

Memorandum

22 September 2021

To: Planning Committee and Aotea/Great Barrier Local Board

Subject: Protecting sites and places of archaeological and cultural significance on Aotea/Great Barrier Island - Advice in response to the presentation from the Aotea/Great Barrier Local Board to the Planning Committee on 1 July 2021

From: John Duguid – General Manager Plans and Places
Ian Smallburn – General Manager Resource Consents

Purpose

1. To provide the Planning Committee with advice in response to the presentation from the Aotea/Great Barrier Local Board on 1 July 2021 regarding the protection of sites and places of archaeological and cultural significance on Aotea/Great Barrier Island.

Summary

2. There are no archaeological sites, or sites and places of significance to mana whenua, scheduled in the Auckland Unitary Plan (AUP) or the Operative Auckland District Plan (Hauraki Gulf Islands Section) (HGI Plan) on Aotea/Great Barrier Island. The council has committed to addressing this legacy issue through its investment in the Māori Cultural Heritage programme. Under this programme, mana whenua have nominated over 500 sites and places of significance across the region. A confidential report was presented to the Planning Committee earlier this month on the sites to be considered for the next proposed plan changes to the AUP and HGI Plan.
3. With no scheduled archaeological or culturally significant sites on Aotea/Great Barrier Island at this point in time, there are limited circumstances where the council is able to assess the archaeological or cultural effects of development.
4. As well as working with mana whenua to identify and protect sites and places of cultural significance through changes to the AUP and HGI Plan, the council is working with mana whenua to develop a GIS-based 'alert layer' council staff can access when assessing resource consent applications. This will go some way towards addressing the current lack of scheduled sites and places of significance to mana whenua on Aotea/Great Barrier Island.

Context

5. On 1 July 2021 the Planning Committee received a presentation from the Aotea/Great Barrier Local Board on the protection of cultural heritage. In response to the presentation, the committee resolved:

That the Planning Committee:

- a) *receive the Aotea/Great Barrier Local Board input regarding the implementation of resource management and heritage legislation on Aotea/Great Barrier Island and thank Izzy Fordham, Valmaine Toki and Don Prince for their presentation*
 - b) *request that the General Manager Plans and Places and General Manager Resource Consents prepare a memorandum for the Planning Committee on the matters raised and suggested approaches to implementing the cultural heritage provisions in the Resource Management Act and Pouhere Taonga/Heritage New Zealand Act.*
6. There are two aspects to the concerns raised by the Aotea/Great Barrier Local Board:
- a) the lack of scheduled sites and places of significance to mana whenua on Aotea/Great Barrier Island in the Auckland Unitary Plan (AUP) and the Operative Auckland District Plan (Hauraki Gulf Islands Section) (HGI Plan)
 - b) a perceived failure of the council's regulatory and compliance processes to manage adverse effects on archaeological and culturally significant sites, including the difficulty mana whenua have with the manner in which the council advises them of resource consent applications.

Discussion

Issue 1 - Lack of scheduled sites

7. There are no archaeological or culturally significant sites to mana whenua scheduled in the AUP or in the HGI Plan on Aotea/Great Barrier Island. To address this issue, the council has a process to continually add sites to the relevant schedules of the AUP and HGI Plan. Across the region, mana whenua have nominated over 500 sites and places of significance for consideration. A report was presented to the Planning Committee earlier this month on the sites to be considered for the next proposed plan changes to the AUP and HGI Plan.
8. A difficulty with the plan change process is that it is time and resource consuming and is particularly demanding on mana whenua. Council staff have an ongoing process of working with mana whenua to address this issue.

Issue 2 - Current council resource consent processes

9. With no scheduled archaeological or culturally significant sites on Aotea/Great Barrier Island, there are limited circumstances where the council is able to assess the archaeological or cultural effects of a resource consent application. Under the AUP and HGI Plan there is an ability to consider cultural effects for discretionary and non-complying applications for resource consent, however for controlled and restricted discretionary there is limited ability.
10. The council therefore relies on the following processes.

Auckland Council's Cultural Heritage Inventory (CHI) database

11. For discretionary and non-complying activity resource consent applications, staff have access to the council's CHI database that lists all known heritage sites and is updated regularly – including from the New Zealand Archaeological Association database. CHI data is limited to points on a map. If the point is not located on the resource consent application site, it will not be identified in the initial resource consent check.

Accidental Discovery Rule

12. The Accidental Discovery Rule (ADR) is a rule in the AUP to protect unknown archaeological, cultural and natural values that may be discovered when works or development are undertaken.

