

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

**Report to Auckland Council
Hearing topic 009
Mana Whenua
July 2016**

IHP Report to AC – Hearing topic 009 Mana Whenua

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1. Hearing topic overview

1.1. Topic description

Topic 009 – RPS Mana Whenua addresses the regional policy statement plan provisions of the proposed Auckland Unitary Plan relating to:

Topic	Proposed Auckland Unitary Plan reference	Independent Hearings Panel reference
RPS Mana Whenua 009	Chapter B 5	Chapter B 6

Under the Local Government (Auckland Transitional Provisions) Act 2010, section 144 (8) (c) requires the Panel to set out:

the reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—

- (i) the provisions of the proposed plan to which they relate; or
- (ii) the matters to which they relate.

This report covers all of the submissions in the Submission Points Pathways report (SPP) for this topic. The Panel has grouped all of the submissions in terms of (c) (i) and (ii) and, while individual submissions and points may not be expressly referred to, all points have nevertheless been taken into account when making the Panel's recommendations.

1.2. Summary of the Panel's recommended changes to the proposed Auckland Unitary Plan

In making and implementing this Unitary Plan, the Council must, as a matter of national importance, recognise and provide for the relationship of Mana Whenua and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga. The Council must also:

- i. have particular regard to kaitiakitanga;
- ii. take into account the principles of Treaty of Waitangi/Te Tiriti o Waitangi; and
- iii. recognise the historic, traditional, cultural, and spiritual relationship of Mana Whenua with the Hauraki Gulf/Te Moana Nui o Toi/Tīkapa Moana.

The Panel considers that the regional policy statement, (and the regional and district plan provisions) it has recommended gives effect to Part 2 of the Resource Management Act. In recommending the Mana Whenua chapter, the Panel has made some changes to the provisions from those in the notified Plan. The reasons for this are addressed in more detail below.

In summary the changes recommended include:

- i. retaining the objectives recognising the Treaty of Waitangi/Te Tiriti o Waitangi but deleting the specific list of Treaty principles;
- ii. deleting explicit reference to Tino Rangatiratanga in the objectives;
- iii. deleting the provisions relating to the sites and places of value to Mana Whenua and its overlay (noting that the Council formally withdrew those sites of value identified on privately-owned land). This matter is also addressed in the Panel's Report to Auckland Council – Hearing topics 036,037 Maori Land and Mana Whenua sites July 2016;
- iv. removing the explicit reference to cultural impact assessments;
- v. amending and refining a number of the provisions, as has occurred throughout the regional policy statement.

Other than these changes, the objectives and policies of the chapter, certainly their intent, have been largely retained; but some have been amended or re-cast.

1.3. Overview

The Panel finds that the issues of significance to Māori and to iwi authorities in the region, as set out in the regional policy statement include:

- i. recognising the Treaty of Waitangi/Te Tiriti o Waitangi and enabling the outcomes that Treaty settlement redress is intended to achieve;
- ii. protecting Mana Whenua culture, landscapes and historic heritage;
- iii. enabling Mana Whenua economic, social and cultural development on Māori Land and Treaty Settlement Land;
- iv. recognising the interests, values and customary rights of Mana Whenua in the sustainable management of natural and physical resources, including integration of mātauranga and tikanga in resource management processes;
- v. increasing opportunities for Mana Whenua to play a role in environmental decision-making, governance and partnerships; and
- vi. enhancing the relationship between Mana Whenua and Auckland's natural environment, including customary uses.

These are all addressed in the Mana Whenua chapter (B6) in the regional policy statement, and in the regional and district plan provisions.

The Council, the Independent Māori Statutory Board and a number of other iwi submitters generally supported the Plan as notified, but sought some refinements. Many other submitters also supported appropriate provisions being in the Plan recognising Part 2 of the Resource Management Act. However some submitters considered that some of the provisions were unreasonable and not supported by appropriate section 32 justification. Those of particular concern included the provisions relating to sites and places of value to Mana Whenua and the need to obtain cultural impact assessments, particularly in relation to

the sites and places of value to Mana Whenua. These two matters were probably the issues of most concern to many submitters. These are addressed below.

In this Plan, the term Mana Whenua is used in preference to Tangata Whenua to be consistent with the particular meaning of 'mana whenua group' as defined in the Local Government (Auckland Council) Act 2009.

