Memo

19 December 2014

To: Phil Reid

cc: John Duguid, Gyanendra Datt, Jennifer Caldwell

From: Jym Clark

Subject: **Use of non-statutory layers in the PAUP: Planning memo with regard to Maori Land and Treaty Settlement Alert Layer**

1. This memo is in response to the memo from Phil Reid, Planning Manager, Independent Hearing Panel (IHP) dated 4 December 2014 to John Duguid, Manager, Unitary Plan which requests justification and information in respect to the subject matter above. My planning memo responds to this request in regard to the Maori Land and Treaty Settlement Alert Layer. This memo should be read in conjunction with the legal memo prepared by Warren Bangma in response to the same IHP request.

Treaty Settlement Alert layer

2. The Treaty Settlement Alert Layer is compiled from maps prepared by the Office of Treaty Settlements. These maps are digitised by a Council GIS analysts based on these 'flat' maps. This data is uploaded to the alert layer after the Final Deed of settlement has been signed. An update will be occurring soon to incorporate the recent Deed of Settlement for Te Kawerau a Maki. This has not yet been enacted by an act of Parliament.

3. The Treaty Settlement alert layer has attributed rules as identified by the IHP memo. Final Deeds of Settlement and associated legislation also has requirements in respect to Council's consents process. Treaty settlement attributes mechanisms are explained below:

   (a) Deed of recognition
   (b) Statutory acknowledgement
   (c) Coastal statutory acknowledgment
   (d) Returned under ten acre block (cultural redress land near Helensville)

(e) Commercial redress (vested land)

(f) Cultural redress (vested land)

4. Commercial redress and cultural redress layers is land vested with an iwi authority by the Crown.

5. The statutory acknowledgment layer is not currently displayed in the Treaty Settlement Alert layer. A statutory acknowledgment is a legal mechanism which requires, amongst other matters, the Council, Environment Court and Heritage NZ to have regard to the claimant group's statutory acknowledgement. Council must send copies of resource consent applications to the iwi governance entity. These areas are identified over Crown and general title private land. Given this requirement, it is considered that statutory acknowledgement land should be mapped to ensure that this requirement is met.

6. A deed of recognition is an agreement between iwi and the Crown, typically the Department of Conservation is the Crown agent for this. Coastal statutory acknowledgement applies only within the CMA.

7. A non-statutory layer is present, titled 'Right of First Refusal'. This layer has no attributed rules. Given this, I propose that this layer be removed. Right of First Refusal Land is the result of a settlement agreement between the Crown and iwi to offer land first to iwi for purchase when the Crown proposes to dispose of land. The Council is not a party to this transfer. I expect an update to remove the Right of First Refusal layer will occur early in 2015.

Other mechanisms

8. There are some areas which have not been mapped which may trigger the requirement for a Cultural Impact Assessment through resource consent such as areas subject to customary marine title and protected customary

rights under the Takutai Moana Act 2011. There is no requirement to map these areas, however this might be helpful to assist future consenting.

Maori Land

9. The Maori Land layer is comprised from data which is prepared and held by the Maori Land Court in the Department of Justice. The maps can also be viewed on Maori Maps Online which states that the maps "provides a snapshot of current ownership, trustee, memorial and block information for land that falls within the jurisdiction of the Māori Land Court under Te Ture Whenua Māori Act 1993 and other legislation – this is primarily Māori Customary and Māori Freehold Land."[1] The data is made publicly available and is periodically updated as new data is made available by the Department of Justice.

Need for Maori Land and treaty Settlement non-statutory layers in the PAUP

10. Having a non-statutory layer for Treaty Settlement land and Māori land ensures that appropriate flexibility and resiliency is built into the Unitary Plan. This ensures that these land types are identified in a timely manner rather than being limited to updates through a plan change or at a plan review. It is also important to include flexibility for Treaty Settlement land as the Crown is yet to settle with most of the 19 iwi of Auckland.

11. Conversely, zoning land for Treaty Settlement purposes may in time become out of date as land is on-sold in order for iwi to realise their economic development aspirations. Current provisions only allow the Auckland-wide rules for Treaty Settlement land to apply to land which is vested to the iwi which the land was returned to. The onus to prove this link is on the applicant. Therefore this removes any potential risk where there are accuracy issues with the non-statutory maps.

[1] Explanation on the Maori Land Online Website. Accessible: http://www.maorilandonline.govt.nz/

12. Since the March 2013 Draft Auckland Unitary Plan, one update to the Treaty Settlement layer has occurred to respond to the Nga Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014. The layer will be continually updated as deeds of settlements are signed, in anticipation of a settlement act being passed.

