

23 October 2014

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Dear Lee

I refer to our meeting on 10 October 2014 and the list of questions provided to me entitled "Questions for Roger Blakeley on Proposed Auckland Unitary Plan (PAUP)".

Set out below are the responses to the 50 written questions, some of which we touched on when Penny Pirrit and I spoke and answered questions at the Democracy Action forum at the Aotea Centre on 18 October 2014.

I record my disappointment that the media release issued following the 18 October 2014, made no reference to Council attending the forum and correcting many of the (incorrect) facts that many speakers and attendees stated during the discussion. I am not proposing to retrace the matters we raised at the forum. Where relevant, corrections are set out in the answers below.

I was also very disappointed in your general circulation email yesterday, which included your gratuitous comment: "After posing questions to the Council representatives and receiving platitudes in return ...". There has been substantial time, planning and legal expertise go into the attached replies to your 50 questions. I hope they will be seriously considered and not peremptorily dismissed.

Proposed Auckland Unitary Plan:

- Q1. On 28 August 2013 the Auckland Plan Committee agreed to amend the Mana Whenua provisions in the draft unitary plan "to include a statutory layer of 4611 sites of Maori origins (location accurately confirmed) that require a resource consent (restricted discretionary) for earthworks within 50m of a site". This followed letters from the**

Independent Maori Statutory Board to Mayor Len Brown, the Council, and several meetings between the Board and Council officials. The plan was notified a month later. How fundamental was this change to the plan being notified?

A1. During the Auckland Plan Committee five-day meeting in August 2013 to consider the proposed Auckland Unitary Plan for notification, the Committee considered amendments on many provisions in the Plan in response to feedback received from the public on the March 2013 Draft Plan. The changes to the Mana Whenua provisions were amongst many such changes. The decision to notify the Plan including amendments to it, was then made in September 2013 by democratically elected members of the Governing Body.

Q2. *How and why was the number of sites reduced to 3600?*

A2. The number of sites in the Sites of Value to Mana Whenua Overlay was reduced to approximately 3,600 as a result of further analysis by the Council's heritage staff in the period between the Committee approval of the notified version and notification on 30 September 2013, in accordance with officers' advice that only those sites with confirmed location data would be included in the Overlay. The final number of 3,600 is approximately half of the number originally proposed to be protected in the non-statutory layer proposed in the March 2013 Draft, for the same reason. It was also established by heritage staff that the original number of 4,611 included sites that were not of Maori origin.

Q3. *The Council has specific statutory duties to the Independent Maori Statutory Board to provide information to them, to consult with them, and to take into account its advice. How was the Board involved in decision-making on the Unitary Plan?*

A3. The Independent Māori Statutory Board (IMSB) is established in accordance with Part 7 of the Local Government (Auckland Council) Act 2009. The Board's functions include advising Auckland Council on matters affecting Mana Whenua groups and mataawaka of Tamaki Makaurau (s84(d)) and to appoint a maximum of two persons to sit as members of the Council's committees that deal with the management and stewardship of natural and physical resources (s85(1)). In this context, two members of the IMSB were part of the Auckland Plan Committee at the time decisions on the PAUP were being made. The Auckland Plan Committee made recommendations to the Governing Body. No IMSB members sit on the Governing Body. The Governing Body (the Mayor and 20 ward Councillors) made decisions on the content of the PAUP prior to its notification in September 2013.

Q4. ***The Council is recorded as allocating \$200,000 for Māori engagement during 2013 and 2014. What was this spent on? How much of this was spent on Iwi involvement in the draft unitary plan process? How much was each Iwi given?***

A4. The RMA requires the council to consult with Iwi Authorities in the preparation of a document such as the PAUP and to consider a wide range of topics that require expertise held only by Mana Whenua. In addition to Part 2 of the RMA, the following clauses contained in Schedule 1 are of particular relevance:

“3 Consultation

- *(1) During the preparation of a proposed policy statement or plan, the local authority concerned shall consult—*
 - *(a) the Minister for the Environment; and*
 - *(b) those other Ministers of the Crown who may be affected by the policy statement or plan; and*
 - *(c) local authorities who may be so affected; and*
 - *(d) the tangata whenua of the area who may be so affected, through Iwi authorities; and*
 - *(e) any customary marine title group in the area.*

