### Waiheke Local Board

**OPEN MINUTE ITEM ATTACHMENTS**

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Rates Remission and Postponement Policy

1. I wish to present to the Local Board some of the views of QEII covenantors on the Island in relation to the Rates Remission and Postponement policy changes that you have been asked to vote on today.

2. Some of these views are well articulated in the tabled papers you will have received which are documents and submissions prepared by Michol and Tony Fisher, who are QEII covenantors owning a large block of land at Oriupu. Both Michol and Tony are lawyers.

3. It is their view and the view of the QEII National Trust legal Department that the Council has a statutory obligation under the QEII National Trust Act to offer rate remission to QEII covenantors. Michol and Tony believe that if the policy changes go ahead this will leave the Council open to appeal in a court of law.

4. It is my belief that the changes herald a withdrawal of support from private land owners who protect the biodiversity values of their land. It is not clear whether the grants scheme will be automatic, as it is now with rates remission, nor is it clear to me that the scheme will remain non-contestable and in place beyond the three year transition period.

5. It has been estimated that covenantors spend on an average a little above $5000.00 a year to do the required conservation work on their land. This is a monetary advantage to Council and supports the aims of parts of Council, namely Biodiversity, Biosecurity and Parks. I believe the proposed changes demonstrate that different Departments of Council are working in opposition to each other. Some supporting the environment and some reducing encouragement for private land owners to conserve their biodiversity for future generations. To me this defies logic.

6. I mentioned Parks. It has been estimated that private landowners who covenant their land are reducing the need for Council to purchase new Parks to ensure that good biodiversity is sustained into the future. On Waiheke there are a number of different forms of covenant and amongst these are ten existing QEII National Trust covenants as well as other properties being assessed for possible covenancing.

7. Finally, it is my belief that the changes the Council have recommended the Local Board vote for will add to, rather than reduce administration costs in relation to covenanted land.

Sue Fitchett
QEII covenantor and representative of QEII covenantors on The Collective
11 April 2018

Minister of Conservation: the Honourable Eugenie Sage – e.sage@ministers.govt.nz
Minister of the Environment: the Honourable David Parker – d.parker@ministers.govt.nz
Minister of Local Government: the Honourable Nanaia Mahuta – n.mahuta@ministers.govt.nz
The Mayor of Auckland: the Honourable Phil Goff – phil.goff@aucklandcouncil.govt.nz
The Councillor for the Hauraki Gulf Islands: Mike Lee – mike.lee@aucklandcouncil.govt.nz

Dear Ministers, Auckland Mayor and Councillor Lee,

Proposed Changes to Auckland Council’s Rates Remission and Postponement Policy – Impacting (in part) Conservation and Environmental Projects

Auckland Council recently produced a consultation document set and advised some interested parties of this consultation document set by letter signed by Andrew Duncan, Manager Financial Policy, which letter invited interested parties to “Have Their Say”.

Please find attached two submission documents we prepared and submitted in response to the proposed changes:
- one has a Queen Elizabeth the Second National Trust focus; and
- the other has a Conservation Act / Reserves Act focus.
Please read these submissions.

We have never previously copied any consultation feedback to such an esteemed group as yourselves; however, we feel it is necessary in this instance as we are generally appalled at the gross incompetence within Auckland Council that allows a consultation document set, so unfit for purpose, to be put out for consultation. Auckland Council should be embarrassed.

The consultation document set is fundamentally (and we would say fatally) flawed. In some aspects the proposed changes are illegal, pre-mature and / or ill considered. Analysis of both the legal and policy context has been completely neglected - perhaps not surprising when the consultation document set emanates from Auckland Council’s Financial Policy Department. Even the resource use analysis is both inadequate and misleading – in that it seems, to us, to have been provided in a way that deliberately combines and obfuscates the issues so as to achieve a pre-determined outcome – i.e. to ensure Councillors accept Council Officer’s preferred “Option 2”.

We do not wish to repeat our submissions here. The purpose of this letter is to point out the woeful manner in which this consultation exercise has been dealt with to date – the cost of which is being borne by ratepayers generally (in Council salaries, consultation costs, communication costs, etc) and people like us, specifically, who dedicate a significant amount of time to providing constructive feedback.

The “icing on the cake” in relation to this matter was when we submitted our feedback on-line on 11 April, in accordance with the Council’s instructions; we immediately received an automated reply stating:

Thanks for contacting AK Have Your Say at Auckland Council.

The consultation period closed at 8pm, Wednesday 28 March.

If you have submitted feedback after that point, your feedback will still be presented to decision makers but we cannot guarantee it will be analysed in reports they receive.
If you have contacted us about anything else, our team will get back to you as soon as they can but aim to reply within 4 working days.

The automated replay is incorrect because the original closing date was 3 April. It was NEVER 28 March. The original date of 3 April was extended to 13 April (after Auckland Council took notice of irate impacted parties and extended the submission deadline to a vaguely more reasonable 20 working days). We are aware of another person who submitted on-line yesterday and got the same automated reply. They then rang Auckland Council immediately and advised the Council’s Customer Service Team of the "issue". They were initially told the date was correct but subsequently informed that 13 April was the closing date. They expressed their concern about the incorrect and misleading automated reply and how it could put other people off making submissions. The Customer Service Representative said that the appropriate person would contact them. The issue has not been fixed. No one from Auckland Council contacted them.

Clearly some Auckland Council Officers would benefit from education in policy formulation and communication. If this proposed change is indicative of general policy formulation within Council there is significant room for improvement!

It is no wonder we are jaded, at the end of our tether, angry and as a consequence very direct (while still being constructive) in our communications about this matter as it comes after major setbacks, in the form of significant physical damage, to our conservation project as a result of the actions and/or inactions of Officers of Auckland Council and Auckland Transport.

