

## Extract from the Council Meeting minutes 11 December 2018 – pgs 28-36

### 6. Whanganui Land Settlement Negotiation Trust – Update

Leighton Toy and Marama Laurenson, General Manager, Property and Strategic Lead, Culture and Community reports:

#### **Executive summary**

The Whanganui Land Settlement Negotiation Trust (WLSNT) is in the process of negotiating its claim with the Crown. On 23 October 2018, Hon. Rick Barker, Crown Negotiator and officers of the Office of Treaty Settlements provided Council with a presentation outlining the issues and the process leading up to the Agreement in Principle.

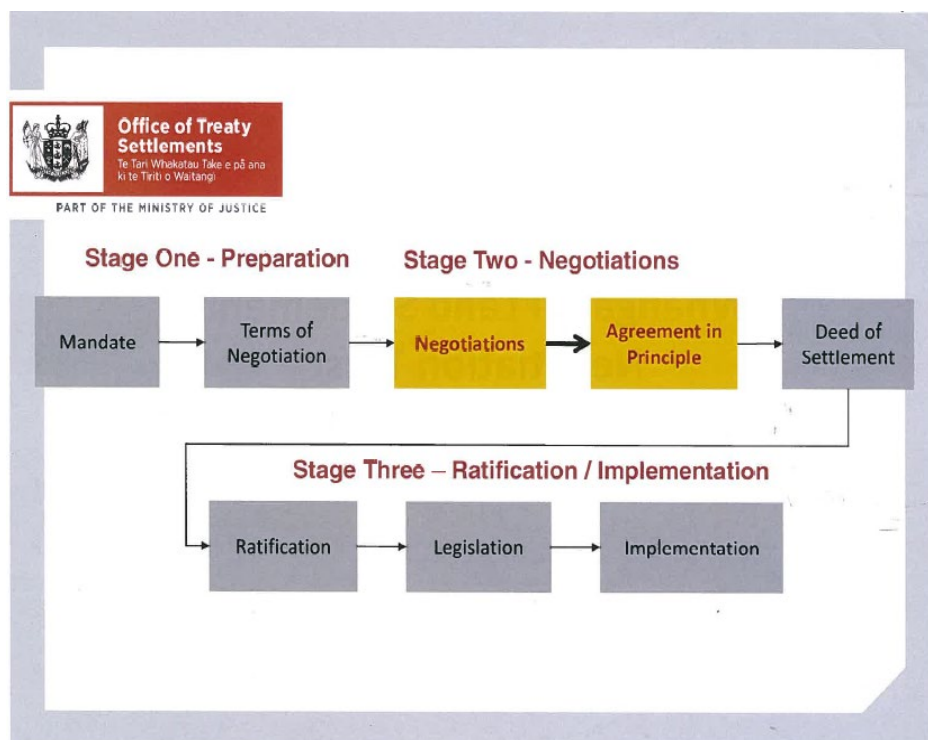
At the conclusion of the settlement process the WLSNT will be wound up and a post-settlement governance entity will be established to receive the settlement redress.

The purpose of this item is to acknowledge that Iwi will be soon entering into an Agreement in Principle with the Crown which is intended to include the matters cited in the recommendations of this Report.

#### **Background**

The WLSNT is the entity responsible for the negotiations in the settlement process with the Crown.

The land settlement negotiation process has a number of key steps as cited below.



The WLSNT has been mandated and finalised the Terms of Negotiation with the Crown. It is in the process of negotiating the Agreement in Principle (AIP). This stage of the process is expected to be completed early 2019.

#### *The Agreement in Principle*

Once the AIP is signed, it will be the basis of a draft Deed of Settlement, as the AIP sets out proposed terms for settlement and terms of redress, between the settlor and the Crown.

Redress outlined in the AIP may take the following forms:

- Financial and commercial redress.
- Historical account.
- Acknowledgement and apology.
- Cultural redress.
- Relationship redress.

#### Te Tomokanga ke te Matapihi

Whanganui Land Settlement Values:

- Toitū to Kupu (innate integrity).
- Toitū to Mana (inherited authority).
- Toitū te Whenua (physical and metaphysical sustenance).

This whakatauki is the exemplar for Whanganuitanga: “the permanence of the absolute word, ensures the retention of chiefly authority guaranteeing the survival of the tribal domain.

