Date:	**Wednesday, 28 October 2015**
Time:	**9.32am**
Meeting Room:	**Reception Lounge**
Venue:	**Auckland Town Hall** **301-305 Queen Street** **Auckland**

Finance and Performance Committee

OPEN MINUTE ITEM ATTACHMENTS

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5.1 Olivia Haddon - Māori freehold land rates

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Expert assessment of Report on Review of the policy on Postponement and Remission of rates on Maori land for Olivia Haddon / Haddon whanau, to go to the Finance and Performance Committee of the Auckland Council on Wednesday the 28th of October 2015.

Tena koutou katoa,

Having read the officers' report on this matter, I make the following comments and further submission on behalf of the submitter as follows:

The report lacks adequate reference to, and consideration of the application of Te Tiriti o Waitangi / the Treaty of Waitangi to this area and reflects a limited knowledge of the Maori historical experience across the same areas, and the Maori cultural and spiritual values and perspectives that apply.

It is noted that the Council must have such a policy (Section 102(2)(e) LGA) and may also have broader policies in these areas, applicable to rates generally. Such a policy must be reviewed at least once every six years, using a consultation process that gives effect to Section 82 - (Section 108 (4A) LGA). Section 82 (2) requires that Council have in place, appropriate processes for consulting Maori. The 2012 review of this policy was aimed primarily at reviewing and reconciling the policies in this area, of the various constituent Councils into a single, uniform policy. A further substantive review process is therefore both warranted and appropriate, although from a Maori perspective one that runs out to 2016 / 017 is both unnecessarily convoluted and tardy. In addition, in determining such a policy Council **must consider** the matters and policy objectives set out in Schedule 11 LGA, if they are seen as desirable and important. The report's coverage of these important processes of consideration and priority setting, is particularly deficient, especially in regard to consideration of Maori ancestral lands - Schedule 11(2)(b).

The report also fails to consider and make policy linkages to other statutes that are relevant to and that elucidate these subjects, in particular to the Te Ture Whenua Maori Land Act 1993 (TTWMLA), and extant reform proposals of it, now in draft Bill form. A few examples will underline this point.

The preamble to TTWMLA describes Maori land as a **taonga tuku iho** - a useful link to seeing and understanding the concept of Whenua tuku iho. See below:

'An Act to reform the laws relating to Maori land in accordance with the principles set out in the Preamble'.

Preamble (English translation)

'Whereas the Treaty of Waitangi established the special relationship between the Maori people and the Crown: And whereas it is desirable that the spirit of the exchange of kawanatanga for the protection of rangatiratanga embodied in the Treaty be reaffirmed: And whereas it is desirable to recognise that land is a **taonga tuku iho** of special significance to Maori people, and for that reason, to promote the retention of that land in the hands of its owners, their whanau and their hapu, and to protect waahi tapu and to facilitate the occupation, development and utilisation of that land for the benefit of its owners, their whanau and their hapu: And whereas it is desirable to maintain a court and establish mechanisms to assist the Maori people to achieve the implementation of these principles' ....

Page 1.
The Heritage New Zealand Pouhere Taonga Act 2014 has a useful definitions of 'waahi tapu' and 'waahi tupuna' in Section 6, the latter closely parallels whenua tuku iho. Section 74 also places a duty on local authorities to take account of sites on the New Zealand Heritage List / Rarangi Korero, which will obviously include Maori specific sites. Such sites ought properly to qualify for rates remission, possibly even exemption when in Maori ownership, regardless of tenure status (i.e even if not Maori Freehold land).

Finally the coverage of valuation of Maori land for rating purposes fails to accurately describe strong Maori objections to present valuation law and practice, typically viewed as being in breach of Treaty obligations and duties. Historical over valuation of Maori land is another related area of grievance. The policies under consideration offer a mechanism through which the impact of these realities can be ameliorated. In this regard the report and findings of the Shand Inquiry into Local Government funding 2007 is instructive, finding both the law and practice in this area as fundamentally deficient - see section of findings quoted below. Research reports undertaken for the Inquiry, available on the DIA website, including one on this very policy and another on the impact of rating on Maori land and provide invaluable insights and in depth knowledge of these areas.

Extract from Executive Summary of Shand Inquiry findings 2007 (Page 14)

'101. The first issue that arises is whether the rating of Maori land is consistent with the Treaty of Waitangi.

The panel recommends that the relationship between the Treaty of Waitangi and rating law be addressed by the Government as part of the work programme on rating and Maori land proposed by the panel'.

'102. That important issue aside the first major issue is whether the current approach to the valuation of Maori land is appropriate. The panel considers that it is not. Valuation of land is based on the assumption of a willing buyer and a willing seller. But Maori regard themselves as custodians of the land. Maori land cannot be sold, except under special and limited circumstances. This was recognised in the decision in the Mangatu case, after which a percentage discount is now generally applied to the values determined for Maori land. However, the panel does not consider that this percentage discount is an appropriate response to the Mangatu decision. In short it believes that valuations of Maori land are generally significantly overstated. The panel received numerous examples of landlocked, unproductive Maori land being valued at inexplicably high figures.

The panel recommends that a new basis for valuing Maori land for rating purposes be established that explicitly recognises the cultural context of Maori land, the objectives of Te Ture Whenua Maori land Act 1993, and the inappropriateness of valuations being premised on the 'market value' of Maori land'.

Maori ancestral land: There appears to be a suggestion in the report that defining whenua tuku iho presents major difficulties. In reality the concept of Maori ancestral land has existed in our statue law since 1977 and has been elucidated and developed by case law under the RMA. As noted other statutes assist in refining this concept and in practice some iwi have taken the step of placing the titles to such lands that are of particular importance to them, in the names of important deceased tupuna / ancestors.
Page 2.

My final comment on the report is in regard to the structure of specific options. These appear to pre-empt additional developments arising from the consultation process and in that regard may even be a breach of Section 82 requirements.

Conclusion: I support and endorse the recommendation for a review and the Option 2 policy content matters, with one important qualification.

I strongly advocate that the report be amended by the Committee via an addendum to the effect that further detailed and specific policy changes be sought from Maori (including the IMSB) as part of the consultation process and that these be assessed by officers and be reported back to the Committee for inclusion in the post review policies and / or to initiate other actions and responses by Council.

Pita Rikys
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Author of 'Valuation for and Rating of Maori land' TNT Press 2001.

Item 5.1

Attachment A