As set out in the summary above, the Council must, as a matter of national importance, recognise and provide for the relationship of Mana Whenua and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga. The Council must also:

- i. have particular regard to kaitiakitanga;
- ii. take into account the principles of Treaty of Waitangi/Te Tiriti o Waitangi; and
- iii. recognise the historic, traditional, cultural, and spiritual relationship of Mana Whenua with the Hauraki Gulf/Te Moana Nui o Toi/Tīkapa Moana.

In the policies relating to partnerships, the Council, and this Plan, acknowledge the importance of the Treaty and Treaty settlements to Mana Whenua and recognise the aspirations of Mana Whenua. These policies promote meaningful relationships and interactions between Mana Whenua and decision-makers as part of recognising the principles of the Treaty, including greater Mana Whenua participation in resource management through the establishment of joint management arrangements and the transfer of powers over particular resources to Mana Whenua. These policies also identify how Treaty settlements should be taken into account in resource management processes, and outline a process for the Council to work with Mana Whenua as claims under the Treaty are settled, to determine appropriate planning outcomes for Treaty Settlement Land.

In the policies relating to Mana Whenua values, the Unitary Plan seeks to ensure that resource management processes in Auckland are informed by Mana Whenua perspectives, including their values, mātauranga and tikanga. Mana Whenua perspectives need to be considered early within resource management processes, accorded status in decision-making and have an opportunity to influence outcomes.

A number of iwi and hapū in Auckland have developed iwi planning documents (also known as Iwi Management Plans, Hapū Environmental Management Plans, or by similar names) which articulate their specific resource management issues, objectives, policies, and methods. Iwi planning documents are a valuable source of information for integrating mātauranga and tikanga into resource management in Auckland.

These policies also seek to give certainty to, and enhance, the involvement of Mana Whenua in resource management processes. Significant adverse effects on ancestral tāonga occur largely as a result of uninformed actions. Before making decisions which may affect customary rights, an understanding of the nature of the tāonga to Mana Whenua is required. This understanding can only be gained from those who have an ancestral relationship with the taonga.

These policies give guidance on how Mana Whenua values, mātauranga and tikanga should be considered in the management of, and decision-making around, Auckland's natural and physical environments, including freshwater and freshwater ecosystems in accordance with the National Policy Statement on Freshwater Management 2014.

The policies in relation to economic, social and cultural development acknowledge that Māori have identified a wide range of activities they would like to undertake to support social, cultural and economic development. These activities include:

- i. establishing and extending papakāinga and marae and associated services;
- ii. developing commercial activities, sports and recreation facilities and community gardens;
- iii. cultural activities and iwi/hapū revitalisation activities such as historic heritage and environmental management.

Economic activities are necessary to support the ability of Mana Whenua to use and live on Māori land. Some economic activities may be based on promoting Māori culture, or utilising customary rights such as aquaculture. These policies recognise there is little Māori land remaining in Auckland and that it is also necessary to provide for Mana Whenua and mataawaka to support their aspirations through development on land held in general title.

The integration of mātauranga and tikanga in design and development may be expressed in development that, for example, is based around communal facilities and spaces, provides a range of housing sizes and layouts, or responds to the values of Mana Whenua associated with the site or landscape.

Mataawaka represent a significant proportion of the Māori population of Auckland and have the desire to connect to their culture and traditions in an urban setting. The interests of mataawaka are addressed in the Unitary Plan through providing for Māori cultural institutions and through a special purpose zone. These tools recognise rangatiratanga and the right of all Māori to express their Māoritanga, as affirmed by articles 2 and 3 of the Treaty.

The policy approach to Mana Whenua cultural heritage addresses the multiple levels of Mana Whenua cultural heritage. Sites and places where a value of significance has been identified are protected through the D21 Sites and Places of Significance to Mana Whenua Overlay. Assessments of effects on the environment which pay particular attention to potential cultural effects based on history and tikanga are expected for areas subject to structure planning to identify additional sites that warrant protection. Similar assessments are required for resource consent applications where Mana Whenua values are affected.

For reasons such as limited investment, cultural sensitivities and mismanagement of information in the past, the Panel acknowledges that very little Mana Whenua cultural heritage has been scheduled, despite the large number of Mana Whenua groups with strong associations to Auckland. The Council has a statutory responsibility to protect Mana Whenua cultural heritage from inappropriate subdivision, use and development. This will involve a collaborative approach with Mana Whenua, working in accordance with tikanga to identify, assess, protect and manage Mana Whenua cultural heritage, including the context for individual sites and places which are the footprint/tapu wae of Mana Whenua.