3B Consultation with Iwi authorities

- *For the purposes of [clause 3\(1\)\(d\)](#), a local authority is to be treated as having consulted with Iwi authorities in relation to those whose details are entered in the record kept under [section 35A](#), if the local authority—*
 - *(a) considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and*
 - *(b) establishes and maintains processes to provide opportunities for those Iwi authorities to consult it; and*
 - *(c) consults with those Iwi authorities; and*
 - *(d) enables those Iwi authorities to identify resource management issues of concern to them; and*
 - *(e) indicates how those issues have been or are to be addressed.”*

The council allocated funds to engage with Auckland’s 19 Mana Whenua groups during the preparation of the PAUP and to receive their technical advice. The total amount invoiced by all 19 Mana Whenua groups between 1 July 2012 and 14 October 2014 is approximately \$126,000. The total amount invoiced by individual groups varies from approximately \$1,000 to approximately \$13,000.

Q5. ***What engagement did the Council have with property owners affected by the Overlay of sites of value prior to notification? How much was spent on it?***

A5. The Overlay was a late addition to the notified version of the Plan. However, the March 2013 Draft did show a non-statutory alert layer of over 7,000 sites and places of Māori origin. Property owners had an opportunity to provide feedback on the Draft. The Sites of Value to Mana Whenua Overlay as notified substantially reduced the number of sites. The notification of the PAUP then enabled any and all property owners (and others) to make a submission on the Mana Whenua Overlay provisions of the PAUP (and all other parts of the PAUP) and to appear before the Independent Hearings Panel in relation to their submissions.

Q6. ***Why was so much spent on consulting and receiving feedback from Māori and yet nothing spent on consulting with the thousands of private property owners affected by this change prior to notification?***

A6. As noted under 4 above, the RMA places specific consultation obligations on the Council in relation to Iwi Authorities when preparing a new RMA planning document. Council has complied with all statutory requirements to include the Auckland community (including property owners) in the development of the PAUP. The community continues to have a significant role to play in the public participation process currently in the hands of the Independent Hearings Panel.

Elected Members:

Q7. ***How were Councillors at the Auckland Plan Committee meeting on 28 August 2013 and the Governing Body meeting on 10 September 2013 which approved the notification of the PAUP informed on the legal effect of the addition of thousands of additional sites referred to in question 1?***

A7. The Committee was given advice prior to notification of the Plan in relation to those provisions that would, by operation of section 86B(1)(3) of the RMA, automatically take legal effect upon notification, including advice that those rules protecting "historic heritage" (as defined in the RMA to include sites of significance to Māori) would take immediate legal effect.

Q8. ***What evidence is there that they got enough to appreciate the significance?***

A8. I am unable to comment on how individual Councillors processed the information given to them.

- Q9. ***What would have alerted them to the situation outlined in Appendix 4.2 of the PAUP that many of the 4611 (later reduced to 3600) sites no longer exist and do not have known locations? If so, why did the resolution on 28 August 2013 say "location accurately confirmed"?***
- A9. The intent of this question is unclear, but members were advised on 28 August 2013 that only those sites of value with accurate location information would be included in the Notified Plan. As indicated in the response to question 2 above, heritage staff continued to check the sites of value information to arrive at a final number for notification, and reduced the number of sites notified by approximately 1,000.
- Q10. ***Were they told that many of these sites are small shell middens originally used for food waste and only a few metres in size?***
- A10. The Committee was advised that the Overlay would include a range of sites of Māori origin and that the sources of information for the Overlay were the Council's Cultural Heritage Inventory and the NZ Archaeological Association database.
- Q11. ***What explanation was given to Councillors that might let them make an informed decision on whether there was cultural impact of earthworks on properties within 150m of, for example, a shell midden?***
- A11. The Councillors were advised that the Sites of Value Overlay would be linked to a rule under which earthworks within 50m of a site would require a restricted discretionary resource consent and may require a cultural impact assessment.
- Q12. ***Were the Councillors told that there would be a buffer area for each of these sites which is 200m in diameter (i.e. a circle with a 100m radius from the centre, so in total with the extra 50m it is a 150m radius)? Did they understand that when the resolution said "within 50m of a site" it actually meant "within 150m of many sites" and each affected area therefore approximately 7 ha?***
- A12. See the response to question 11 above. The difficulty that has arisen since notification is that the purple circles on the Overlay purporting to represent the Sites and Places of Value have a 200m diameter, i.e. a radius of 100m measured from the centre of each circle, rather than a 50m radius (or 100m diameter) as was originally intended. This is not an accurate reflection of the Council resolution on the Overlay, and is likely to have been a result of the late addition of the Overlay.

