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Report to Policy and Finance Committee
from Councillor Ian Buchanan, Chairperson, Environment Committee

Revision of the Charter of Understanding

1. Purpose

To present a revised version of the Charter of Understanding for adoption by the Council.

2. Background

Report 00.113 to the Policy and Finance Committee on 9 March 2000 outlined a proposal to strengthen the relationship between the Council and tangata whenua. This proposal was adopted and is currently being implemented.

One key aspect of the proposal was a review of the Charter of Understanding between the Te Tangata Whenua o Te Upoko t te Ika a Maui and the Council.

3. The Review

The review of the Charter was required to reflect the changes that have occurred in the relationship between the two parties.

Several key areas that required consideration were:

1. The acknowledgement of the different roles, responsibilities and accountability mechanisms of the Council and Tangata whenua.
2. The acknowledgement of the fundamental difference between the Council and Tangata whenua regarding the interpretation of the Treaty and the obligations that flow from that.
3. An acknowledgement that the Council will maintain an Inter-Iwi forum while developing and strengthening its relationship with individual Tangata whenua groups.

4. The ability to address the addition of Hapu who are not represented by the current Iwi authorities should the need arise.
5. The expansion of the scope of the Charter to cover the following areas of Council business:
 - Environmental Management
 - Land Management
 - Flood Protection
 - Regional Parks
 - Regional Transport Outcomes
 - Regional Water Supply Outcomes

Over the past 5 months Ara Tahi has considered amendments to the original Charter. This has culminated in a new Charter, which was adopted at Ara Tahi on 19 July 2000 (Attachment 1). All changes have been robustly debated.

Ara Tahi proposed that the parties should sign the revised Charter at a formal ceremony after the Council and Iwi authorities formally adopt it, probably in November this year. The original signatures will remain as a key part of the Charter.

4. Communication

The outcome of this report will be communicated to the Iwi members of Ara Tahi.

5. Recommendations

- (1) *That the Committee recommends that Council adopt the revised Charter as set out in Attachment 1 to this report.*
- (2) *That the Committee recommends that Council holds a formal ceremony to acknowledge the revised Charter.*

Report prepared by:

CR IAN BUCHANAN
Chairperson, Environment Committee

Attachment: 1

The Charter of Understanding

The Charter of Understanding¹

between

**Te Tangata Whenua o
Te Upoko o te Ika a Maui**

and

Wellington Regional Council

July 2000

¹ This version of the Charter replaces the original Charter of Understanding November 1993.

Purpose

1. The purpose of this Charter of Understanding is to develop a relationship of mutual benefit between the Wellington Regional Council and the mana whenua tribes of Te Upoko o te Ika a Maui. This relationship will occur in two distinct ways, firstly on a one to one basis between tangata whenua and Council and secondly within the collective forum of mana whenua tribes and Council.
2. The Charter establishes and provides for a clear understanding of the basis and ongoing conduct of the relationship between the Council and tangata whenua, in the context of the Treaty of Waitangi, Te Tiriti o Waitangi, and the legislation which gives functions, duties and powers to the Wellington Regional Council.

Background

3. The Treaty of Waitangi, Te Tiriti o Waitangi, is the founding document of Aotearoa/New Zealand. It provides for the exercise of kawanatanga, governance, by the Crown, while actively protecting te tino rangatiratanga, full authority, of the Iwi in respect of their natural, physical and metaphysical resources.
4. The Wellington Regional Council is constituted under the Wellington Region Reorganisation Order 1989, and its functions and responsibilities are set out in that Order and a number of statutes. The principal legislation affecting the Council is as follows:
 - Biosecurity Act 1993
 - Land Transport Act 1998
 - Local Government Act 1974
 - Maritime Transport Act 1994
 - Resource Management Act 1991
 - Soil Conservation and Rivers Control Act 1941
 - Transit New Zealand Act 1989
 - Wellington Regional Water Board Act 1972
5. Since the establishment of the Charter, the relationship between Iwi and the Council has been based on the obligations outlined in the Resource Management Act 1991. However, in practice the relationship has covered a much wider range of Council activities. This is now formally recognised by expanding the Charter to include other areas of Council business. These include Environmental Management, Land Management, Flood Protection, Regional Parks, Regional Transport Outcomes and Regional Water Supply Outcomes.

