opportunity and prosperity for all Aucklanders and New Zealand”. A priority is to “grow a business-friendly and well-functioning city”. Paragraph 386 of the Auckland Plan has “[w]e will ensure that growth is inclusive and equitable, so that all Aucklanders participate in growing the economy and can enjoy its benefits.” The PAUP’s provisions on cultural impact assessments and cultural harvesting are two examples which will result in long delays, uncertainty and extra cost for property owners and developers.</p> <p>Directive 6.2 of the Auckland Plan is to “ensure an efficient and effective regulatory process with strong public-private relationships, and implement a streamlined regulatory process that offers reduced uncertainty around cost, timing and outcome.” It is difficult to see how the requirements for cultural impact assessments and cultural harvesting will “reduce</p> |         |

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| <p>uncertainty around cost, timing and outcome”. Because the definition of “Mana Whenua values” is so vague and open ended there is potential for every resource consent application to be held up while applicants consult with iwi over whether a CIA is required.</p>   |   |
| <p><b>Chapter B 1.4</b></p>  |   |
| <p><b>Unitary Plan issue</b><br/> Māori have a special relationship with natural and physical resources through whakapapa. Inherent in this relationship is kaitiakitanga which seeks to maintain the mauri of these resources, while allowing their use for social, cultural and economic wellbeing. <b>The development of Māori land and Treaty settlement land needs to be enabled to ensure that these lands and resources contribute to significantly lifting Māori social, cultural and economic wellbeing.</b></p> <p><b>Development and expansion of Auckland has negatively impacted on Mana Whenua taonga, on customary rights and practices of Mana Whenua within their ancestral rohe.</b> Further deterioration of taonga, sites and places of significance, and the values associated with cultural landscapes must be avoided. Degraded taonga and customary rights must be actively enhanced in order to restore the wellbeing and mana of those taonga, sites and places – and therefore the mana of the people. Mana Whenua participation in resource management decisionmaking, and the integration of mātauranga Māori and tikanga in resource management is of paramount importance to ensure a sustainable future for Mana Whenua and for Auckland as a whole.</p> | <p>Examples of unsubstantiated assertions in bold.</p>  |
| <p>In accordance with the principle of active protection, the Unitary Plan takes into account the following factors:</p> <ul style="list-style-type: none"> <li>• the Crown has an obligation to actively protect Māori interests</li> <li>• the establishment of Māori institutions can advance Māori culture and the principles of the Treaty</li> <li>• active protection may also require applicants to investigate alternative options which do not affect Māori relationships with resources.</li> </ul>   |   |
| <p>In accordance with the principle of redress, the Unitary Plan takes into account the aims of redress as stated by the Office of Treaty Settlements:</p> <ul style="list-style-type: none"> <li>• cultural redress is intended to meet the cultural interests of the Mana Whenua group</li> <li>• cultural redress aims to protect wāhi tapu (sites of spiritual significance) and wāhi whakahirahira (other sites and places of significance), possibly through tribal ownership or guardianship</li> <li>• cultural redress recognises the special and traditional relationship of claimant groups with the natural environment, especially rivers, lakes, mountains, forests and wetlands</li> <li>• cultural redress gives claimant groups greater ability to participate in resource management, and to make decisionmakers more responsible for being aware of their relationship with resources</li> <li>• cultural redress provides visible recognition of the claimant group within their area of interest</li> <li>• commercial redress is intended to contribute to the</li> </ul>  | <p>Neither local government nor private citizens are parties to the Treaty. They have no obligations under the Treaty except where the Crown has delegated power to local government through legislation.</p> |