To address this difficulty the Council has lodged a submission seeking a new definition of Sites and Places of Value to Mana Whenua which explains how the 50m requirement in the rule is to be applied.

The Council expects that the detail of the rule and its application to the Overlay will be the subject of vigorous debate during the PAUP hearings process as a result of submissions. Meanwhile the Council's Resource Consents department is applying the rule as it was originally intended, i.e. a resource consent requirement is triggered if earthworks are proposed within 50 metres of the site, regardless of the extent of the purpose circle shown on the Overlay map.

Selection of the 3600 sites and places of value to Mana Whenua:

- Q13. ***Is the New Zealand Archeological [sic] Association (NZAA) submission correct when it says these 3600 sites were scheduled without any prior assessment or evaluation (apart from those that are also included in the Schedule of Significant Historic Heritage Place)?***
- A13. It is correct that the sites have not been evaluated in terms of their significance to Mana Whenua. Their inclusion in the PAUP reflects a precautionary approach to the protection of Maori cultural heritage that is known to exist but has not yet been assessed against the criteria for scheduling as a Site or Place of Significance to Mana Whenua (which would then provide a greater level of protection). The Overlay provisions are strongly supported by most Mana Whenua groups, indicating that they are considered to be of value.
- Q14. ***Is the NZAA submission correct when it says the 3600 sites were selected "on the basis of a global mapping exercise, the criteria for which are that sites "are of Māori origin and specified by a geospatial co-ordinate"? If so, why did the Evaluation Report describe this as "robust information" (page 8)?***
- A14. The reference in page 8 of the Section 32 Evaluation Report is to interim directions given by the Committee to Council officers to "use robust information" to inform the development of a non-statutory alert layer containing sites and places of Māori origin. The sites and places of value that ultimately comprised the notified Overlay were not "selected" but were taken from the Council's Cultural Heritage Inventory and the NZAA database and filtered in relation to location information (i.e. geospatial reference and associated NZAA site file.)
- Q15. ***How were these sites originally located, by whom, and what criteria was used?***

- A15. The sites were located by archaeologists working in the Auckland region over many years.
- Q16. ***Is the NZAA correct in saying many of these middens no longer exist and some no longer have GPS locations (i.e. they have no confirmed location)?***
- A16. It is possible that some of the sites no longer exist. However, the Council is unable to confirm this without a site visit, and is not in a position at present to undertake site visits in respect of 3,600 sites. The Council's heritage staff are undertaking a desktop 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 Mana Whenua provisions. Evidence that particular sites no longer exist can be presented by submitters at the hearing.
- Q17. ***Who authorized the way these 3600 sites were selected?***
- A17. See the response to question 14 above.
- Q18. ***How will sites and places of value to Mana Whenua be selected in the future? Will they be evaluated prior to being scheduled to determine if they still exist? Will affected property owners have the chance to object to them being scheduled?***
- A18. Once the PAUP is made operative any new inclusions in the Sites and Places of Value to Mana Whenua Overlay would go through the standard plan change process with public notification and hearings. Any new 'site' proposed would be required to be supported by information and location details.
- Q19. ***Were the Councillors specifically informed that the rules appear to give to Iwi exclusive interpretation of the scope and meaning of relevant terms (Mana Whenua value etc.)?***
- A19. The Council recognises that Mana Whenua are specialists in determining their values and associations with their cultural heritage, and has included a policy to that effect in the Regional Policy Statement chapter B5.4 (policy 8).

Economic cost to private property landowners:

Q20. ***These 3600 sites have a 200m diameter circle around them and then an additional 50 meter (sic) buffer. Is the NZAA correct in saying this means anyone living or with a business within an (sic) 7ha area of each site can be affected?***

A20. See the response to questions 11 and 12 above.