Yours faithfully,

Michol Fisher
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11 April 2018

Dear Andrew Duncan / Beth Sullivan,

“Have Your Say” – Rates Remission and Postponement Policy – Proposed Changes

Introduction
Thank you for your letter(s) of 15 March giving us until 3 April – a short period which includes Easter – to “have our say” on the proposed changes. An 11 working day period between the date of the letters (not the receipt date by Covenantors) and the submission close date and no opportunity for a meeting to discuss the issues is, in our opinion, a form over substance approach to consultation – especially when many of the potentially impacted parties will be community organisations with management boards of volunteers.

We thank you for your subsequent notification, by text, of the extension of the closing date until 13 April - taking the submission period to 20 working days from the date of your letter.

We strongly object to the proposed changes to the rates remission scheme for the reasons set out below.

Context / Overview
Economics in One Lesson – a classic economics text by Henry Hazlitt – states that “a bad economist sees only what immediately strikes the eye; a good economist looks beyond – at secondary consequences”. “The art of economics consists in looking not merely at the immediate but at the longer effects of any act or policy; it consists in tracing the consequences of that policy not merely for one group but for all groups.” (Hazlett, 1962, page 17).

There is a tendency in the world today for many people to view many things through a lens of “me, me, me, short term-ism” rather than “us, us, us, the planet and sustainable long term-ism”. Some New Zealanders are here for the environment generally (land, coast, sea, etc) - to conserve, to improve and to protect for future generations - as Queen Elizabeth the Second National Trust (“QEII”) Covenantors, by their actions, attest.

It is important to remember too that it is always a good idea to propose win-win outcomes – this has the advantage of taking most people along with you when making changes.

Background on us
We have been undertaking an extensive conservation project on Waiheke Island for approximately 20 years. The area encompassed is approximately 46 acres, the vast majority of which has been covenanted in that time. We have five covenants across three titles: three QEII Covenantants and two Auckland Council Covenantants.
We treat covenanted and un-covenanted land the same. We are not GST registered and we estimate we have spent in excess of half a million dollars, much of our lives and many thousands of hours on this project for no other purpose than the greater good.

We have removed many hundreds of exotic trees and replanted with many thousands of native plants. We have done this over an extended period of time to minimise any negative impact on the land. We have undertaken (and continue to undertake) extensive pest control programmes – for both animal and weed pests.

We have made tremendous progress in the 20 years subject to a few MAJOR set-backs ALL, in part, caused by Auckland Council – neighbours “permitted by Auckland Council” fireworks display (during a fire ban period) setting fire to, and destroying, the most fragile part of our restoration efforts (including QEII covenanted land) and storm water runoff from a poorly engineered Orapiu Road causing slips in QEII covenanted land (which is the subject of action in the Environment Court at present). QEII records, from their visits, attest to the progress made and the devastating setbacks we have experienced.

Currently the rates remission we receive would not even cover our annual raw material costs for animal and weed pest control.

**General Comments on Consultation Document Headed “Proposal to amend Auckland Council’s Rates Remission and Postponement Policy”**

As a general rule, it is both good practice and helpful, in a consultation document, to number pages, tables and options so that they can be easily identified and referred back to in feedback.

Again, as a general rule, it is good practice for a policy change proposal to provide information on the existing policy in terms of the relevant legal, policy and resource use (financial, people, etc) context. The rationale for the proposed changes should then be clearly identified and the proposed policy discussed in terms of how that (presumably, better) fits the legal, policy and resource use context. The documentation we have been invited to “have our say on” is completely inadequate in this regard. Both the legal and policy context have been completely ignored and the resource use analysis is both inadequate and misleading.

**Specific Comments on Consultation Document Headed “Proposal to amend Auckland Council’s Rates Remission and Postponement Policy” as it Relates to Private Covenanted Land**

**Legal Context**

The legal context relevant to the proposed changes includes the Resource Management Act 1991 (“RMA”), which guides policy formulation, the Local Government Act 2002, the Local Government (Rating) Act 2002, the Reserves Act 1977 (“RA”), the Conservation Act 1987 (“CA”) and the Queen Elizabeth the Second National Trust Act 1977 (“QEII Act”). No doubt there are other relevant Acts which should also have been identified and considered – you are in a better position than us to know what they are.

A brief analysis of the Acts listed above shows that according to Section 8 (1) of the Local Government Rating Act 2002 land described in Part 1 of Schedule 1 is non-rateable. Under Schedule 1 Part 1 Section 5 non-rateable land includes: “[l]and owned or used by, and for the purposes of, - (b) the Queen Elizabeth the Second National Trust”.

Land covenanted under Section 22 of the QEII Act is used by and for the purpose of QEII. It is land that is protected forever for the benefit and enjoyment of the people of New Zealand.

Having delved briefly into the legislative context we therefore find that Auckland Council’s proposed policy is in breach of the legislative framework, at least in respect of private land covenanted to QEII. Auckland
Council has NO authority to remove rates remission from private land covenanted to QEII or to substitute the rates remission with some nebulous grants scheme.

Given the immediately preceding paragraph it is unnecessary to address the issues of policy and resource use context but to be constructive, and for your edification, we do so anyway.

Policy Context
The policy context around the issue of conservation is set by the RMA, the RA, the CA and the QEII Act. No doubt there is also other relevant legislation. At a local level detailed policy is set out in the Unitary Plan and, where relevant, District Plans.

Given that none of the RMA, RA, CA and/or QEII Act are referred to in the document headed “Proposal to amend Auckland Council’s Rates Remission and Postponement Policy” it would appear that no analysis has been undertaken of how the proposed changes support (or don’t) the achievement of Central Government’s and then Auckland Council’s broad policy objectives relating to the environment.

The purpose and principles of the RMA are set out in Part 2 of the RMA, consisting of Sections 5 through 8. We have reproduced these Sections below and underlined key words for added emphasis.

5. Purpose
(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—
(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
(c) avoiding,remedying, or mitigating any adverse effects of activities on the environment.

6. Matters of national importance
In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:
(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;
(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development;
(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;
(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers;
(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;
(f) the protection of historic heritage from inappropriate subdivision, use, and development;
(g) the protection of protected customary rights;
(h) the management of significant risks from natural hazards.