- 5A. Although the areas of Council business included in the relationship have been expanded, the specific provisions of the Resource Management Act 1991 relating to Māori remain important components. The Council's commitment to these provisions is outlined in the Regional Policy Statement.

The Parties

6. The Wellington Regional Council is represented by its elected Council.
7. The tangata whenua tribes are known as: Ngati Kahungunu ki Wairarapa, Te Atiawa/Taranaki ki Te Upoko o te Ika a Maui, Ngati Toa Rangatira, Te Atiawa ki Whakarongotai, Ngati Raukawa ki te Tonga and Rangitaane o Wairarapa. This group will be referred to as: Te Tangata Whenua o te Upoko o te Ika a Maui, or simply the tangata whenua of the Region.
8. These tribes are at present represented by the following organisations:
- Ngati Kahungunu is represented by Ngati Kahungunu ki Wairarapa;
 - Te Atiawa/Taranaki ki te Upoko o te Ika a Maui is represented by the Wellington Tenth's Trust/Nga Tekau o Poneke and Te Runanganui o Taranaki Whanui ki te Upoko o Te Ika a Maui Inc.;
 - Ngati Toa Rangatira is represented by Te Runanga o Toa Rangatira Inc.;
 - Te Atiawa ki Whakarongotai is represented by Te Runanga o Ati Awa ki Whakarongotai Inc.;
 - Ngati Raukawa ki te Tonga is represented by Te Runanga o Raukawa Inc.;
 - Ngati Rangitaane is represented by Rangitaane o Wairarapa Inc.
9. The tangata whenua of this Region are independent tribes which each maintain their own mana.
10. All parties remain open to the possibility of new parties joining Ara Tahi. If a new party communicates to the Council their desire to join Ara Tahi, their request will be brought to Ara Tahi. Ara Tahi will then decide on a process to determine whether such a group will be invited to be part of Ara Tahi and a signatory of this Charter.

Goals and Objectives

11. The Council and tangata whenua of the Region have a common goal. It is the sustainable management of the Region's environment for the benefit and the well being of the regional community, both now and in the future.
12. In pursuit of this goal, the Council and tangata whenua of the Region agree that within their collective and individual relationships the following will apply:

- (1) The relationship will be mutually beneficial.
- (2) The relationships are based on good faith, co-operation and understanding.
- (3) There is commitment to work towards solutions with reasonableness and honesty of purpose.
- (4) All parties respect and seek to accommodate different cultural values and ways of working. They recognise a range of philosophies and practices of environmental management, and acknowledge that tangata whenua groups are working to restore a tribal environmental management system.
- (5) There are different forms and levels of tangata whenua representation ranging from the inter-iwi, to iwi, to hapu, which may need to be accommodated separately.
- (6) Individual relationships will be given greater priority.

Principles for the Relationship

Principles of the Treaty of Waitangi

17. The Treaty of Waitangi contains three articles. There are two versions of the Treaty - the English and the Māori. Neither translation is an accurate translation of the other.

The international rule of *contra preferendum* requires that any international Treaty that has two interpretations should be recognised in the language of the Indigenous Peoples. The New Zealand Government has chosen not to apply this rule to the Treaty of Waitangi. Instead, they have decided to extract principles from the Treaty text as a basis for interpreting the Treaty.

The fourth Labour Government first enumerated the principles. The Court of Appeal and the Waitangi Tribunal have since expanded upon them.

Iwi and the Council now use Treaty principles in their dialogue. However, tangata whenua maintain the primacy of the Māori version of the Treaty of Waitangi and will continue to state that the Treaty terms are valid and important and guide the relationship between the Council and themselves. Tangata whenua maintain that tino rangatiratanga must be given priority and opportunities for its exercise.

The parties acknowledge that there will continue to be differences between the Council and tangata whenua regarding the interpretation of the Treaty and the obligations that flow from it.

18. The parties recognise that understanding of the principles of the Treaty of Waitangi is a developing area and new principles may emerge as the meaning and intent of the Treaty is further defined.

19. The principles of the Treaty describe a dynamic relationship between the treaty partners, recognising that the Treaty is a living document.
20. Council and tangata whenua may, with mutual agreement, decide to develop and adopt further principles.
21. The following principles are of primary significance for the conduct of the relationship:
 - **The “Essential Bargain”**. The Treaty has been likened to an exchange of interests. It can be interpreted from the Court of Appeal that Maori ceded sovereignty and the right to govern, in return for guarantees that the Crown would protect rangatiratanga.