Q21. ***Is the Council claiming the entire 7ha is of "historic heritage" even when it may be no more significant than a 2 metre wide shell midden that no longer exists and has no confirmed location?***

A21. See the response to questions 11 and 12 above. To the extent that this question is directed at the immediate legal effect of the rules, I confirm that the rules associated with the Sites and Places of Value to Mana Whenua Overlay fall within the definition of rules relating to historic heritage and therefore take immediate legal effect by virtue of section 86B(3).

Q22. ***How many properties does the Council consider will be affected by this overlay?***

A22. Given the highly variable size of the sites, it is not possible to confirm with any accuracy how many properties are affected by the Overlay. It is also important to note that many of the sites are on public land. The number of potentially affected properties (public and private) lies somewhere between 4,084 and 18,041 from a total of 586,009 properties in the Auckland region.

Q23. ***What are the Council's estimates of financial cost for each owner (in terms of need for resource consents, cultural impact assessments)?***

A23. Property owners will only be affected by the Overlay if they wish to undertake earthworks that trigger the requirement for a resource consent (i.e. within 50 metres of a Site or Place of Value). Where a CIA is required there is likely to be a cost, just as there would be a cost in commissioning other specialist input into an Assessment of Effects on the Environment that may also be required. The processing costs of any consent application depend on the nature and scale of the proposal and the nature of the Site or Place of Value. I also note that the Mana Whenua provisions may not be the only element triggering the need for a resource consent e.g. traffic matters or bulk and location matters for new buildings. In relation to the likely costs associated with a CIA, see the response to question 39.

Q24. *What are the Council's estimates of any reduction in potential utility or usefulness to owners and occupiers of affected property?*

A24. The PAUP contains many provisions that may potentially impact the usefulness or utility of properties. As discussed in the response to question 23 above, that impact will depend on what the property owner wishes to do and whether any proposal involving earthworks within 50m of a Site or Place of Value is likely to have an adverse impact on that Site or Place. However, the Council expects that in many cases the impact is likely to be minimal due to the small scale of most sites relative to property size and the ability to avoid impacts on the values of the Site or Place.

Q25. *What are the Council's estimates of the value reduction effects on affected property?*

A25. The PAUP contains many provisions that may potentially impact on property value. In defending the notified provisions, the Council is required to satisfy the Hearings Panel that the matters in section 32 have been assessed, including the benefits and costs anticipated from implementation of the provisions. The costs and benefits relate not just to private property values, but broadly to environmental, economic, social and cultural effects of the provisions. The Council will provide economic evidence on the benefits and costs of the Overlay provisions as part of the preparation of its case for the hearings.

Q26. *Why was such a large buffer zone chosen and who authorized it?*

A26. See the response to questions 11 and 12 above.

Q27. *A Council draft memo dated 14 November 2013 and titled "Mana Whenua Cultural Heritage Package" claims the decision regarding buffers around sites was made partly on the basis of informal guidance from the NZAA. NZAA deny this in their submission. Who is correct?*

A27. The informal guidance referred to in the memo is based on discussions that took place between NZAA staff and Council staff.

Q28. *You have been reported in the media as saying that in the past six months fewer than 200 resource consents have triggered a possible cultural impact assessment. Why is this? How does that compare with the total number of properties that fall within the affected areas?*

A28. The figure of 'fewer than 200' is based on Council's own records, associated with applicants' use of the CIA facilitation service (see the response to question 29 below). We are unable to report accurately on the number of applications for which the CIA provisions have been triggered, but where the applicant has chosen to liaise with Mana Whenua directly (without the Council's assistance). However, even if the number were closer to 400, this still only represents 5-6% of all applications processed since March 2014, when record-keeping on this began.

Q29. ***What has the Council been doing to facilitate easy obtaining of these cultural impact assessments?***

A29. Council offers a CIA facilitation service at no cost to applicants. Where the CIA provisions are triggered, the Council offers to liaise with Mana Whenua to determine whether CIAs are required. The results of this exercise are reported to the applicant after 15 working days. Applicants are then able to work with Mana Whenua to obtain CIAs in those limited situations (12 according to our facilitation records to date) where Mana Whenua consider CIAs are warranted.