Even if a landowner/developer has a resource consent or the activity is permitted, if a site of value is discovered then the rule requires the landowner/developer to stop work and follow a process that involves engagement with mana whenua and the council. As a regional rule under the Resource Management Act, these requirements apply to the Hauraki Gulf Islands as well as the rest of Auckland.

Heritage New Zealand Pouhere Taonga

13. Regardless of whether the land on which the site is located is designated, or the activity is permitted under the AUP or HGI Plan, or a resource or building consent has been granted, the Heritage New Zealand Pouhere Taonga Act 2014 makes it unlawful for any person to modify or destroy, or cause to be modified or destroyed, the whole or any part of an archaeological site without the prior authority of Heritage New Zealand Pouhere Taonga. An advice note is normally placed on relevant resource consents to this effect. It is important to note that the Heritage New Zealand Pouhere Taonga Act 2014 is separate legislation to the Resource Management Act and resource consents are not able to be delayed waiting on third party (e.g. Heritage New Zealand Pouhere Taonga) approvals.

Contacting mana whenua during the consenting process

14. Staff in the Resource Consents department primarily rely on the direction in the AUP and/or HGI Plan, the CHI data and contact from mana whenua to alert them to potential concerns or cultural values to take into account. Local boards or other local knowledge can also highlight particularly sensitive sites or specific sites of interest, or with a history of cultural concern, that are not necessarily mapped. It is important to note that council staff are unable to assess impacts on cultural values, this information must come from mana whenua.
15. All resource consent applications lodged with the council are entered on to the 'application register'. The 'application register' is distributed on a weekly basis to the iwi authorities that are formally recognised by the council as representative organisations. All applications on the register include the 'activity description' as recorded at the time of lodgement. This allows the recipient to make their own call about applications that may be of interest to them, rather than relying on the judgement of staff. Having reviewed the registers, iwi representatives may advise council staff of their potential interest and request copies of the application materials.
16. Iwi are able to request further information from the council on any of these applications to understand more about the proposals, and raise any cultural concerns they may have for the council to consider in the processing of the application. It is particularly important for iwi authorities to engage in terms of applications within the Hauraki Gulf as there are no scheduled sites on the outer islands.

Placing an Accidental Discovery Protocol and Heritage New Zealand Pouhere Taonga notice on relevant consents

17. Depending on the proximity of consented works to CHI data points, consents on Aotea/Great Barrier often include reference to the Accidental Discovery Protocols under the AUP. In addition, the standard advice note on all resource consents includes the following reference to approvals being needed from Heritage New Zealand:

The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015),

regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.

Additional initiative to address some of the issues of concern

18. Staff are developing a non-statutory Māori heritage database (an ‘alert layer’), the purpose of which is to identify the region’s Māori heritage places so they can be better managed, protected and enhanced. It is a project developed in partnership with mana whenua. The database contains sites identified by mana whenua including their spatial mapping. Staff can then refer to the alert layer to determine whether there are any identified sites in close proximity to the location of a resource consent application/proposed development.
19. The Māori Heritage team are currently working with mana whenua to populate the alert layer. Currently there are 18 live sites on the alert layer with discussions underway with mana whenua to confirm that all nominated sites should be entered on the database/alert layer while further work is undertaken to include some, or all, of the sites in future plan changes. As of July 2021, there are 528 sites that could be included should mana whenua agree.
20. Access to the database/alert layer will be via Te Mātāpuna, the council’s Resource Consent Portal, which will soon replace the weekly ‘application register’. Replacing the ‘application register’ with Te Mātāpuna will significantly improve the ability of mana whenua to engage in the resource consent process.
21. Functionality of the portal includes:
 - a ‘register an interest’ function for mana whenua to easily signal to the council that mana whenua would like to be engaged on a particular resource consent application
 - mana whenua will have direct links to application documents without waiting on allocation to a processing planner
 - easy ‘comments’ section to signal to the council that mana whenua have reviewed the application and to give clearer instructions on next steps
 - automatic distribution of resource consents to mana whenua (areas of interest, process and efficiency)
 - each mana whenua group will have their own portal that will only display resource consent applications relevant to their rohe
 - ability to easily filter and triage applications according to each mana whenua entity’s priorities and interests.

Next steps

22. We trust the above information is helpful, however if you have any further questions, please feel free to contact John Duguid - General Manager Plans and Places or Ian Smallburn - General Manager Resource Consents.