7. Other matters
In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to —
(a) kaitiakitanga;
(ba) the ethic of stewardship;
(b) the efficient use and development of natural and physical resources;
(ba) the efficiency of the end use of energy;
(c) the maintenance and enhancement of amenity values;
(d) intrinsic values of ecosystems;
(e) [Repealed]
(f) maintenance and enhancement of the quality of the environment;
(g) any finite characteristics of natural and physical resources;
(h) the protection of the habitat of trout and salmon;
(i) the effects of climate change;
(j) the benefits to be derived from the use and development of renewable energy.

The functions of the Auckland Council, for the purpose of giving effect to the RMA as a regional council and as a territorial authority, are set out in Sections 30 and 31 of the RMA.

Chapter A1.1 of the Unitary Plan identifies the Plans three key roles, namely:

The statutory purposes of the Auckland Unitary Plan (the Plan) are:

(1) for the part which is the regional policy statement: to achieve the purpose of the Resource Management Act 1991 by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region;

(2) for the parts which are the regional coastal plan: to assist the Council, in conjunction with the Minister of Conservation, to achieve the purpose of the Resource Management Act 1991 in relation to the coastal marine area of the region; and

(3) for the parts which are the regional plan and the district plan: to assist the Council to carry out any of its functions as a regional council and as a territorial authority in order to achieve the purpose of the Resource Management Act 1991.

In Chapter B of the Unitary Plan, where the regional policy statement objectives and policies are set out, there are the following statements, again we have underlined key words for added emphasis:

Protecting outstanding natural features and landscapes and the natural character of the coastal environment, wetlands, lakes and rivers from inappropriate subdivision, use and development, and maintaining the contribution of landscape values to high amenity values, all need active stewardship if these qualities are to survive to meet the needs of future generations. (B4)

Outstanding natural landscapes and features are finite resources – once they are destroyed they are lost forever, and restoration options are limited. The focus is therefore on protection of values and the avoidance of adverse effects. (B4)

The rural parts of Auckland also contain important natural resources, including native bush, significant ecological areas and outstanding natural landscapes. The contributions made by rural areas and rural communities to the well-being of the region must be acknowledged and enabled. (B9)

Enable the permanent protection and enhancement of areas of significant indigenous biodiversity. (B9)

There are many more parts of the Unitary Plan we could refer to but it is apparent, just from the parts set out above, that Auckland Council clearly acknowledges in the Unitary Plan that it has an obligation to
actively enable the permanent protection of the environment to meet the needs of future generations. Policies developed must therefore assist in achieving this objective.

By omitting any analysis or discussion of the relevant policy context and how the proposed policy complies with that policy the “Proposal to amend Auckland Council’s Rates Remission and Postponement Policy” is fundamentally flawed.

Given the immediately preceding paragraph it is unnecessary to address the issue of resource use context but to be constructive, and for your edification, we do so anyway.

**Resource Use Context**

We note that at paragraph 2 of the document headed “Proposal to amend Auckland Council’s Rates Remission and Postponement Policy” it is stated “[w]e use this policy to ... address inequities in how rates are applied”. That is very much a financial viewpoint. As we have commented above, resource use (financial, people, etc) issues are only one part of three that require analysis when (re)formulating policies. In this instance both the legal and policy contexts detail why and when “inequities”, in how rates are applied to land, ARE required. Clearly Central Government intended all land covenanted to QEII to be treated differently, for rating purposes, to non-covenanted land.

We have identified inadequacies in the resource use analysis provided in the “Proposal to amend Auckland Council’s Rates Remission and Postponement Policy” and we have set these out below.

First, the table at page 5 of the document aggregates the various issues and so Councillors cannot understand the scale involved in each area impacted (private covenanted land, community, sporting and other organisations, commercial properties, Great Barrier, etc).

The consultation document headed “Summary of Auckland Council Rates remission and postponement policy schemes” identifies that:

- current remissions and postponements number 30,031* recipients, at a total cost of $5,420,846*;
- proposed changes impact 18,227* recipients, at a total cost of $3,073,427*;
- proposed legacy remission and postponement scheme changes impact 458* recipients, at a total cost of $786,441*;
- proposed changes in respect of private covenanted land impacts 99* recipients at a total cost of $58,928* (so that’s half a percent of total current remissions and postponements by number and under 2% by dollar value). Given that the table unhelpfully amalgamates QEII and Section 77 Reserve Act covenants together it is impossible for us to determine what part of the current spend of $58,928 relates solely to QEII covenants.

*refer Attachment 1, being a spreadsheet summarising the figures provided in Council’s document headed “Summary of Auckland Council Rates remission and postponement policy schemes”.

Secondly, the table provides some dollar value costs at Option 4 in a way that suggests the figures are “costed” when, because the supporting data has not all been collated or analysed, the figures are at best “guesstimates” and at worst, given the inconsistencies that need harmonisation (see below at 4.1), they are misleading. Again, because the dollar value costs are aggregated, they give no idea of the scale involved in each area impacted.

Thirdly, it is inconsistent to refer to an estimated dollar value for the cost of remissions for Category A heritage and community and sporting organisations but for covenanted land to state the number of properties involved (4500+ properties with covenants) and not estimate a dollar value for the cost of remissions. The provision of inconsistent information stops Councillors from understanding the real picture.
Fourthly, referring to figures like 4500 properties with “other types of covenants” and a potential unknown future cost (“significantly more”) alongside additional figures of $3m for Category A heritage and $1.5-3m for community and sporting organisations gives the impression that the potential cost for covenanted land will be huge – since the relevant information has not been collected or analysed and no policy has been formulated – the impression given may well be misleading.

We note additional costs for all the other QEII covenants (assuming they claimed the rebate) may amount to as little as $40,000 according to Auckland Council’s own figures as provided under Option 4.