Q30. ***We've been told that sensible officers in some areas are telling people to ignore the CIA requirements. How much could that explain your 200 figure?***

A30. Staff have not been advised to ignore the CIA requirements. However, there are some situations in which a practical solution can be found e.g. the CIA provisions are deemed not to apply by staff because the Sites or Places of Value to Mana Whenua are not in practice in close proximity to proposed activities, or the matters that can be considered as part of a consent application pursuant to the relevant rules do not include Mana Whenua issues.

Q31. ***Why didn't the Council consult with the affected private property owners before notifying the PAUP?***

A31. See the response to question 5 above.

Evaluation report:

Q32. ***Do you think the section 32 report addressed the right questions? Why didn't it evaluate the identifiable costs and benefits of the CIA and overlay provisions? For***

example, why didn't it include the potential cost of preparing a CIA? Why didn't it give any monetary value to the costs and benefits? Why didn't it provide any detail on the overall number of properties affected by the 3600 sites of value, the geographical extent of these "sites" and therefore, the potential effects of the overlay on property owners?

A32. The Council's consideration of the Sites and Places of Value Overlay provisions has continued to evolve in response to submissions lodged. Further analysis on the matters set out in section 32 will be undertaken as the Council prepares its case on the provisions for hearing. Ultimately the Council must satisfy the Hearings Panel that the provisions represent the most appropriate way to achieve the Council's objectives and the purpose of the RMA. Submitters will have an opportunity to present any opposing view.

Q33. ***How useful was the s 32 assessment in decisions to change the proposal? Can you point to any Councillor or other decision-maker using it to improve the proposal?***

A33. See the response to question 32 above.

Q34. ***The NZAA and Dr Ken Palmer say the late inclusion of these rules (i.e. as specified in question 1) meant the s 32 report is deficient? If so, why wasn't a new evaluation report prepared?***

A34. See the response to question 32 above.

Q35. ***The s 32 Evaluation Report refers to a "Memoranda of Understanding between council, Mana Whenua and heritage protection agencies on processes for identifying and protecting Mana Whenua cultural heritage". Has this been agreed to? If so, what does it say?***

A35. The memoranda have not been progressed at this stage.

Cultural Impact Assessments:

Q36. ***How much responsibility is the Council taking for the cultural impact assessment process?***

A36. The cultural impact assessment provisions set out in the PAUP, will be fully tested in the Independent Hearings Panel hearings process. In the meantime, those applicants who are required to obtain a CIA will be assisted to do so by the Council facilitation process described in the response to question 29.

Q37. ***Have any of the following been prepared by the Council as recommended in the Evaluation Report?***

- a. ***Toolkits guiding the preparation of a cultural impact assessment***
- b. ***Toolkits guiding early, effective and meaningful engagement with Mana Whenua***
- c. ***Toolkits to assisting the understanding Mana Whenua interests and values***
- d. ***Resource Management Hearings Commissioner training for Mana Whenua***

A37. These initiatives have yet to be progressed by the Council due to the current focus on the PAUP submissions and hearings.

Q38. ***How will the Iwi representatives who do the CIAs be selected and replaced? How will the Council ensure they have enough knowledge and capacity to be 'experts'?***

A38. The Iwi themselves will determine who will undertake any CIA that might be required, in accordance with the Council's recognition that Mana Whenua are specialists in determining their values and associations with their cultural heritage (see the response to question 19). Council maintains an up-to-date contact list for Iwi representatives and readily provides this information to applicants, in addition to the facilitation service described in the response to question 29.

Q39. ***How much are Iwi charging for doing cultural impact assessments?***

A39. Council records (via its facilitation service) indicate that Mana Whenua quote between \$1,500 and \$4,000 for providing a CIA, with an average quote of \$2,900. They do not charge for initial consideration of whether a CIA is required, unless a site visit is necessary, for which there may be a modest charge.

Q40. ***How will the Council assess the risk of corruption by Iwi overcharging or use the CIA process to benefit themselves?***

A40. Council is not aware of any excessive charges associated with the preparation of CIAs.