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| <p>economic and social development of Mana Whenua.</p> <ul style="list-style-type: none"> <li>• commercial redress recognises that where claims for loss of land and/or resources are established, the Crown’s breaches of the principles of the Treaty will usually have held back the potential economic development of the claimant group</li> <li>• commercial redress does not provide full compensation based on a calculation of total loss to Mana Whenua as this is not considered practicable or generally acceptable to the New Zealand public.</li> </ul> <p>Cultural and commercial redress includes:</p> <ul style="list-style-type: none"> <li>• transfer of Crown assets to the claimant group to help meet their economic interests</li> <li>• transfer of Crown assets to the claimant group to help meet their cultural interests</li> <li>• recognition of claimant groups’ interests in other ways – for instance, involvement in decisionmaking</li> <li>• about resources of cultural significance, or the creation of statutory instruments.</li> </ul> <p>Parcels of Crown land transferred to Mana Whenua ownership as cultural redress include open space reserves. In many cases, Mana Whenua have agreed to receive and retain open space for the access and enjoyment of all Aucklanders. Any existing third party rights over Crown land (such as easements, leases and licenses) are also protected even if the land is transferred to Mana Whenua ownership.</p> |   |
| <p><b>Mana Whenua mātauranga and tikanga in sustainable management</b></p> <p>Kaitiakitanga denotes the practice of ‘guardianship’ in accordance with tikanga Māori and describes the Mana Whenua world view in environmental management. As kaitiaki, Mana Whenua have responsibilities to maintain and enhance the mauri of resources on both public and private land throughout Auckland. Mana Whenua are experts in tikanga and mātauranga which apply to the region’s resources.</p>   |   |
| <p><b>Decisionmaking, environmental governance, partnerships and participation</b></p> <p>Mana Whenua expect to be actively involved in resource management processes, and require greater participation in resource management decisionmaking. Mana Whenua have requested joint management arrangements under s. 36b of the RMA to create shared decisionmaking bodies. Mana Whenua have also requested the full transfer of powers in accordance with s.33 of the RMA for particular resource management activities, for example, the consideration of resource consent applications for activities on Māori land.</p> <p>It is important to build stable and equal partnerships which enable Mana Whenua to actively and meaningfully participate in the management of natural resources. For example, the council could contribute to Mana Whenua capacity to respond to requests to engage on resource management issues.</p>  | <p>Recommendations:</p> <ul style="list-style-type: none"> <li>• Remove references to greater participation by Mana Whenua in resource consent decision-making</li> </ul> |
| <p><b>Chapter B 5.1</b></p>   |   |
| <p><b>5.1 Recognition of Te Tiriti o Waitangi partnerships and</b></p>  | <p>PAUP goes far beyond the requirement in the RMA for</p>  |

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| <p><b>participation</b></p> <p><b>Objectives</b></p> <ol style="list-style-type: none"> <li>1. The principles of the Treaty are recognised and provided for in the sustainable management of ancestral lands, water, air, coastal sites, wāhi tapu and other taonga, and natural and physical resources. The Treaty is articulated in law through an evolving set of principles. These include: <ul style="list-style-type: none"> <li>• reciprocity</li> <li>• rangatiratanga</li> <li>• partnership</li> <li>• shared decisionmaking</li> <li>• active protection</li> <li>• mutual benefit</li> <li>• right of development</li> <li>• redress.</li> </ul> </li> <li>2. Mana Whenua can exercise Tino Rangatiratanga through participation in resource management processes and decisions.</li> </ol>  | <p>those making decisions under the RMA to “take into account the principles of the Treaty of Waitangi”. The PAUP purports to define these principles (which is for courts not councils to do) but at a level of generality that will ensure they can be called in aid to support or oppose almost any proposition for which a Maori, or opportunist pakeha might want to claim trump status.</p> <p>As well as contravening the clear terms of Article 2 of the Treaty, it contradicts the principles of the Treaty including:</p> <ul style="list-style-type: none"> <li>• the equality of all New Zealanders; and</li> <li>• mutual benefit leading to the duty to act reasonably, honourably and in good faith.</li> </ul> <p>The treaty is between Maori and the Crown and not the Auckland Council.</p> |