The parties understand the powers and functions of the Council to be expressions of kawanatanga. However, the parties recognise that the Council is limited by statute in its exercise of kawanatanga. (Its powers are more limited than those of city and district councils.)

The essential bargain is in the nature of an exchange and a recognition of respective rights. The operation of this principle would include “rangatira to rangatira” interaction between Council and Iwi representatives.

- **The Partnership/Mutually Beneficial Relationship** principle imposes a duty on both tangata whenua and the Council to interact in the best possible way with reason and respect. This is reflected in the Goals and Objectives, which set out the parameters of the relationship.
- **Shared Decision Making** is a principle implied in the requirement to balance the kawanatanga role of Article I of the Treaty and the rangatiratanga role of Article II of the Treaty.

Council will seek to achieve the principle of shared decision making.

- **Active Protection** requires that the Crown duty of protection of tangata whenua interests in resource management is not simply a passive one but is in all senses active to the fullest extent practicable.

The Council will recognise the need for active protection to be considered in developing its policies and plans.

- **Tribal self regulation** principle recognises that tangata whenua may wish to retain responsibility and control of the management and allocation of their resources.

Application of this principle requires those exercising kawanatanga to recognise the exercise of rangatiratanga by tribal groups, and for those exercising rangatiratanga to recognise kawanatanga.

In exercising rangatiratanga and kaitiakitanga, tangata whenua are not bound to just the methods and technologies available at the signing of the Treaty of Waitangi but have the right to take advantage of new technology.

Implementing the Principles

Representation

22. Representation refers to the mechanisms which provide for individuals and groups authorised to speak for tangata whenua to participate in Council decision making processes. The nature of that participation is outlined below.
23. Iwi representation will be undertaken through a variety of mechanisms, some of which are listed below. These mechanisms take account of the principles of partnership and shared decision making, and the independence and diversity of the Iwi organisations.

- **“One-to-one” Relationship between Individual Iwi and Council.** The Council will give priority to developing a direct relationship with each Iwi of the Region. This relationship will be based on ongoing dialogue focusing on specific local issues and how the Council and Iwi can work together to improve these local issues. In each case the mechanism of representation may differ, as agreed between the Council and that Iwi.
- **Ara Tahi.** The purpose of Ara Tahi includes the following:
 - To provide policy advice to the Council
 - To act as a forum for collective discussion

Ara Tahi will consist of representatives from each Iwi and members of the Policy and Finance Committee (ie all Councillors).

The group will meet several times a year. There will be the opportunity for additional meetings to be held, at the request of any Iwi representative or Council member.

- **Iwi Representatives at Council Meetings.** Within the framework of Council standing orders, Iwi representatives will have the right to address any committee meeting or meeting of the full Council. This right is in addition to the right that members of the general public have to make statements at Council meetings. This initiative may arise in two ways:
 - Ara Tahi may identify matters to be raised and Iwi members of that group would present the matters to the appropriate Council meeting.

- Representatives of one Iwi may have matters to raise at a Council meeting. Individual Iwi would not have to go through Ara Tahī to talk directly to Council.
 - **Council Representatives at Iwi Meetings.** In implementing consultation on a “rangatira to rangatira” basis, Council and Iwi representatives may meet to discuss matters of mutual importance on the marae or other venue nominated by the tangata whenua.
 - **Working Parties.** Working parties will be established, with the mutual agreement of Council and tangata whenua, to facilitate Iwi input into the preparation and review of policies and plans.
- 23A. All parties remain open to the consideration of other forms of representation if mutually suitable mechanisms can be identified. Such mechanisms could include Iwi appointments to Council committees and the use of Māori hearing commissioners.
24. All parties retain the right to choose their own representatives. Both tangata whenua and Council recognise that those representatives are authorised to speak for their respective organisations.
25. Council staff members involved in facilitating liaison between Council and tangata whenua do not act as representatives of Iwi views.

Consultation

27. Consultation involves:
- A genuine invitation to give advice and a genuine consideration of that advice.
 - The provision of sufficient information and time for the consulted party to be adequately informed, to appraise the information and make useful responses.
 - The party obliged to consult, keeping its mind open, being ready to change and seeking at least consensus.
28. Consultation is not simply informing tangata whenua of impending actions. The duty is an active one. Council must consult early and in good faith, as is implied in the partnership principle. Council will continue to consult with tangata whenua at all stages of the preparation and review of policies and plans, and with regard to resource consents as required.
29. To facilitate consultation the Council will:
- Acknowledge that tangata whenua have a status as Treaty partner, beyond that of interest groups and the general public.