It seems like the information provided and the way it is provided deliberately combines and obfuscates the issues so as to achieve a predetermined outcome, i.e. to ensure Councillors accept the “proposed Option 2”.

Further, under the heading “3 Legacy remission and postponement schemes”, it is disingenuous to state “Recipients will be informed of any options for additional funding including grants after the transition period.” Clearly current recipients won’t get “additional” funding. Actually the proposal sees current recipients lose their existing funding (which is indirect by way of rates remission). What current recipients may get, in future, is the ability to apply for a grant from a contestable grants pool (if any).

In the comments below we aim to limit our comments to the issue of the proposed changes impacting covenanted land.

The following key points are missing from the table:

**Option 1 (our numbering)**

1.1 While Council would make a very small financial saving of $58,928 (plus some reduced admin costs – not quantified) by removing the rates remissions available for private covenanted land, 99 Covenants would lose their rates remission and the impact of that loss on Covenants may be huge and far reaching in that some Covenants may cease to be able to afford the consumables they need to maintain their covenant.

1.2 In addition Covenants are likely to feel that their efforts are not valued and this may disincentivise further conservation work.

1.3 Withdrawal of rates remission is likely to put some potential Covenants off entering into covenants in future.

**Option 2 (our numbering)**

2.1 This option is only cost neutral to Auckland Council! As it states in the covering letter “Recipients who are not GST registered will have an effective reduction in Auckland Council support of 13 percent”. Do Council Officers have any idea of the split between GST registered recipients and non-GST registered recipients? Because that is a key piece of information. It is likely that the vast majority of recipients will not be GST registered, which means that the proposed change is a lose/lose for Auckland Council and the Covenants – the Government gets the 13% as tax into the Consolidated Fund but Auckland Council doesn’t gain anything and loses the goodwill and potentially on-going efforts of Covenants. Remember that if recipients are GST registered they are likely expensing their costs (rates, labour, and consumables) in any event!

2.2 There is no clarity for Covenants with this option – just an indeterminate period of uncertainty until a grants scheme is settled on and implemented and then there is no certainty for Covenants in actually obtaining a grant.

2.3 If Covenants have to apply for “grants” in future there is the additional cost to Covenants of “applying” – which is downtime from actually “working on their covenant”.

6
2.4 If Covenantors have to apply for “grants” in future who knows what additional costs will be imposed on Covenantors by pre-conditions to an application or indeed conditions of a grant?

2.5 Some Covenantors may not apply for grants (as opposed to a on-off remission application) because of the whole “bureaucracy” of the process and distrust of said bureaucracy.

2.6 We note that under table heading “[a]dministrative simplicity” it is stated that “grants would increase but could be managed within current systems”. Putting monitoring to one side, this statement suggests that the current resource is under-utilised. But if potentially somewhere in the order of 4600 new Covenantors (figure taken from the consultation document) as well as the 99 existing Covenantors apply for grants we very much doubt that the existing resource will cope. Could formulating the grants scheme, advising potential applicants, assessing grant applications, awarding of grants and making the relevant grant payments (ignoring on-going monitoring) realistically be carried out by the current resource? Would the funding pool for grants increase?

2.7 Grants require monitoring which means that the covenants themselves require field monitoring – has this been factored into your table heading “[a]dministrative simplicity”? Can “current systems” manage such monitoring? It is very likely that extra and specialised resource (i.e. ecologists/ specialist heritage architects / specialist heritage archaeologists) would be required to consistently undertake field monitoring of covenants. We note that under the current Council Rates Remission and Postponement Policy Council state “Council will inspect the conservation area every two years to ensure that the conservation area is being maintained to the agreed standard in the management plan”. This applies to both QEII and other covenants. We note that we have never had a Council inspection (we have had QEII inspections every two years) so clearly the current policy is not being implemented as set out. Possibly Auckland Council has taken the view that they do not need to duplicate QEII monitoring, but Council Officers have failed to communicate that to QEII Covenantors?

**Option 3 (our numbering)**

3.1 The “key issue” comment: “[i]nequitable as only available in some parts of the region” we accept. Clearly the legal framework indicates that all QEII covenanted land across the region should be non-rateable. That would be equitable. Indeed it is not clear that QEII Covenantors should have to even apply for rates remission. Section 6 of the Local Government (Rating) Act 2002 binds the Crown. Section 8 states “land described in Part 1 of Schedule 1 is non-rateable”. It does not state that landowners may apply to have their land recognised as non-rateable. If land qualifies under Part 1 of Schedule 1 it appears it is ipso facto non-rateable.

3.2 The “key issue” comment: “[r]emissions and postponements are not a transparent mechanism for supporting wider Council goals because they are not prioritised against other expenditure proposals or subject to the same value for money scrutiny” is a concerning statement because there is a potential conflict between Covenantors with very long term goals and the whims of a Council the makeup of which changes regularly and is politicised. This mis-match is exactly the reason why, historically, some Covenantors have preferred to covenant with QEII.

**Option 4 (our numbering)**

4.1 The table heading “key issue” comment: “[m]ore equitable because the same level of remissions are available to qualifying ratepayers across the region” presumes no changes in the existing policy and from a reading of the current policy it is apparent that there are actually a number of policies in situ and they are not consistent in and of themselves - so Auckland Council can’t just “extend remissions to the entire region” without undergoing a process of policy harmonisation at the very least.
4.2 Your same comment is set out under table heading “[k]ey issues” under both Options 3 and 4. For the avoidance of doubt we restate the comments set out at 3.2 here as they also apply to Option 4. The table heading “key issue” comment: “[i]mmissions and postponements are not a transparent mechanism for supporting wider council goals because they are not prioritised against other expenditure proposals or subject to the same value for money scrutiny” is a concerning statement because there is a potential conflict between Covenantors with very long term goals and the whims of a Council the makeup of which changes regularly and is politicised. This mis-match is exactly the reason why, historically, some Covenantors have preferred to covenant with QEI.