The knowledge base of information about Mana Whenua cultural heritage is continually developing and tools that provide a form of protection and inform subdivision, use and development, while respecting Mana Whenua values, are increasingly valuable. An improved knowledge base helps reduce the risk of damage, enables development that properly reflects the values associated with the context of an area, informs landowners and applicants of the

characteristics of their site, and helps to avoid major time and cost implications to applicants when development is halted by accidental discovery of protected items.

The following matters are addressed in more detail below:

- i. Mana Whenua, rather than Tangata Whenua, to be consistent with the particular meaning of 'mana whenua group' as defined in the Local Government (Auckland Council) Act 2009;
- ii. retaining the objectives recognising the Treaty of Waitangi/Te Tiriti o Waitangi but deleting the specific list of treaty principles;
- iii. whether the objectives should retain the explicit reference to Tino Rangatiratanga;
- iv. the Plan's approach to Māori and Treaty Settlement Land;
- v. deleting the provisions relating to the sites and places of value to Mana Whenua, and its overlay (noting that the Council formally withdrew those sites of value identified on privately owned land). This is also addressed in the Panel's Report to Auckland Council – Hearing topic 037 Mana Whenua Sites July 2016;
- vi. removing the explicit reference to cultural impact assessments; and
- vii. removing references to cultural landscapes.

1.4. Scope

The Panel considers that the recommendations in 1.2 above and the changes made to the provisions relating to this topic (see 1.1 above) are within scope of submissions.

For an explanation of the Panel's approach to scope see the Panel's Report to Auckland Council – Overview of recommendations July 2016.

1.5. Documents relied on

Documents relied on by the Panel in making its recommendations are listed below in section 10 Reference documents.

2. Terminology - Mana Whenua or Tangata Whenua

2.1. Statement of issue

Whether the terminology of Mana Whenua, rather than Tangata Whenua, should be used in the Plan.

2.2. Panel recommendation and reasons

The Panel recommends retaining text which refers to Mana Whenua rather than Tangata Whenua as this aligns with the approach in the Local Government (Auckland Council) Act 2009.

The Panel sought clarification from the Council regarding the use of the terms Mana Whenua, Mana Whenua group, Tangata Whenua and Māori, and confirmation as to whether the terms have been used consistently in Chapter B5 of the proposed Auckland Unitary Plan as notified. In summary the Council's position was set out at of its closing statement and stated that:

"Mana Whenua group" is defined in the Local Government (Auckland Council) Act 2009 (LGACA) to refer to iwi or hapū groups who are mana whenua in Auckland. (Paragraph 3.16 (a))

The Local Government (Auckland Council) Act 2009 defines Mana Whenua group as:

an iwi or hapū group that exercises historical and continuing mana whenua in an area wholly or partly located in Auckland, and in one or more of the following in Auckland: a mandated iwi organisation under the Māori Fisheries Act 2004, a body that has been the subject of a settlement of Treaty of Waitangi claim, or a body that has been confirmed by the Crown as holding mandate for the purpose of negotiating Treaty of Waitangi claims.

The Panel accepts that based on the inclusion of this term in the Local Government (Auckland Council) Act 2009, the term "Mana Whenua group" and "Mana Whenua" have generally been used in Auckland's planning documents to refer to iwi or hapū groups who are mana whenua in Auckland.

The Panel also accepts that the use of the term 'Māori' in the Plan in lieu of 'Mana Whenua' would not be appropriate because the term Māori includes both Mana Whenua and Mataawaka, who are defined in the Local Government (Auckland Council) Act 2009 as:

Māori who live in Auckland and are not a Mana Whenua group.

The use of the term 'Tangata Whenua' was not considered appropriate either, despite its use in the Resource Management Act, because 'Mana Whenua' would ensure consistency between Auckland's other planning documents which already use this term (and the Local Government (Auckland Council) Act 2009 which establishes the Auckland Council). However, the definition of 'Mana Whenua' in the Plan expressly provides that it is defined as 'Tangata Whenua' in the Resource Management Act 1991 thereby clarifying that these two terms are intended for the purposes of the Plan to have the same meaning. (Council closing statement, paragraph 3.16 (e))

The Panel finds that Mana Whenua are Tangata Whenua who whakapapa to the mountains, rivers, marae, tribal areas and practice Ahi Kaa. The Panel agrees that Mana Whenua for the purpose of this plan is a term that encompasses the term Tangata Whenua.

