

## Legal Services Unit

# Memo

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Date: 1 October 2021

From: Sophie Meares (Senior Legal Counsel)

To: Independent Commissioner for Plan Change 8: Papakāinga / Kāinga Nohoanga Zone

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### Plan Change 8: Papakāinga / Kāinga Nohoanga Zone – Legal issue relating to status of Māori land

1. This memorandum is to assist the Commissioner with the issue of whether a District Plan can require that the status of the land under the Te Ture Whenua Maori Act 1993 (**TTWMA**) be changed.
2. This issue was raised in relation to the submission from J. Cook (S6.3). The submission queried whether there should be some attempt by Council to prevent land that has been developed using Māori land activity provisions may be then on-sold to non-Māori.<sup>1</sup>
3. The section 42A report addresses the planning considerations of this issue, and goes on to note that: “I also understand that rules in District Plans cannot at law require that the status of land be changed under the Te Ture Whenua Māori Act.”<sup>2</sup>
4. In terms of land acquiring Māori customary or Māori freehold land status, sections 131 to 143 of the Act prescribes the limited circumstances in which this can occur. District plan provisions, or any requirement by a local authority, are not included in the list.
5. Section 130 of the Act specifically prohibits land from acquiring Māori customary land or of Māori freehold land status unless expressly provided in the Act or any other Act. There is no legislation empowering a local authority to require a land status change. Therefore, the Council cannot require General land owned by Māori (which will come under the Maori land activity provisions in the proposed plan change) to acquire Māori land status under TTWMA.
6. In terms of alienation/on-sale of Māori freehold and Māori customary land under the TTWMA, it cannot be alienated otherwise than in accordance with the Act.<sup>3</sup> There are specific restrictions on alienation of this land in Parts 7 and 8 of the Act. For example, if owners of Māori land want to sell or gift their interest in the land, they must first notify and offer it to the people who belong to the “preferred classes of alienees” (such as descendants, whānaunga, hapū members, etc), and the seller must then get the Māori

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<sup>1</sup> Paragraph 8.4.5 of the s 42A Report.

<sup>2</sup> At 8.4.10.

<sup>3</sup> Sections 145-147 of the TTWMA.

Land Court's approval for the gift or sale, usually in the form of a "vesting order" that transfers the ownership in the land.

7. For completeness, while there are restrictions on the alienation of land, there are still circumstances in which Māori land could be alienated to non-Māori through for example, Maori Land Court approval and proof of right of first refusal not being exercised. In other words, even if the District plan could require a change of land status under the TTWMA, it would not necessarily prevent alienation to non-Māori as suggested by the submitter.

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