4.3 Given that Council Officers do not appear to know a great deal about the number and nature of the Covenant in the Auckland Council Region (see below) the estimated costs are at best “guesstimates” and at worst, given the inconsistencies that need harmonisation (see 4.1 above), they are misleading. The same can be said for the statements “[i]ncreases rates for all other ratepayers by 0.3 per cent” under the table heading “[m]inimise the effects of change.”

4.4 Amalgamating community and sporting organisations in with the covenanted properties is like trying to compare bananas and monkeys – these issues all need to be completely separated out with their own legal, policy and resource use (Finance, Heritage, Environment) analysis - none of which are referred to AT ALL in what appears to very much be a financially driven (cost saving targeted?) proposal.

Summary and Moving Forward
Clearly “do nothing” is not acceptable to Auckland Council because it is inequitable (and, to a certain extent, that is understandable). Having been put on notice of the legal issues with both the proposed and the current policy (as a result of this consultation process) “do nothing” would also appear to be a risky strategy from a legal standpoint as now even the current policy may potentially become the subject of legal challenge.

Why then propose to implement a lose / lose option (the three year transition)? What part of that seems like a good idea?

It seems, to us, that the current Option 2 (our numbering) is only an interim measure and it has a lot of immediate downside:

- For Covenantors: immediate loss of 13% of funding (if not GST registered) / on-going uncertainty while grants scheme developed and put in place / future increased costs of having to apply for grants and potential increased costs arising from any grant conditions or pre-conditions for that matter – i.e., will Council in future require “management plans” to be prepared by third party specialist consultants at significant additional cost to the Covenantor or an application fee?
- For Council: no immediate improvement in situation for Council and Council will have alienated current recipients;

and no upside for any party (except the Government getting a further 13% in tax on the rates paid into the Consolidated Fund).

A better proposal would be to leave the current rates remission legacy schemes in place until Council’s Officers have actually gathered all the relevant information and assessed it and then drafted a comprehensive new proposal. The reality is, that is what the three year period is all about anyway. In our opinion the proposed change “we are having our say on” is illegal, pre-mature and ill considered.

We suggest you prioritise gathering all the relevant information and drafting a comprehensive new proposal so it can be released for consultation quickly and in a more targeted way. Separate out the quite different
issues of community, sporting and other organisations providing community services and covenants and have a separate policy development work stream for each.

Turning to Covenants
The nature and focus of ALL existing covenants needs to be gathered and summarised.

1. Currently, according to Auckland Council’s own records, only 99 covenants relating to private covenanted land currently receive a remission at a total cost of $58,928. That’s a long way short of the potential 4,600 covenants and “significantly more” quoted under Option 4 of the table. How much is “significantly more”? To answer that question you need to collate all the relevant information.
2. The other 4,600 covenants need to be identified and basic information collated on each.
3. The legal position of each covenant needs to be identified i.e. is it a covenant falling under the QEII Act? the RA? the CA?
4. Those 4,600 covenants will potentially include covenants of land for conservation purposes, for archaeological heritage purposes, for architectural heritage purposes and there may be other purpose covenants out there … view shaft covenants?, building line restriction covenants? Who knows? (Apparently not Council Officers at present!)
5. QEII covenants will be easy to obtain the relevant information on because (as we understand it) QEII has very good records and can supply Council with all the relevant data – address, size, age of covenant, status, status of owner (whether GST registered or not) etc. All Council will have to determine, from its own records, is whether the existing QEII Covenantors have applied for and are currently receiving rates remission on the portion of their land covenanted. Note: not all QEII Covenantors will have applied for and be receiving rates remission.
6. There may be some titles with multiple covenants on them so this could account for an element of multiple counting. It is the percentage of land covenanted not the number of separate covenants on a title that is relevant (count 1 per title).
7. Some land will be covenanted twice and so will be being double counted in your existing broad brush figures – once to QEII and again to DoC or Council. We know this for a fact as we have two properties covenanted both to QEII and Council – we had already voluntarily covenanted land to QEII and were proposing to covenant more adjoining land but as a result of Council’s involvement we ended up with two covenants on each title (albeit on slightly different terms). Such an unnecessary duplication on Council’s part. And sometimes one just can’t make Council Officers see sense no matter how hard one tries.
8. Having gathered all the relevant information it will become apparent what the key issues are – and they will be different between types of covenant. Covenants relating to architectural or archaeological heritage will have different issues to covenants relating to land.

Some Helpful Hints as to how you Should Go About (Re) Formulating This Policy

1. The first question to address is the legal framework. What is the current relevant law and so what MUST Auckland Council comply with by law? Ultimately whatever (financial) rates remission policy is proposed it MUST comply with the law.
2. If land qualifies under Part 1 of Schedule 1 of the Local Government (Rating) Act 2002 it does appear it is ipso facto non-rateable. Land owners should therefore receive rates remission WITHOUT having to make an application and Auckland Council has NO ability to reduce or remove remissions for covenanted land not being maintained to an adequate standard. If this is indeed the case Auckland Council may wish (as a priority and as a separate piece of work) to review its standard covenant terms and monitoring procedures going forward. Covenantors obtaining rates remissions should be field monitored regularly (this is actually part of the conditions now but in respect of Council covenants we understand regular on-going monitoring has been inconsistent, at best, and, at worst, non-existent). This is easy (and cheap) for the Council in respect of QEII covenants as QEII representatives monitor covenants every two years.
QEII could, with a Covenantor’s consent, supply Council with the results of their monitoring visits.

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4. If land qualifies under Part 1 of Schedule 1 of the Local Government (Rating) Act 2002 it appears that the GST status of the owners is irrelevant. GST registered owners would appear to be entitled to a rates remission and their legal deductions for expenses, provided they don’t “double-dip”.

5. The second question to address is the policy framework. What are Central Government’s and Auckland Council’s current relevant policies actively enabling the permanent protection of the environment to meet the needs of future generations? What (financial) rates remission policy can be proposed to implement and indeed ideally further these policies?