3. Objectives recognising the Treaty of Waitangi/Te Tiriti o Waitangi

3.1. Statement of issue

Whether the objective should retain the list of specific Treaty principles recognising the Treaty of Waitangi/Te Tiriti o Waitangi.

3.2. Panel recommendation and reasons

The Panel accepts that the objective is an important one. However for the reasons set out below, the Panel has recommended the deletion of the list of specific Treaty principles and simply refer to the "principles of the Treaty of Waitangi/Te Tiriti o Waitangi".

The Council, with the support of the Independent Māori Statutory Board, in its closing statement sought:

- 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:
 - a. ~~reciprocity~~
 - b. ~~rangatiratanga~~
 - c. ~~partnership~~
 - d. ~~shareddecision-making~~
 - e. ~~activeprotection~~
 - f. ~~mutualbenefit~~
 - g. ~~rightofdevelopment~~
 - h. ~~redress.~~
 - a. reciprocity or recognition of the essential bargain
 - b. rangatiratanga
 - c. shared decision-making
 - d. partnership
 - e. active protection
 - f. ōritetanga

- g. options
- h. the right of development
- i. redress.

The Panel has retained the objective but has deleted the list of Treaty principles. This is not because the Panel does not support them, but that the submissions and evidence of a number of parties, including the Council, Independent Māori Statutory Board, Democracy Action and others, set out that the principles change and evolve over time. This is also acknowledged in the objective itself.

The Panel acknowledges that the list of principles is a 'non- exclusive' with the objective stating "The Treaty is articulated in law through an evolving set of principles. These include...". However it is the Panel's view that the list of principles be deleted to ensure that the Plan does not become outdated.

The Panel does not consider that anything is lost by deleting the list of principles from the objective.

4. Mana Whenua exercising Tino Rangatiratanga

4.1. Statement of issue

Whether the objective should retain the explicit reference to Tino Rangatiratanga.

4.2. Panel recommendation and reasons

The Panel has recommended the deletion of explicit reference to Tino Rangatiratanga. The objective as sought by the Council in its closing statement was:

Mana Whenua ~~can~~ exercise Tino Rangatiratanga through participation in resource management processes and decisions.

The Panel has amended this objective to refer to the Treaty principles being recognised through Mana Whenua participation in resource management processes, and the exercising of Tino Rangatiratanga.

A number of submitters, including L and S Short (Democracy Action), Scentre (New Zealand) Limited, Auckland International Airport Limited and the Ports of Auckland Limited, sought changes to this objective. They considered that the notified objective implied that Mana Whenua would take the role of the Council (Tino Rangatiratanga) particularly in terms of decision-making, which is a function of the Council.

The Panel acknowledges that the Council can transfer functions under the Resource Management Act 1991 and it can, and does, appoint independent decision-makers, including those experienced in tikanga Māori, for plan and resource consent processes. However these are administrative matters and do not need to be in the Plan as a regional policy statement objective.

The Panel accepts that the objective should be changed, and agrees with the suggested wording from L and S Short (Democracy Action). The matter of participation in the resource management is retained, as well as recognising the Treaty principles, rather than Tino Rangatiratanga

Overall the Panel's view is that the recommended wording is more appropriate than the Objective as notified.

5. Māori and Treaty Settlement Land

5.1. Statement of issue

The extent to which the Plan should recognise and provide for enabling the use and development of Māori and Treaty Settlement land.

5.2. Panel recommendation and reasons

The Panel supports and has retained the policies relating to the use and development of Māori and Treaty settlement. B6 Mana Whenua contains clear direction that the use and development of Māori and Treaty Settlement Land in Auckland is to be enabled by the Plan.

Dr Mitchell, expert planner for the Independent Māori Statutory Board, set out in some detail in his evidence in chief why the Plan should enable greater development of Māori and Treaty Settlement Land. It was his opinion that enabling use and development on Māori and Treaty Settlement Land should have a policy preference over those of the natural heritage overlays and some urban growth policies.

Dr Mitchell set out at paragraph 3.3 of his evidence in chief that:

With respect to Māori land in particular, a substantial proportion of that land is located in the rural production and rural coastal zones (~98%), and a substantial amount is also within natural heritage overlays.