- Q41. ***Does the Council have any system in place to ensure Iwi groups doing the CIAs will not have a conflict of interest?***
- A41. Council has no formal process in place to ensure Mana Whenua do not have a conflict of interest in preparing CIAs. The ultimate decision maker for any resource consent application is the Council.
- Q42. ***Will the Council indemnify the Iwi authorities that do the cultural impact assessments against claims of negligence and other court proceedings?***
- A42. The Council will not indemnify Iwi authorities and sees no need to do so.
- Q43. ***Will a property owner be able to object to a CIA or have it reviewed?***
- A43. Applicants are asked to provide their views on a CIA before forwarding it to the Council. These views (e.g. about the practicality of any requested mitigation measures), together with those expressed in the CIA, are relevant factors for the Council to consider when determining whether to grant consent and if so, what conditions to impose on the consent.
- Q44. ***What should a property owner do if there is a conflict between several Iwi doing their CIA for them?***
- A44. We are not aware of any such situation occurring to date. Council does not attempt to adjudicate between Iwi. All views expressed in CIAs provided on a proposal would be given due consideration.
- Q45. ***What would the Council expect to do with Cultural Impact Assessments which assert conflicting cultural or spiritual impacts, for example driven by differences between Ratana, Ringatu, Protestant, and Catholic approaches pertaining to differing Iwi representatives?***
- A45. We are not aware of any such situation occurring to date

Next steps:

Q46. *The Hearings are in progress, is the Council intending to wait for the Panel's recommendations or will they make changes to the PAUP sooner?*

A46. The Council is currently preparing its case for hearing on the Mana Whenua provisions of the PAUP, including the provisions dealing with Sites and Places of Value to Mana Whenua. As part of that process the Council's experts are considering all submissions lodged on the provisions, and will advise the Hearings Panel at the time of hearing whether they consider any of the submissions warrant changes being made to the provisions. There is also a possibility that the Mana Whenua provisions could benefit from mediation amongst interested submitters to explore whether amendments to the provisions could be agreed prior to hearing. In any event, no changes can be made to the PAUP provisions until the Panel has made its recommendations to the Council and the Council has made a decision whether to accept or reject those recommendations. On the current timetable, this is not likely to happen until late 2016.

Q47. *Why would the Council not agree to mitigate the immediate effect of these rules in the way suggested by NZAA?*

NZAA recommended: The overlay should exclude all sites that no longer exist and all sites that do not have an accurate GPS locations (sic). It should be based on the selection of individual sites with potentially moderate to high cultural heritage and archeological [sic] significance based on a review of the site information by relevant Mana Whenua groups assisted by the Council's archeological (sic) specialists. The buffer should only be 50m from the recorded central point - all arbitrary 200m buffer circles should be removed

A47. The approach suggested by the NZAA in its submission is one of a number of approaches the Council will consider in light of the submissions on the PAUP, prior to confirming its position at the hearings.

Q48. *Why would the rules have immediate effect on properties which already have statutory protection as a historic place?*

A48. The fact that other provisions in the PAUP may also have immediate legal effect does not have a bearing on the status of the Sites and Places of Value to Mana Whenua Overlay provisions.

Sites and Places of Significance to Mana Whenua:

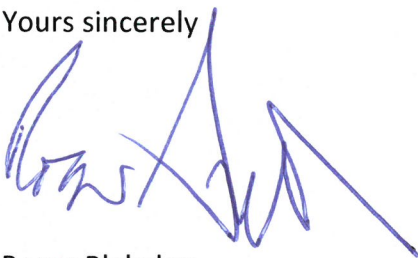
Q49. ***Why are some of scheduled sites and places of significance to Mana Whenua also in the Appendix 4.2 for sites and places of value to Mana Whenua?***

A49. We are aware of this duplication and will review the matter in the context of the submissions on the PAUP.

Q50. ***Sir Bob Jones commented in the NZ Herald on the debacle of having to consult multiple iwi for cultural impact assessments in order to change window. Why was this necessary and should it have been?***

A50. Under the PAUP, the subject site is affected by the Sites and Places of Significance to Mana Whenua Overlay (purple triangle). Therefore, new buildings, alterations and additions to buildings on or within 50m of a scheduled [site](#) or place of significance to [Mana Whenua](#) require resource consent, and in turn potentially a CIA. The proposal was to alter the shop front façade, hence resource consent was required. Multiple Iwi were contacted by the applicant in line with the standard process and no Iwi said a CIA was required. The question of whether a change of shop front windows should trigger a requirement for a CIA is an issue that will be addressed in the hearings process.

Yours sincerely



Roger Blakeley

Chief Planning Officer