6. The third question to address is the resource use one. Given the parameters set by the answers to the first two questions (above) and the information Council ascertains on the 4600 covenants Council indicates are in existence (refer heading “Turning to Covenants” above) you can now look to identify the resource needs (financial and human) of the proposed policy. Human resources will be likely to span many Council departments (finance, ecology, archaeology, architectural heritage, valuation, etc). Regular on-going monitoring of covenants is potentially going to be quite demanding upon resources. In that regard we note that QEII Covenantors have the benefit of long term relationships with QEII Regional Representatives (we have had two Regional Representatives in 20 years) who are knowledgeable and who have a history with the Covenantors and the covenanted land and so can recognise and appreciate covenant improvements (and deteriorations). QEII covenanters are also of benefit to Council because all the monitoring etc is provided at no cost to Council. In contrast, Council often suffer from staff turnover and shortages which reduces the potential for long term relationships and means Covenantors dealing with Council Officers may need to repeatedly spend precious time bringing new Council Officers up to speed and trying to give them some appreciation of what went before.

As you can see, from a reading of our submission, we strongly object to the proposed changes to the rates remission scheme. We encourage you to have the current proposal reviewed by Council’s in house legal team before placing the proposal before Councillors for a decision. Implementation of the proposed policy (as drafted) by Auckland Council will likely result in legal challenge. This would be a waste of ratepayers’ monies and should be avoided.

We hope this submission is of interest and useful in your deliberations. If you have any queries regarding this submission or require further clarification of points made or elucidation of matters raised please do not hesitate to contact the undersigned.

Yours sincerely,

Michol Fisher
For Trustees BAYMI & Flinch Trusts
2 April 2018

Rates Remission and Postponement Consultation
Auckland Council
Freepost Authority 2435125
Private Bag 92300
Auckland 1142

Dear Andrew Duncan / Beth Sullivan,

“Have Your Say” – Rates Remission and Postponement Policy – Proposed Changes

Introduction
Thank you for your letter(s) of 15 March giving us until 3 April – a short period which includes Easter – to “have our say” on the proposed changes. An 11 working day period between the date of the letters (not the receipt date by Covenantors) and the submission close date and no opportunity for a meeting to discuss the issues is, in our opinion, a form over substance approach to consultation – especially when many of the potentially impacted parties will be community organisations with management boards of volunteers.

We thank you for your subsequent notification of the extension of the closing date until 13 April - taking the submission period to 20 working days from the date of your letter.

We strongly object to the proposed changes to the rates remission scheme for the reasons set out below.

General Comments on Consultation Document Headed “Proposal to amend Auckland Council’s Rates Remission and Postponement Policy”
As a general rule, it is both good practise and helpful, in a consultation document, to number pages, tables and options so that they can be easily identified and referred back to in the feedback submission provided.

Again, as a general rule, it is good practice for a policy change proposal to provide information on the existing policy in terms of the relevant legal, policy and resource use (financial, people, etc) context. The rationale for the proposed changes should then be clearly identified and the proposed policy discussed in terms of how that (presumably, better) fits the legal, policy and resource use context. The documentation we have been invited to “have our say on” is completely inadequate in this regard. Both the legal and policy context have been completely ignored and the resource use analysis is both inadequate and misleading.

Specific Comments on Consultation Document Headed “Proposal to amend Auckland Council’s Rates Remission and Postponement Policy” as it Relates to Private Covenanted Land

Legal Context
The legal context relevant to the proposed changes includes the Resource Management Act 1991 (“RMA”), which guides policy formulation, the Local Government Act 2002, the Local Government (Rating) Act 2002, the Reserves Act 1977 (“RA”) and the Conservation Act 1987 (“CA”). No doubt there are other relevant Acts which should also have been identified and considered – you are in a better position than us to know what they are.
A brief analysis of the Acts listed above shows that according to Section 8 (1) of the Local Government Rating Act 2002 land described in Part 1 of Schedule 1 is non rateable. Under Schedule 1 Part 1 Section 1 non rateable land includes: “(a) land owned or used by, and for the purposes of: (b) a reserve under the Reserves Act 1977; and (c) a conservation area under the Conservation Act 1987.

It would appear therefore that land declared protected private land and/or subject to conservation covenants under ss76 and 77 (respectively) of the RA is non-rateable pursuant to Schedule 1 Part 1 Section 1(b) of the Local Government (Rating) Act 2002.

Potentially land that is covenanted land pursuant to section 27 of the CA and thus becomes a “conservation area” as defined in section 2 of the CA may also be non-rateable pursuant to Schedule 1 Part 1 Section 1(c) of the Local Government Rating Act 2002.

Auckland Council’s proposed policy may well be in breach of this legislation. Auckland Council would be wise not to remove rates remission from private land covenanted under either the RA or the CA or to substitute the rates remission with some nebulous grants scheme without ensuring doing so does not breach the RA or CA.

Given the above it is potentially unnecessary to address the issues of policy and resource use context but to be constructive, and for your edification, we do so anyway.

Policy Context
The policy context around the issue of conservation is set by the RMA, the RA (refer section 3 for the general purpose of that Act) and the CA (refer section 6 for the general purpose of the Department of Conservation). No doubt there is also other relevant legislation. At a local level detailed policy is set out in the Unitary Plan and, where relevant, District Plans.

Given that none of the RMA, RA or CA are even referred to in the document headed “Proposal to amend Auckland Council’s Rates Remission and Postponement Policy” it would appear that no analysis has been undertaken of how the proposed changes support (or don’t) the achievement of Central Government’s and then Auckland Council’s broad policy objectives relating to the environment.

By omitting any analysis or discussion of the relevant policy context and how the proposed policy complies with that policy context the “Proposal to amend Auckland Council’s Rates Remission and Postponement Policy” is fatally flawed.

Given the immediately preceding paragraph it is unnecessary to address the issues of resource use context but to be constructive, and for your edification, we do so anyway.