He also set out at in some detail at paragraphs 3.5 and 3.6 of his evidence in chief that there are unique circumstances surrounding Māori and Treaty Settlement Land in Auckland. Dr Mitchell considered these to be of particular relevance when considering appropriate provisions in the Plan. These included:

- i. the inherent relationship and connection Mana Whenua have with their land is undeniable, and has been sustained for generations. It is rooted in whakapapa and genealogy and notions of sustainability, protection, responsibility and development for future generations;
- ii. Mana Whenua connection to their ancestral rohe, including their ancestral lands, marae, papakāinga, wāhi tapu, wāhi tupuna and mahinga kai cannot simply be transferred outside their rohe;
- iii. enabling Mana Whenua to live on their ancestral lands and within their ancestral rohe is an important element of enabling Mana Whenua to maintain their identity and provide for their social, economic and cultural well-being .

It is noted that Dr Mitchell's evidence in chief relied on the evidence in chief of Messrs Kapea and Taipari, both representing the Independent Māori Statutory Board.

The Panel acknowledges that a substantial proportion of Māori and Treaty Settlement Land (to date) is located in rural and coastal areas, and within natural heritage overlays including those for significant ecological areas, outstanding and high natural character and outstanding landscapes. Development of land in these areas is subject to the strong policy direction which seeks to protect the natural heritage values. The Panel also acknowledges the strong urban growth policies seeking to limit inappropriate development outside the Rural Urban Boundary, and this could impact on the appropriate development of Māori and Treaty Settlement Land.

The Panel has addressed this issue in the regional and district plan provisions of the Unitary Plan in natural resources and natural heritage overlay provisions, as well in the vegetation management provisions (see the Panel's Report to Auckland Council - Hearing topic 023 Significant ecological areas and vegetation management July 2016). This matter is also addressed in the Panel's report to Auckland Council – Hearing topics 036 and 037 Māori Land and Treaty, and Mana Whenua sites July 2016.

6. Sites and places of value to Mana Whenua

6.1. Statement of issue

Whether the provisions relating to the sites and places of value to Mana Whenua on public land should be retained or deleted. It is noted that the Council formally withdrew from the Plan those sites of value identified on privately-owned land.

6.2. Panel recommendation and reasons

The provisions relating to sites and places of value to Mana Whenua (and the related requirement to obtain a cultural impact assessment addressed below) was probably the issue of most concern to many submitters. This was because a significant number of sites (in the order of 3600) were:

- i. not selected by Mana Whenua nor had they been evaluated against any criteria;
- ii. it had not determined or verified whether the sites of value actually existed and what values were sought to be protected, and that the majority of the sites had not had site visits undertaken;
- iii. that the rules relating to the sites of values were unreasonable, particularly given the points in i and ii above;
- iv. that the rules had immediate legal effect; and
- v. the sites of value had been notified incorrectly (covering a much larger area than was approved for notification).

Extensive legal submissions and evidence was produced for this matter from submitters including:

New Zealand Archaeological Association, Heritage New Zealand, Ports of Auckland Limited , Scentre (New Zealand) Limited, Ms Lashbrook (property at Red Beach), Atlas Concrete Limited, Auckland International Airport Limited, Auckland Utility Operators Group, C and D McLeod (related to sites on their farm), L and S Short (Democracy Action), Wiri Oil Services Limited, and Z Energy. These submitters addressed in detail the matters listed above.

It is also noted that the Council, the Independent Māori Statutory Board and some iwi groups were concerned about the robustness of and justification for including all of the sites of value.

Dr Mitchell set out at paragraph 4.18 of his evidence in chief that

with respect to other sites not currently included in either the sites of significance or sites of value schedules, the options for appropriately protecting those sites in the PAUP are limited. In my view the approach taken by the PAUP for those sites is the correct one, namely that:

- (a) A proactive work programme be initiated for undertaking a proper assessment of Mana Whenua cultural heritage in Auckland, with a view to including additional sites in the PAUP schedules in an expedient manner via a Council funded plan change

Also Mr Blair for Ngati Whatua Orakei Whai Maia Limited at the 009 hearing said he was concerned that without justification the entire sites of value could be lost and that it was better to retain those which clearly are of value and only include others once assessed.

The Council in its closing statement (paragraph 11.1) clarified its current workstreams regarding cultural heritage and noted:

The Council is currently undertaking a desktop review of the 3,600 sites currently included in the Sites and Places of Value overlay, to determine whether there is enough information for these sites to remain in this overlay. We have been advised that this process is expected to be complete by early 2015; and

On 26 September 2014, the Council initiated a workstream which will implement B5.4, Policies 1-3 through a Māori Cultural Heritage project. The project will develop a methodology for identifying, assessing and mapping Māori cultural heritage with a view to, amongst other options, introducing sites and places and reviewing Sites and Places of Significance and Sites and Places of Value through a plan change.