| <p><b>Policies</b></p> <ol style="list-style-type: none"> <li>1. Provide opportunities for Mana Whenua to actively participate in the sustainable management of ancestral lands, water, air, coastal sites, wāhi tapu and other taonga, and natural and physical resources in a way that: <ol style="list-style-type: none"> <li>a. recognises the role of Mana Whenua as kaitiaki and provides for the practical expression of kaitiakitanga</li> <li>b. builds and maintains partnerships and relationships with iwi authorities</li> <li>c. provides for timely, effective and meaningful engagement with Mana Whenua at appropriate stages in the resource management process including development of resource management policies and plans</li> <li>d. recognises the role of kaumātua and pūkenga</li> <li>e. recognises Mana Whenua as specialists in the tikanga of their hapū or iwi and as being best placed to convey their relationship with their ancestral lands, water, sites, wāhi tapu and taonga</li> <li>f. acknowledges historical circumstances and impacts on resource needs</li> <li>g. recognises and provides for mātauranga and tikanga</li> <li>h. recognises the role and rights of whānau and hapū to speak and act on matters that affect them.</li> </ol> </li> </ol> | <p>Recommendations:</p> <ul style="list-style-type: none"> <li>• Remove policy 1</li> </ul>   |
| <ol style="list-style-type: none"> <li>2. Involve Mana Whenua specialists in mātauranga and tikanga in resource management decisions where Mana Whenua values are affected.</li> </ol>   | <p>Recommendations:</p> <ul style="list-style-type: none"> <li>• Remove policy 2</li> </ul> <p>The definition of “Mana Whenua values” in Part 4 of the PAUP is not exhaustive and provided as a guide only. It recognises Mana Whenua as the “experts in the interpretation of their values in the RMA context”. In effect this permits iwi authorities to adopt new Mana Whenua values on an ad hoc basis. Whether Mana Whenua “may be affected” is subjective and will invariably lead to legal and practical uncertainty. It will</p>  |

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|   | <p>create uncertainty for the applicant, for the council but also encourage the Mana Whenua (whoever they may be) to misuse their power. Rule 4 should be deleted together with any other references to “Mana Whenua values” in the PAUP.</p>   |
| <p>3. Recognise and take into account partnership arrangements and agreements between Mana Whenua and the council when making resource management decisions.</p>  | <p>Recommendations:</p> <ul style="list-style-type: none"> <li>• Remove policy 3</li> </ul> <p>The creation of a partnership between Mana Whenua and the Council in the management and governance of Auckland’s physical and natural resources would fundamentally undermine both the principle of equality of citizenship, and the democratic system it supports. It sets out to establish two classes of citizen in Auckland one based on ancestral bloodlines and others. This is highly divisive and racist.</p> <p>There is no requirement in law to introduce co governance, joint management or transfer of powers in the RMA only provisions to do so if wished. The Council has not involved the citizens in any debate seeking a mandate to do this.</p> <p>Such arrangements, whereby council authorities accountable to the public surrender rights and powers to a non-elected group of citizens, undermines both the equality of citizenship, and the democratic system it supports. The inevitable consequence of Council and Mana Whenua partnerships is the inferior status of all citizens who are not members of local iwi.</p>              |
| <p>4. Enable the transfer of powers and/or establishment of joint management agreements for certain functions relating to the development and management of ancestral lands, water, air, coastal sites, wāhi tapu and other taonga, and the sustainable management of natural and physical resources, where an iwi authority:</p> <ol style="list-style-type: none"> <li>a. has an ancestral connection or mana over a resource</li> <li>b. has a clear mandate to represent the interests of that iwi or hapū</li> <li>c. can demonstrate the ability to fulfill the requirements of the RMA, whether directly or by outsourcing.</li> </ol> | <p>Recommendations:</p> <ul style="list-style-type: none"> <li>• Remove policy 4</li> </ul> <p>‘Ancestral lands, water, air, coastal sites’ are not defined in the RMA. Ancestral lands are not necessarily just lands Maori own now, but could be any lands with which they have an ancestral connection, which is just about everywhere.