Resource Use Context
We note that at paragraph 2 of the document headed “Proposal to amend Auckland Council’s Rates Remission and Postponement Policy” it is stated “[w]e use this policy to ... address inequities in how rates are applied”. That is very much a financial viewpoint. As we have commented above, resource use (financial, people etc) issues are only one part of three that require analysis when (re)formulating policies. In this instance both the legal and policy contexts detail why and when “inequities”, in how rates are applied to land, ARE required. Clearly covenanted land IS to be treated differently to non-covenanted land.

We have identified inadequacies in the resource use analysis provided in the “Proposal to amend Auckland Council’s Rates Remission and Postponement Policy” and we have set these out below.
First, the table at page 5 of the document aggregates the various issues and so Councillors cannot understand the scale involved in each area impacted (private covenanted land, community, sporting and other organisations, commercial properties, Great Barrier, etc).

The consultation document headed “Summary of Auckland Council Rates remission and postponement policy schemes” identifies that:

- current remissions and postponements number 30,031* recipients, at a total cost of $5,420,846*;
- proposed changes impact 18,227* recipients, at a total cost of $3,073,427*;
- proposed legacy remission and postponement scheme changes impact 458* recipients, at a total cost of $786,441*;
- proposed changes in respect of private covenanted land impacts 99* recipients at a total cost of $58,928* (so that’s half a percent of total current remissions and postponements by number and under 2% by dollar value). Given that the table unhelpfully amalgamates QEII and section 77 RA covenants together it is impossible for us to determine what part of the current spend of $58,928 relates to each of QEII covenants and section 77 RA covenants.

* - refer Attachment 1, being a spreadsheet summarising the figures provided in Council’s document headed “Summary of Auckland Council Rates remission and postponement policy schemes”.

Secondly, the table provides some dollar value costs at Option 4 in a way that suggests the figures are “costed” when, because the supporting data has not all been collated or analysed, the figures are at best “guestimates” and at worst, given the inconsistencies that need harmonisation (see below at paragraph 4.1), they are misleading. Again, because the dollar value costs are aggregated, they give no idea of the scale involved in each area impacted.

Thirdly, it is inconsistent to refer to an estimated dollar value for the cost of remissions for Category A heritage and community and sporting organisations but for covenanted land to state the number of properties involved (4500+ properties with covenants) and not estimate a dollar value for the cost of remissions. The provision of inconsistent information stops Councillors from understanding the real picture.

Fourthly, referring to figures like 4500 properties with “other types of covenants” and a potential unknown future cost (“significantly more”) alongside additional figures of $3m for Category A heritage and $1.5-3m for community and sporting organisations gives the impression that the potential cost for covenanted land will be huge – since the relevant information has not been collected or analysed and no policy has been formulated - the impression given may well be misleading.

It seems like the information provided and the way it is provided deliberately combines and obfuscates the issues so as to achieve a pre-determined outcome, i.e. to ensure Councillors accept the “proposed Option 2”.

Further, under the heading “3 Legacy remission and postponement schemes”, it is disingenuous to state “Recipients will be informed of any options for additional funding including grants after the transition period.” Clearly current recipients won’t get “additional” funding. Actually the proposal sees current recipients lose their existing funding (which is indirect by way of rates remission). What current recipients may get in future is the ability to apply for a grant from a contestable grants pool (if any).

In the comments below we aim to limit our comments to the issue of the proposed changes impacting covenanted land.

The following key points are missing from the table:
Option 1 (our numbering)

1.1 While Council would make a very small financial saving of $58,928 (plus some reduced admin costs – not quantified) by removing the rates remissions available for private covenanted land, 99 Covenantors would lose their rates remission and the impact of that loss on Covenantors may be huge and far reaching in that some Covenantors may cease to be able to afford the consumables they need to maintain their covenant.

1.2 In addition Covenantors are likely to feel that their efforts are not valued and this may dis-incentivise further conservation work.

1.3 Withdrawal of rates remission is likely to put some potential Covenantors off entering into covenants in future.

Option 2 (our numbering)

2.1 This option is only cost neutral to Auckland Council! As it states in the covering letter “Recipients who are not GST registered will have an effective reduction in Auckland Council support of 13 percent”. Do Council Officers have any idea of the split between GST registered recipients and non-GST registered recipients? Because that is a key piece of information. It is likely that the vast majority of recipients will not be GST registered, which means that the proposed change is a lose/lose for Auckland Council and the Covenantors – the Government gets the 13% as tax into the Consolidated Fund but Auckland Council doesn’t gain anything and loses the goodwill and potentially on-going efforts of Covenantors. Remember that if recipients are GST registered they are likely expensing their costs (rates, labour, and consumables) in any event!

2.2 There is no clarity for Covenantors with this option – just an indeterminate period of uncertainty until a grants scheme is settled on and implemented and then there is no certainty for Covenantors in actually obtaining a grant.

2.3 If Covenantors have to apply for “grants” in future there is the additional cost to Covenantors of “applying” – which is downtime from actually “working on their covenant”. If Covenantors have to apply for “grants” in future who knows what additional costs will be imposed on Covenantors by pre-conditions to an application or indeed conditions of a grant?

2.4 Some Covenantors may not apply for grants (as opposed to a one off remission application) because of the whole “bureaucracy” of the process and distrust of said bureaucracy.

2.5 We note that under table heading “[a]dministrative simplicity” it is stated that “grants would increase but could be managed within current systems”. Putting monitoring to one side, this statement suggests that the current grant resource is under-utilised. But if potentially somewhere in the order of 4600 new Covenantors (figure taken from the consultation document) as well as the 99 existing Covenantors apply for grants we very much doubt that the existing resource will cope. Could formulating the grants scheme, advising potential applicants, assessing grant applications, awarding of grants and making the relevant grant payments (ignoring on-going monitoring) realistically be carried out by the current resource?