The Council indicated that prior to the hearing for Mana Whenua sites (Topic 037) in June 2015 it intended to have refined the content of the sites and places of value overlay and to have re-mapped the overlay to improve clarity and accuracy, including the Māori cultural heritage overlays and the cultural impact assessment provisions.

Notwithstanding the above, the Auckland Development Committee, at its 12 November 2015 meeting passed Resolution number AUC/2015/205, which is:

That the Auckland Development Committee:

- a) agree to remove Sites and Places of value overlay on private land until such a time that all Sites and Places have been accurately identified and mapped.

Accordingly these sites have been withdrawn from the notified Plan. The remaining sites are those on publicly-owned land.

The Panel has recommended the deletion of those sites of value identified on publicly-owned land. This means that all of the sites of values are to be removed from the Unitary Plan. The reasons for removing those sites of value identified on publicly-owned land are the same as those set out above. That is, those sites have not been appropriately identified and evaluated to determine if they are indeed a site of value.

The Panel's approach to protecting places and areas has been set out in the Panel's Report to Auckland Council – Overview of recommendations July 2016 and in the Report to Auckland Council - Hearing topic 010 Historic heritage July 2016. In that report it is stated:

In the Panel's view, the method of protecting historic heritage by scheduling those places identified as having considerable and outstanding historic heritage value is well-established. The Panel supports this approach because it provides certainty to landowners and is likely to achieve the outcomes sought by the Plan. The Panel considers that significant historic heritage places should be identified, evaluated and included in the schedule following the process set out in the regional policy statement because this promotes effective protection.

For these reasons, the Panel does not support the inclusion of plan provisions relating to unscheduled historic heritage. If the Council wishes to protect historic heritage, it should follow the identification and scheduling process provided for in the regional policy statement, using the plan change procedure.

Overall, the Panel does not support the inclusion of objectives and policies addressing 'unscheduled historic heritage' in the regional policy statement (nor does it support the many references to 'unscheduled significant historic heritage' that occur throughout the Plan, and this is addressed in more detail in the Panel's report on hearing topic 031 Historic heritage as referenced above). Accordingly, provisions relating to unidentified historic heritage places have been removed from the regional policy statement (pages 5-6).

The above paragraphs apply equally to the Sites and Places of Value to Mana Whenua Overlay. While those sites of value were identified in the notified Plan, no criteria had been applied to be able to evaluate them or verify that the sites actually existed and what their values were. If the Council wishes to pursue a schedule of sites of value with a supporting policy framework, this would need to be by a plan change using the Schedule 1 process under the Resource Management Act 1991, with the required section 32 analysis.

Overall, the Council's section 32 evaluation for the Sites and Places of Value to Mana Whenua Overlay does not provide an adequate basis for the introduction of that overlay.

This matter is also addressed in the panel's report on Topic 037- Mana Whenua Sites as referenced above. However given the deletion of policy approach to the sites of value in the regional policy statement, the district plan provisions also need to be deleted. Accordingly there are no objectives, policies, rules or schedule for any of the sites of value.

7. Cultural impact assessments

7.1. Statement of issue

Whether specific reference should be retained for cultural impact assessments as a method.

7.2. Panel recommendation and reasons

A significant number of submitters (largely those identified in the section above regarding the sites of value) raised concerns about the obligation to provide a cultural impact assessment and how this differed in practice from the processes that are currently used to engage with Mana Whenua about a specific proposal.

The regional policy statement as notified has the following policy:

Promote the preparation of a cultural impact assessment for activities that may adversely affect the values of Mana Whenua.

During the hearing process the Council proposed the following amendment

Require ~~Promote~~ the preparation of a cultural impact assessment for activities that may adversely affect the values of Mana Whenua.

There was much contention about this policy, in particular the requirement for a Cultural Impact Assessment as a prescribed method in the regional policy statement. The Council and Independent Māori Statutory Board argued that a cultural impact assessment was not a prescribed 'method' but an approach to an assessment, and could be an email, a brief report or a more detailed report.

A number of submitters disagreed, referring to the definition of cultural impact assessment in the Plan (set out below). The definition requires "a report" and that the cultural impact assessment should be undertaken by Iwi (or their involvement). Submitters considered that due to the policy proposed by the Council and the definition, cultural impact assessments were essentially mandatory; whereas section 36A of the Resource Management Act 1991 does not require consultation with respect to resource consent applications.