- Acknowledge the different levels of iwi, hapu and whanau decision-making structures and recognise that each level may have different needs for consultation. The Council will liaise with the affected iwi, hapu or whanau in dealing with site-specific issues.
 - Have regard to environmental management plans prepared by Iwi authorities, and consider the need to support tangata whenua in the preparation of such plans.
30. The Council will, in regard to consultation over resource consents, and subject to the time constraints contained in the Resource Management Act 1991:
- Ensure that sufficient information is provided by a resource consent applicant on any potential impacts on the tangata whenua.
 - Encourage applicants to consult with the affected iwi, hapu or whanau as part of the assessment of effects, by directing them to the appropriate tangata whenua and advising on suitable consultation approaches.
 - Have regard to the effects on tangata whenua, in assessing whether resource consent applications should be notified or non-notified.
 - As a matter of course, provide a list of notified resource consent applications to each Iwi authority so that they may assess which are of interest to them.
31. Tangata whenua will:
- Use the consultation provisions of the Resource Management Act 1991 in a positive and proactive way where possible.
 - Provide, where resources and time allow, clarification on resource management matters of regional significance.
 - Identify appropriate contact persons within each Iwi, who will receive information, disseminate it and ensure that Council is kept adequately informed.
 - Recognise the time constraints which govern the resource consent application process.

Conflict Resolution

32. There may be situations where the Council's kawanatanga powers and responsibilities conflict with the rangatiratanga interests of tangata whenua. In such instances, the parties should endeavour to reconcile differences through dialogue, mediation and negotiation. Litigation should always be seen as a last resort.

Resources

33. In recognition of the partnership and active protection principles, Council will provide resources to tangata whenua to facilitate their involvement in Council business. Resources in the context of this Charter may include the provision of technical advice, expertise, information and financial support. Resourcing will be mutually agreed and within accountability requirements, including those of quality and timeliness.
34. Council and tangata whenua recognise the limitations and constraints on each partner in respect of resources. Frequently, tangata whenua do not have the resources, either financial or human, to respond adequately to consultation requirements. For its part, the Council's resources, derived primarily from rates, are limited. Council must set priorities and demonstrate accountability.
35. Appropriate areas where Council may agree with tangata whenua on the provision of resources, for Iwi input, are:
- preparation and review of regional policies and plans;
 - provision of administrative servicing, travel and meeting allowances for the meetings of Ara Tahi.
 - provision of technical assistance and advice in the preparation of Iwi environmental management plans;
 - general provision of information and advice, and assistance in interpreting and using that information.
 - **comments on Council documents and policies**
 - input into the LTFS and Annual Plan processes
 - any reviews of the Charter
 - payment for consultation when Wellington Regional Council is an applicant for a resource consent
 - individual work-plans between each Iwi and the council. Both parties will agree upon projects.
36. In some circumstances, Council and tangata whenua may see contracting as appropriate. The normal rules of contact and performance criteria would apply. In the case of a dispute, a group made up of two tangata whenua and two Council nominees could seek resolution. Parties should avoid recourse to legal processes to resolve conflict.

Protection of Sensitive Information

44. From time to time tangata whenua may provide Council with sensitive and confidential information, e.g., concerning waahi tapu or other sites of significance, or aspects of tikanga Maori. The Council will undertake to protect such information in its care and restrict access to it, in accordance with

the Local Government Official Information and Meetings Act 1987 (s7) and the Resource Management Act 1991 (s42(1)(a)).

45. The Council will give due respect and recognition to “silent files” or plans held by tangata whenua.
46. Tangata whenua will undertake to protect any sensitive or confidential information that Council may give to them.

Education and training

47. In pursuing a mutually beneficial relationship it is acknowledged that each party continues to learn more about the other and to explore common areas of interest. One of the ways that this can occur is through ongoing systematic training for Councillors and council staff on matters of Māori interest and Māori tikanga.
48. A number of issues arise during the course of work that require further discussion. To this end the parties agree that the establishment of technical workshops to provide similar researched information to both parties and to discuss an outcome are appropriate. Several will be run each calendar year. Both the Council and Iwi will be responsible for running these workshops.