2.7 Grants require monitoring which means that the covenants themselves require field monitoring – has this been factored into your table heading “[a]dministrative simplicity”? Can “current systems” manage such monitoring? It is very likely that extra and specialised resource (i.e. ecologists/historic places specialist architects/archaeologists) would be required to consistently undertake field monitoring of covenants. We note that under the current Council Rates Remission and Postponement Policy Council state “Council will inspect the conservation area every two years to ensure that the conservation area is being maintained to the agreed standard in the management plan”. We note that we have never had a Council inspection, perhaps because we have had regular QEII inspections.
Option 3 (our numbering)

3.1 The “key issue” comment: “[i]nequitable as only available in some parts of the region” we accept. Clearly the legal framework indicates that potentially all covenanted land across the region should be non-rateable. That would be equitable. Indeed it is not clear that Covenantors should even have to apply for rates remission. Section 6 of the Local Government (Rating) Act 2002 binds the Crown. Section 8 states “land described in Part 1 of Schedule 1 is non-rateable”. It does not state that landowners may apply to have their land recognised as non-rateable. If land qualifies under Part 1 of Schedule 1 it appears it is ipso facto non-rateable.

3.2 The “key issue” comment: “[r]emissions and postponements are not a transparent mechanism for supporting wider Council goals because they are not prioritised against other expenditure proposals or subject to the same value for money scrutiny” is a concerning statement because there is a potential conflict between Covenantors with very long term goals and the whims of a Council the makeup of which changes regularly and is politicised. This mis-match is exactly the reason why historically some Covenantors have preferred to covenant with QEI.

Option 4 (our numbering)

4.1 The table heading “key issue” comment: “[m]ore equitable because the same level of remissions are available to qualifying ratepayers across the region” presumes no changes in the existing policy and from a reading of the current policy it is apparent that there are actually a number of policies in situ and they are not consistent in and of themselves - so Auckland Council can’t just “extend remissions to the entire region” without undergoing a process of policy harmonisation at the very least.

4.2 Your same comment is set out under table heading “[k]ey issues” under both Options 3 and 4. For the avoidance of doubt we restate the comments set out at 3.2 here as they also apply to Option 4. The table heading “key issue” comment: “[r]emissions and postponements are not a transparent mechanism for supporting wider council goals because they are not prioritised against other expenditure proposals or subject to the same value for money scrutiny” is of concern because there is a potential conflict between Covenantors with very long term goals and the whims of a Council the makeup of which changes regularly and is politicised. This mis-match is exactly the reason why historically some Covenantors have preferred to covenant with QEI.

4.3 Given that Council Officers do not appear to know a great deal about the number and nature of the Covenant in the Auckland Council Region (see below) the estimated costs are at best “guestimates” and at worst, given the inconsistencies that need harmonisation (see 4.1 above), they are misleading. The same can be said for the statements “[i]ncreases rates for all other ratepayers by 0.3 per cent” under the table heading “[m]inimise the effects of change.”

4.4 Amalgamating community and sporting organisations in with the covenanted properties is like trying to compare bananas and monkeys – these issues all need to be completely separated out with their own legal, policy and resource use (Finance, Heritage, Environment) analysis - none of which are referred to AT ALL in what appears to very much be a financially driven (cost saving targeted?) proposal.

Summary and Moving Forward

Clearly “do nothing” is not acceptable to Auckland Council because it is inequitable (and, to a certain extent, that is understandable).

So why then propose to implement a lose / lose option (the three year transition)? What part of that seems like a good idea?
It appears, to us, that the current Option 2 (our numbering) is only an interim measure and it has a lot of immediate downside:

- For Covenantors: immediate loss of 13% of funding (if not GST registered) / on-going uncertainty while grants scheme developed and put in place / future increased costs of having to apply for grants and potential increased costs arising from any grant conditions or pre-conditions for that matter – i.e., will Council in future require “management plans” to be prepared by third party specialist consultants at significant additional cost to the Covenantor or an application fee?;
- For Council: no immediate improvement in situation for Council and Council will have alienated current recipients;

and no upside for any party (except the Government getting an additional 13% in tax on the rates paid into the Consolidated Fund).

A better proposal would be to leave the current rates remission legacy schemes in place until Council’s Officers have actually gathered all the relevant information and assessed it and then drafted a comprehensive new proposal. The reality is, that is what the three year period is all about anyway. In our opinion the proposed change “we are having our say on” is illegal, pre-mature and ill considered.

Prioritise gathering all the relevant information and drafting a comprehensive new proposal so it can be released for consultation quickly and in a more targeted way. Separate out the quite different issues of community, sporting and other organisations providing community services and covenants and have a separate policy development work stream for each.

**Turning to Covenants**

The nature and focus of all existing covenants needs to be gathered and summarised.

1. Currently, according to Auckland Council’s own records, only 99 covenants relating to private covenanted land currently receive a remission at a total cost of $58,928. That’s a long way short of the potential 4,600 covenants and “significantly more” quoted under Option 4 of the table. How much is “significantly more”?
2. The other 4,600 covenants need to be identified and basic information collated on each.
3. The legal position of each covenant needs to be identified i.e. is it a covenant falling under the QEII Act? the RA? the CA?
4. Those 4,600 covenants will potentially include covenants of land for conservation purposes, for archaeological heritage purposes, for architectural heritage purposes and, who knows, there may be other purpose covenants out there (view shaft covenants?, building line restriction covenants? Who knows? – apparently not Council Officers at present!)
5. QEII covenants should be easy to obtain the relevant information on because (as we understand it) QEII have very good records and can supply Council with all the relevant data – address, size, age of covenant, status, status of owner (whether GST registered or not) etc. All Council will have to determine, from its own records, is whether the existing QEII Covenantors have applied for and are currently receiving rates remission on the portion of their land covenanted. Note: not all QEII Covenantors will have applied for and be receiving rates remission.
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We hope this submission is of interest and useful. If you have any queries regarding this submission or require further clarification of points made or elucidation of matters raised please do not hesitate to contact the undersigned.

Yours sincerely,

Noel Lynch
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