#### Whanganui Land Settlement Aspirations

WLSNT seek the return, purchase or co-management of important cultural properties within the tribal rohe:

- Return of previously identified sensitive land around the Airport (**Ref D**) which a previous Mayor had promised to return as part of a support agreement.
- A First Right of Refusal to purchase any Harbour and City Endowment land should the Whanganui District Council decide to sell.
- Pākaitore.

The ownership of Pākaitore has been vested in the Crown, with joint management between Council, Iwi and the Crown.

#### Land Reserves

WLSNT propose co-management with Whanganui District Council over the following reserves:

- Pukenui Queens Park.
- Kokohuia Wetlands.

- Gonville Domain.
- Horrocks Park Reserve.

WLSNT are seeking the potential vesting of some of the Crown-owned reserve land at Mowhanau / Kai Iwi Beach, with specific sites and administration arrangements to be confirmed. These Reserves in question are generally Whanganui District Council administered with the land titles a mix of Crown / Whanganui District Council owned land.

#### Lake Trust

WLSNT wants to protect and preserve Lakes Wiritoa, Pauri, Westmere (Roto Mokia) and Virginia Lake in partnership with Whanganui District Council.

#### Partnership in Social Investment

WLSNT's vision is to improve the wellbeing and prosperity of the Whanganui community and considers the Whanganui District Council as a natural partner. WLSNT seek a strategic tripartite relationship with Whanganui District Council and relevant Crown agencies to explore an integrated approach to the provision of social services. This relationship could be formalised through a social entity to operate strategically, not operationally.

#### Relationship Agreements

Relationship agreements between claimant groups, Crown and the public sector agencies are a feature of AIP's and are a standard part of Treaty Settlements. Relationship agreements can often reflect existing relationships an Iwi has developed and built overtime and are generally negotiated and agreed to post AIP signing.

#### Next steps

The Crown seeks feedback from Whanganui District Council on considering the WLSNT's aspirations to:

1. Develop a Relationship Agreement.
2. Return previously identified sensitive land around the Airport. **(Ref D)**
3. Provide Iwi with a First Right of Refusal to purchase Harbour or City Endowment lands should Council consider selling.
4. Support the vesting of Pākaitore to WLSNT.
5. Pukenamu / Queens Park being jointly managed by WLSNT and Council.
6. Enter into co-management arrangements for identified reserves.
7. Set-up a Lakes Trust with WLSNT and Council for identified lakes.
8. Explore the creation of a social entity with WLSNT, Council and the Crown.

#### **Options**

For each of the referenced "next steps", Council has the opportunity to indicate to the Crown its constructive support for and negotiate mutually appropriate terms to take the claimant process and its settlement into account with respect to items relevant to Council's jurisdiction in the draft AIP.

#### Develop a Relationship Agreement

The impact of a Relationship Agreement is a positive objective – to achieve a mutually appropriate relationship with shared objectives to account for claimant expectations aligned to building the community together.

#### Return previously identified land around the Airport

A previous Mayor made an agreement with the claimant group to return the land of cultural significance. Council officers have been investigating a methodology to achieve a robust transfer process. It is expected that the Office of Treaty Settlements will provide support through the draft Deed of Settlement. Council support the lands being transferred with the support from the Office of Treaty Settlements to facilitate the legal mechanisms.

#### Provide the post-settlement governance entity with a First Right of Refusal to purchase Harbour and City Endowment lands should Council consider selling

The process for First Right of Refusal needs to be investigated so that it is conducted in a mutually appropriate way – and, in particular, the impact on the private sector and market realities will also need to be taken into account in a transparent system.

#### Support the vesting of Pūkaitore to WLSNT

Pūkaitore Historic Reserve is owned by the Crown and jointly managed by the Crown, Iwi and Council.

#### Pukenamu Queens Parks being jointly managed by WLSNT and Council

In principle, this is consistent with the objective for the overarching intention for co-management of identified reserves.

#### Enter into co-management arrangements for identified reserves

In principle and subject to a legal review of ownership, co-management of identified reserves may be developed to ensure continuity of use as a public amenity. Council, the Crown and iwi will need to jointly consider a preferred mutually acceptable model for co-management going forward.

#### Set-up a Lakes Trust with WLSNT and Council for identified lakes

Like co-management of identified reserves, Council should support this in principle subject to the development of a mutually acceptable model to ensure the continuity of public use and access in a culturally appropriate way.