</p> <p>‘Natural and physical resources’ are defined in the Resource Management Act to include land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced) and all structures. management of natural and physical resources . The management of natural and physical resources has proven to be open to a very wide interpretation.</p> <p>If you combine these two aspects (as described above) with the fundamentally anti-democratic nature of policies proposed in the plan, such as “equal partnerships”, “co-management”, “the transfer of powers”, “the establishment of joint management agreements”, iwi authorities would gain truly extensive powers over much of Auckland, unelected by and unaccountable to the wider community. Our</p> |

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|   | democracy could not survive such governance arrangements. |
| <b>Nonregulatory</b><br><b>NonStatutory layers, plans and strategies</b> <ul style="list-style-type: none"> <li>• Memoranda of understanding between the council and Mana Whenua</li> <li>• Co-management framework</li> </ul>  |   |
| <b>Advocacy and education</b> <ul style="list-style-type: none"> <li>• Governance meetings between iwi authorities and Auckland Council elected members, to discuss issues of importance</li> <li>• Toolkits guiding the preparation of a cultural impact assessment</li> <li>• Toolkits guiding early, effective and meaningful engagement with Mana Whenua</li> <li>• Toolkits to assisting the understanding Mana Whenua values</li> <li>• Preparation of expert advice training for Mana Whenua</li> <li>• Toolkits guiding the implementation of mātauranga Māori</li> <li>• Encourage and promote new technologies that implement mātauranga Māori</li> <li>• Toolkits to assist with the development of Treaty Settlement land.</li> </ul> |   |
| The strongest RMA mechanisms to encourage greater Mana Whenua participation in resource management are the ability for Mana Whenua and the council to establish joint management arrangements, and for the council to transfer powers over a particular resource to Mana Whenua.  |   |
| <b>Chapter B 5.2</b>  |   |
| <b>Policies</b> <ol style="list-style-type: none"> <li>4. Promote the preparation of a cultural impact assessment for activities that may adversely affect the values of Mana Whenua.</li> </ol>  |   |
| <ol style="list-style-type: none"> <li>7. Require resource management decisions to have particular regard to potential impacts on: <ul style="list-style-type: none"> <li>• the exercise of kaitiakitanga</li> <li>• mauri, particularly in relation to freshwater and coastal resources</li> <li>• customary activities, including mahinga kai</li> <li>• places, sites and areas with significant spiritual or cultural heritage value to Mana Whenua.</li> </ul> </li> </ol>   |   |
| <b>Explanation and reasons</b><br>These policies seek to ensure that resource management processes in Auckland are informed by Mana Whenua perspectives, including values, mātauranga and tikanga. Mana Whenua perspectives need to be considered early within resource management processes, accorded status in decisionmaking and have an opportunity to influence outcomes. Consideration of the values of Mana Whenua form part of the consideration of cultural and social wellbeing required under s. 5 and 6 of the RMA.   |   |
| <b>Chapter B 5.4</b>  |   |
| <b>Policies</b>   | Chapter B 5.4. creates a vague and permissive             |

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| <p>1. The council will work with Mana Whenua to develop a methodology for identifying, researching and assessing unscheduled sites and places of significance to Mana Whenua that will be nominated for scheduling.</p>  | <p>methodology whereby Mana Whenua would be both interested party and the de facto adjudicator. The regime creates severe temptation to abuse opportunity, and ignores conflicts of interest.</p> <p>It provides Mana Whenua almost unfettered discretion to schedule sites while at the same time establishing a regime whereby Mana Whenua could directly profit from such designation when potential Mana Whenua have already signalled their intention to claim interest in most of Auckland.</p> <p>The policies allow for rules which have considerable impact upon the freedom of other citizens to manage their own property as they see fit.</p> |