Cultural impact assessment

A report which documents Mana Whenua cultural values, interests and associations with an area or a resource, the potential impacts of a proposed activity on these values and offers solutions to address these impacts. A cultural impact assessment should be prepared with the involvement of Mana Whenua recognising that it is the relationship of Mana Whenua with their ancestral lands, water, sites, wahi tapu and taonga that is to be recognised and provided for under section 6(e) of the RMA

The cultural impact assessment issue is also linked with the proposed 3600 sites and places of value to Mana Whenua as discussed above. Given the Panel's recommendation to delete the Sites and Places of Value to Mana Whenua Overlay, the need to obtain a cultural impact assessment is much reduced. However in the Panel's view this is not reason to retain such a specific method in the regional policy statement. It is the Panel's view is that the term cultural impact assessment is too definitive at the regional policy statement level of the Unitary Plan.

The Panel notes, and agrees, with Mr Roberts, expert planner for Ngāti Whātua Ōrākei Whai Maia Limited and Te Ākitai Waiohua Waka Taua Trust, where he states in his evidence in rebuttal at paragraphs 19 and 20 - Cultural Impact Assessments:

On review, I concur with the evidence of Mr Arbuthnot and Mr Collier that reference to Cultural Impact Assessments in the Regional Policy Statement provisions is unnecessary. CIAs are a method and one tool to enable an appropriate assessment of effects on cultural values. Whai Maia and Te Akitai consider that a CIA is not always required nor the best approach to ensuring cultural values are taken into account in resource management decision making.

The two key requirements that should be reflected in the objectives and policies are to:

- ensure an appropriate assessment of effects on cultural values. An “appropriate” assessment has regard to the location, scale and character of the proposed subdivision, use or development;
- Acknowledge that mana whenua are experts in assessing effects on their cultural values.

References to cultural impact assessments as a specific method in the regional policy statement have been deleted as being unnecessary. It is the Panel's view that ‘environment’ is defined in the Resource Management Act 1991 to include people and communities and the cultural conditions which affect people and communities. It follows that in preparing an assessment of effects on the environment to form part of an application for resource consent, an applicant must address any potential effects of a proposed activity on Mana Whenua, including their relationship with their ancestral lands, water, sites, wāhi tapu, and other taonga as well as kaitiakitanga and the principles of the Treaty of Waitangi, wherever those matters may be relevant.

8. Cultural landscapes

8.1. Statement of issue

Whether specific reference should be retained for Cultural Landscapes as a method.

8.2. Panel recommendation and reasons

The notified regional policy statement contained policies relating to cultural landscapes. The Council proposed to amend some of these policies through the hearings process. No cultural landscapes were mapped in the notified Plan or proposed to be mapped by the Council during the hearing process.

The Panel questioned a number of submitters and their witnesses as to how Māori cultural landscapes might in future be recognised or protected in the Plan rules. Some submitters are clearly concerned that a Māori cultural landscape may give rise to a further layer of physical protection over broad areas of the city, to be implemented by restrictive activity status and policy direction to 'avoid' certain effects.

The Council confirmed in its closing statement that the reference to Māori cultural landscapes was a deliberate decision. The Council considered use of the term 'Māori cultural landscapes' to be appropriate because this concept was gaining increasing recognition and use in New Zealand's planning documents. Mr Murdoch, Council's expert heritage consultant, discussed in evidence some specific examples, including the *Te Aranga Cultural Landscapes Strategy* which was developed by the Ministry for the Environment in conjunction with Te Puni Kokiri and which recognises the concept of a Māori cultural landscape. He also confirmed that through his involvement in the negotiation of Treaty settlement claims, he had seen increasing acknowledgement of Māori cultural landscapes by Government departments.

However the Council at 5.2 and 5.3 of its closing statement stated:

At this stage, it is too early to speculate how such landscape protection might be implemented, which is why the Council has signalled the ongoing nature of this work in Chapter B5. In particular, B5.4, Policy 5 provides that Māori cultural landscapes will be recognised, enhanced and protected *by developing an agreed methodology to identify, record, assess and map the values associated with these landscapes, and determine the most appropriate mechanisms to recognise the values associated with them (emphasis added)*. The methods in B5.4 also identify "*ongoing work to identify and map the Mana Whenua values associated with cultural landscapes*".

Given the work to be done, it would be premature for the Council to signal how Māori cultural landscapes might be recognised or protected in the PAUP rules.