### **Key issues**

The claimant process undertaken by the Whanganui Lands Negotiation Settlement Trust is creating a significant step in the collective journey of building nationhood between the Treaty partners. Acknowledgement and recognition of it by Council participating effectively and respectfully in the process in good faith is key to building a shared future together in the Region as a whole. It is a benefit to the claimant iwi and the community that Council provide leadership to align with the aspirations and expectations of the WLSNT. In order that Council may achieve this, Council officers will

be required to work closely with the Office of Treaty Settlements to deliver effective models, to account for:

- Methodology for transfer of lands under a First Right of Refusal regime.
- Effective models for co-management of reserves and lakes, and with whom they may be conducted (particular hapu within the iwi will have mana whenua).
- A mutually appropriate model for a Relationship Agreement to both recognise the expectations of the settlement process in a way that aligns with Council's statutory obligations, that together will benefit the community as a whole.

### **Next steps**

The Office of Treaty Settlements is leading the Crown's settlement process with the claimants. The Office of Treaty Settlements requires feedback from this meeting so that it may progress to the next stage, to have the Agreement in Principle agreed, that will then lead to a Draft Deed of Settlement. Council will be advised by the Office of Treaty Settlements when the final AIP is produced.

### **References**

- D Aerial showing previously identified sensitive land around the Airport

## SUMMARY OF CONSIDERATIONS

### **Fit with purpose of local government**

This decision aligns with section 4 of the Local Government Act 2002 (Treaty of Waitangi) which recognises and respects the Crown's responsibilities to take appropriate account of the principles of the Treaty of Waitangi.

Link: Section 10 of the Local Government Act 2002

### **Fit with strategic framework**

Select checkboxes to indicate whether the decision / report contributes, detracts or has no impact

	Contributes	Detracts	No impact
Leading Edge Strategy	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Long-Term Plan	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Infrastructure Strategy	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Economic Development Strategy	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other Policies or Plans	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Link: Leading Edge Strategy

Link: Leading Edge Strategy Toolkit

Link: Policy and strategy documents

### **Risks**

No risks apply

### **Treaty of Waitangi**

The Council will take into account the principles of the Treaty of Waitangi in its decision making and service delivery processes.

### **Policy implications**

The decisions of this paper support collaboration and partnership with our local Iwi.

### **Financial considerations**

Nil

Approved in LTP / AP

Unbudgeted  
\$

### **Legal implications**

The decisions within this paper provide Council support to our local Iwi's aspirations. There will be legal implications that require consideration once further detail on each resolution has been provided / worked on.

### **Significance**

The recommended decision is considered not significant as per Council's Significance and Engagement Policy.

Link: Significance and Engagement Policy

Link: Determining significance overview

### **Engagement**

This paper looks to provide Council support of the Whanganui Land Settlement Negotiation Trust aspirations. As further detail on each aspiration is shared with Council, Council will need to give consideration as to the level of required engagement, and with whom.

Link: Significance and Engagement Policy

## Discussion

Mayor McDouall expressed his disappointment at the release of confidential information presented in a Council workshop by Hon. Rick Barker, Crown Negotiator and officers of the Office of Treaty Settlements that outlined the issues and process that would lead to an agreement in principle.

Mr Toy responded to questions of clarification. Discussions were required to define the areas of reserve referred to at Kai Iwi Beach. Recommendation 6.4 acknowledged that the Council would consider a first right of refusal and would discuss with the Office of Treaty Settlements and/or Iwi how that could be implemented. Should local Iwi identify land and the Council agree to those properties being part of the settlement, those properties would be transferred to the Office of Treaty Settlements. If endowment properties, legislation required the money to be transferred at the current market value. Capital funds from a sale would be retained in the portfolio to invest in other property. How best a co-management of lakes and reserves would work would require discussion. From a Council perspective, it would need to be ensured that any governance structure was not onerous nor a burden on either the Council or the community. Recommendation 6.9 supported exploring a cross sectoral governance model for a social provider entity. The concept in principle was localised social services' decision-making.

Mr Toy said if the recommendations were adopted, each would require 'round table' discussion with Iwi, consultation with the community with outputs reported back to the Council. In terms of consultation, each decision would stand on its own merits.