| <p>2. Schedule Mana Whenua cultural heritage where it can be demonstrated it is of significance to Mana Whenua.</p>  |   |
| <p>4. Protect the values and associations of Mana Whenua with their sites and places of significance or value, which are identified in the Unitary Plan, where subdivision, use and development may result in the loss or degradation of those values and associations by avoiding:</p> <ol style="list-style-type: none"> <li>a. the destruction in whole or in part of the site or place and its extent adverse cumulative effects on the site or place</li> <li>b. adverse effects on the location and context of the site or place</li> <li>c. the lack of assessment of and provision for mātauranga and tikanga Māori when making decisions</li> <li>d. significant adverse effects on the values and associations Mana Whenua have with the site or place.</li> </ol> | <p>Chapter B 5.4 also provides that subdivision, use, and development should be avoided where it could have “adverse effects” on places of significance or value to Mana Whenua. Further, where subdivision, use, or development may affect Mana Whenua cultural heritage, a cultural impact assessment is required: the fees for which are a direct benefit to Mana Whenua.</p>  |
| <p>5. Recognise, enhance and protect Mana Whenua values associated with their cultural landscapes by developing an agreed methodology to:</p> <ol style="list-style-type: none"> <li>a. identify and record, assess and map the values within a spatial context in accordance with tikanga and mātauranga Māori</li> <li>b. determine the most appropriate mechanisms to recognise, enhance and protect Mana Whenua values and associations</li> <li>c. prioritise areas where there is a higher level of threat to the loss or degradation of Mana Whenua</li> <li>d. cultural heritage such as the coastal and freshwater environments, and areas subject to structure planning.</li> </ol>  | <p>The Heritage New Zealand Pouhere Taonga Act 2014 has recently been enacted. This replaced the Historic Places Act 1003. The Heritage New Zealand Pouhere Taonga Act sets out criteria and methodology for protecting places and areas of historical and cultural significance (Part 3). The Act provides appeal rights. Rather than duplicating processes and assessment we recommend the PAUP refer to this Act for how sites and places of significance to Mana Whenua are to be accessed.</p>   |
| <p>8. Recognise that Mana Whenua are specialists in determining their values and associations with their cultural heritage.</p>  | <p>Mana Whenua are to be recognised as the “specialists in determining their values and associations with their cultural heritage.” Under “policies” it sets up a vague, potentially all-inclusive set of criteria for determining whether a site is one of cultural heritage that should be scheduled. In any dispute over whether or not these criteria were met, Mana Whenua as “experts” would surely have authority under PAUP to determine the</p>  |

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|  | <p>outcome.</p> <p>As “experts” in determining cultural heritage, Mana Whenua are effectively given the discretion under Chapter B 5.4 to obstruct development or require cultural impact assessments on whatever sites they wish.</p>  |
| <p>11. Require a cultural impact assessment where subdivision, use or development may affect Mana Whenua cultural heritage.</p>  | <p>Under the RMA clause 36B clearly states that there are no requirements to consult for resource consents. The RPS is introducing new law making CIAs mandatory with regard to sites of significance or sites of value.</p> <p>The Treaty of Waitangi promised property rights but does not bind private individuals except to the extent incorporated in legislation.</p> <p>by stipulating for consultation with Mana Whenua (including) over whether a cultural impact assessment is required, subordinates ownership to both symbolic and actual overlordship;</p> |
| <p>12. Adopt a precautionary approach where structure planning is required by undertaking a Maori cultural landscape assessment, with Mana Whenua to:</p> <ul style="list-style-type: none"> <li>• identify Mana Whenua values associated with the landscape</li> <li>• identify sites and places that are suitable to schedule for their Mana Whenua cultural heritage values as part of a future plan change</li> <li>• reflect Mana Whenua values.</li> </ul> | <p>Under “policies” it sets up a vague, potentially all-inclusive set of criteria for determining whether a site is one of cultural heritage that should be scheduled.</p>  |