13. The Office of the Auditor General prepared a report in 2011 which recommended that local authorities build flexibility into their plans in order to better deliver Māori housing.[2] The report gave examples of local authorities that have Māori zones which allow for development of Māori housing. The zoning approach can increase the likelihood of development and reduce the overall cost per dwelling borne on the developer. The Office of the Auditor General found that for zoning to be effective, all Māori Land[3] needs to be appropriately zoned. This can be problematic and limiting as additional land receives Māori Land status or as land is returned to Māori through Treaty settlements from the Crown. The Office of the Auditor General recently produced an article which investigated the progress made with respect to its 2011 recommendations. It used the Unitary Plan as case study which identified the additional flexibility that has been incorporated.[4] The article did not evaluate the proposed provisions given that this was not within its scope.

14. Treaty Settlement Land and Māori Land has is of special significance under the RMA with respect to Part II Section 8and 6(g), 6(e) and 7(a) given that the return of the land is a Crown response to Treaty grievances. Local authorities, as an agent of the Crown have a role to play to ensure that this land is able to be used whilst ensuring that its use is appropriate in the context of resource management.

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[2] *Government planning and support for housing on Māori land. Ngā whakatakotoranga kaupapa me te tautoko a te Kāwanatanga ki te hanga whare i runga i te whenua Māori.* Office of the Auditor General. 15 August 2011. http://www.oag.govt.nz/2011/housing-on-Māori-land

[3] The 2011 Report by the Office of the Auditor General referred to Māori Land as land that is owned by Māori and therefore inludes Treaty Settlement Land, regardless of its recognition under Te Ture Whenua Māori Act 1993

[4] *Government planning and support for housing on Māori land: Progress in responding to the Auditor-General's recommendations.* Office of the Auditor General. 10-12-2014. Paragraphs 1.27 – 1.41. http://www.oag.govt.nz/2014/housing-on-Māori-land

15. Section 8 requires Council to have regard to the principles of the Treaty of Waitangi. I consider the principle with the most relevance to this topic is the 'principle of development'. Section 6(e) requires recognition and provision for the relationship of Māori and their culture and traditions with their ancestral lands. Section 6(g) requires the protection of recognised customary activities, which may include such activities on Treaty Settlement land and Māori land. Similarly, on these lands, kaitiakitanga must be had regard to with respect to section 7(a), particularly in regard to cultural redress land.

16. It is therefore appropriate to ascribe bespoke general rules for development for Māori land and Treaty Settlement land. Consultation with Mana Whenua identified that the provisions need to be appropriately flexible given that past development of this land has not been as great as that of other non-Maori land with similar characteristics. Mana Whenua also requested that the land also be shown on the Unitary Plan non-statutory maps rather than rely on information held by the Office of Treaty Settlements or the Department of Justice. This was so that Council and applicants maintain an understanding of the location of this land.[5] In other words, these map layers maintain transparency.

17. The rules in relation to Treaty Settlement land and Māori Land do not add any additional controls to the use and development of the land. Instead they introduce opportunities for Māori to realise small scale development. Conversely they may choose not to use them.

18. Property owners with land that is near or adjacent to Māori land and Treaty Settlement land would have a number of opportunities to be aware of the presence of this land and its associated status. Most Māori Land has long held its status given the historical links that it must have. Māori Land can only otherwise be identified as such through the Māori Land Court. Treaty Settlement land is subject to a formal public process through a deed of

[5] *Response to Mana Whenua Feedback on the 15 March Draft Auckland Unitary Plan…* 22 January 2014, page 2.

settlement and the resulting legislation that is passed by Parliament. Any member of the public may submit to the select committee with respect to Treaty Settlement legislation.

19. A number of councils in New Zealand use a non-statutory mapping approach to identify Maori land. Examples include Western Bay of Plenty District Council[6], Tauranga City Council[7] and recently the Hastings District Council notified a district plan[8] which allowed the use this method.

Conclusion

20. The ability to ascribe spatially flexible rules to Treaty Settlement land and Maori land recognises the special nature of this land and the ongoing process that these land types are identified. The process of identification is robust given that they are subject to public process. Mapping it within the non-statutory layers provides flexibility for the iwi and hapu owners to meet their development aspirations. Also, this mapping technique provides appropriate transparency to all users of the plan.

Jym Hallam Clark
19 December 2014

[6] Operative Western Bay of Plenty District Plan, Section 18: Rural
[7] Operative Tauranga City Plan, Section 16A: Rural zones
[8] Proposed Hastings District Plan, Part D, 15.1: Papakainga District Wide