Reference was made to Recommendation 6.9 regarding the exploration of a cross sectoral governance model for a social provider entity. There was agreement that the word 'tripartite' be added to the cross sectoral governance model.

Mayor McDouall, seconded by Cr Duncan, proposed all recommendations, 6.1 to 6.9. Mayor McDouall agreed with a request that each motion be taken separately.

Mayor McDouall said adopting these recommendations would enable inclusion in an agreement in principle that formally would give the 'green light' for discussion. Potentially this meant Government money would flow into Whanganui for the benefit of all. He encouraged Councillors to learn more about this process and urged support for the nine motions.

Cr Anderson noted concern at the process and the consequences of land transfer concerned him. He considered first right of refusal for endowment property would far outweigh the benefits and, rightly or wrongly, would split the community. He had asked Mr Barker (Chief Negotiator) whether any financial benefit would filter down to those disadvantaged and the answer had been 'no'. Cr Anderson said he could not support Recommendations 6.3, 6.4 or 6.6.

Cr Vinsen had two concerns. He said the public would need to be reassured of continued unfettered public access to any of the areas of parks and reserves deemed to be part of

these negotiations. Referring to exploration of a cross sectoral governance model, Cr Vinsen considered this a dangerous path for the Council to follow that would transfer responsibility from the taxpayer to the ratepayer. Shifting the burden to the ratepayer should be resisted at every opportunity.

Crs Chandulal-Mackay, Reid, Joblin, Young, Taylor and Duncan spoke in support of the recommendations. Cr Chandulal-Mackay believed entering into a relationship with the Whanganui Land Settlement Negotiation Trust was the appropriate process and referred to Council's obligation under the Local Government Act to take into account the principles of the Treaty of Waitangi. He hoped the community would have some empathy of the effects on many Maori people through intergenerational injustice, harm and hurt that had occurred without apology. He believed Local Government had to play a part in this healing process. For those who had reservations on this process, Cr Young noted the value of reading even the summary document of the three volumes of He Whiritaunoka: The Whanganui Land Report. Cr Duncan agreed with Cr Young's comment and said to provide an opportunity for better understanding, publishing the summary document on the Council's website could be considered.

The motions were put separately.

**Significance of decision** – In terms of the Significance and Engagement Policy 2018, the decision is not significant.

### **Council's Resolution**

Proposed by Mayor McDouall, seconded by Cr Duncan:

- 6.1 THAT Council notes that the Whanganui Land Settlement Negotiation Trust is in the process of negotiating its land claim with the Crown.  
CARRIED
- 6.2 THAT Council enters into a Relationship Agreement with a post-settlement governance entity which will be informed by Te Tomokanga ki te Matapihi (Whanganui Land Settlement Values).  
CARRIED
- 6.3 THAT Council considers the transfer of 128 hectares of grazing land on Airport Road and South Spit to Whanganui Land Settlement Negotiation Trust. The land forms part of, and is included in, Identifier 357927, Wellington Registry.  
CARRIED  
Cr Anderson voted against.
- 6.4 THAT Council considers the advice of the Office of Treaty Settlements that Whanganui Land Settlement Negotiation Trust request a First Right of Refusal for the purchase of any Harbour or City Endowment land.  
CARRIED  
Crs Anderson and Bennett voted against.



6.5 THAT Council understands the intention of there being continued unfettered public access and supports the vesting of Pākaitore to a post-settlement governance entity.

CARRIED

6.6 THAT Council understands the intention of there being continued unfettered public access to and supports the progression of vesting of some or all Crown owned reserve land at Kai Iwi Beach.

CARRIED

Cr Anderson voted against.

6.7 THAT Council considers opportunities for joint management relationships with Whanganui Land Settlement Negotiation Trust's post settlement governance entity for particular reserves that may be identified as significant to the beneficiaries of the Trust.

CARRIED

6.8 THAT Council considers setting up co-governance arrangements for identified lakes and reserves with Whanganui Land Settlement Negotiation Trust's post settlement governance entity.

CARRIED

6.9 THAT Council supports the exploration of a tripartite cross sectoral governance model for a social provider entity that includes the Whanganui Land Settlement Negotiation Trust's post-settlement governance entity with Central Government agencies.

CARRIED

Crs Bennett and Vinsen voted against.

**ACTION: Leighton Toy**