There are no cultural landscapes mapped nor is there a clear view of what they are, where they may apply and what type of management response would be appropriate or required if there were mapped cultural landscapes (i.e. objectives, policies and rules). The Panel agrees with the Council that it is premature to signal how Māori cultural landscapes might be recognised or protected in the Proposed Auckland Unitary Plan rules.

The regional policy statement sets out the issues of significance to Māori and to iwi authorities in the region, and this includes:

protecting Mana Whenua culture, landscapes and historic heritage.

Also the policies in B6.5 Protection of Mana Whenua cultural heritage, include that a Māori cultural assessment identify Mana Whenua values associated with the landscape in structure planning and plan change processes. Other than those provisions above, provisions relating to cultural landscapes have been deleted.

9. Consequential changes

9.1. Changes to other parts of the plan

As a result of the Panel's recommendations on this topic, there are consequential changes to other parts of the Plan as listed below.

The Overlay - Sites and Places of Value to Mana Whenua, and all associated provisions relating to it are deleted. This matter is also addressed in the Panel's Report to Auckland Council – Hearing topic 036, 037 Māori Land and Mana Whenua Sites July 2016.

9.2. Changes to provisions in this topic

There are no changes to provisions in this topic as a result of the Panel's recommendations on other hearing topics.

10. Reference documents

The documents listed below, as well as the submissions and evidence presented to the Panel on this topic, have been relied upon by the Panel in making its recommendations.

The documents can be located on the aupihp website (www.aupihp.govt.nz) on the hearings page under the relevant hearing topic number and name.

You can use the links provided below to locate the documents, or you can go to the website and search for the document by name or date loaded.

(The date in brackets after the document link refers to the date the document was loaded onto the aupihp website. Note this may not be the same as the date of the document referred to in the report.)

10.1. General topic documents

Panel documents

The Submission Points Pathway report

[009-Submission Point Pathway - 8 Oct 2014](#) (17 October 2014)

The Parties and Issues Report

[009-Parties and Issues Report - 8 Oct 2014](#) (6 March 2015)

Auckland Council marked up version

[Hearing Evidence - B5 Mana Whenua 1 - Graeme Murdoch](#) (19 November 2014)

[Hearing Evidence - B5.3 Māori Economic Social and Cultural Development](#) (30 October 2014)

[Hearing Evidence- Attachment B - evidence for B5 Key Matters in Pathways Mana Whenua 2](#) (30 October 2014)

[Hearing Evidence- Attachment B Proposed Track Change Section B5 Mana Whenua 3](#) (30 October 2014)

[Hearing Evidence- Attachment C Proposed Track Change Section B5 Mana Whenua 2](#) (30 October 2014)

[Hearing Evidence- B5 Mana Whenua 2 - Chloe Trenouth](#) (19 November 2014)

[Hearing Evidence- B5 Mana Whenua 3 - Maximus Smitheram](#) (19 November 2014)

Auckland Council closing statement

[Closing Statement](#) (9 December 2014)

[Closing Statement - Appendix One](#) (9 December 2014)

Panel Interim Guidance

[RPS General - PAUP Chapter B - Regional Policy Statement \(PDF 378KB\)](#) (9 March 2015)

10.2. Specific evidence

See the hearings page on the auihp website <https://hearings.auihp.govt.nz/hearings> for the extensive evidence submitted as part of Topic 009 on the matter of sites of value to Mana Whenua, including from the following submitters:

New Zealand Archaeological Association, Heritage New Zealand, Ports of Auckland Limited, Scentre (New Zealand) Limited, Ms Lashbrook (property at Red Beach), Atlas Concrete Limited, Auckland International Airport Limited, Auckland Utility Operators Group, C and D McLeod (related to sites on their farm), L and S Short (Democracy Action), Wiri Oil Services Limited, and Z Energy

Auckland Council

[Hearing Evidence - B5 Mana Whenua 1 - Graeme Murdoch](#) (19 November 2014)

Independent Maori Statutory Board

[Hearing Evidence - Philip Hunter Mitchell](#) (4 November 2014)

[Hearing Evidence - David Taipari](#) (3 November 2014)

[Hearing Evidence - Tokorangi Kapea](#) (3 November 2014)

Ngati Whatua Orakei Whai Maia Limited

[Hearing Evidence - Ngarimu Blair](#) (4 November 2014)

[Rebuttal Hearing Evidence - Nick Roberts](#) (14 November 2014)