
Te Uri o Hau - Kaipara District Council

Memorandum of Understanding

An agreement which documents the commitment of a District Council and a local hapū/iwi to work together to support local people and the future of the Kaipara District..

The Parties

Kaipara District Council

Te Uri o Hau, Ngāti Whātua

Te Rūnanga o Ngāti Whātua

Background

As part of facilitating the settlement of Te Uri o Hau's claim¹⁶ against the Crown, the Office of Treaty Settlements approached Kaipara District Council to discuss the Council's relationship with the hapū. Around the same time the new Mayor of the Kaipara District sought to strengthen Council's relationships with its local communities, including iwi.

To support the Mayor's new direction, Council agreed to enter into a Memorandum of Understanding (MOU) with Te Uri o Hau, a Northland hapū of Iwi Ngāti Whātua. Up until this time there had been little formal recorded contact between Te Uri o Hau and the Council. Out of initial discussions between the Interim Trustees of Te Uri o Hau and the Council came a clear commitment to develop an action-focused document with measurable outcomes that would provide a strong platform for ongoing relationships and future working together. Both sides then instructed their staff to jointly prepare an MOU based on some key criteria which included mutual respect and understanding for each other's values and statutory roles.

A consultant, who was already contracted to Te Uri o Hau, was engaged to facilitate the MOU development process. However, after some time, it became apparent that neither side was happy with the way meeting notes and the draft MOU were being put together. Key staff from both organisations made a decision to instead run the process themselves without a facilitator.

Benefits of Putting Pen to Paper...

- a strong working relationship based on openness and trust;
- formal recognition of the Treaty of Waitangi as the basis through which both organisations come together and work together;

¹⁶ Te Uri o Hau settled its historical grievances with the Crown in 2002. Since then the tribe has been developing commercial partnerships in order to maximise the return to beneficiaries for a self sufficient, sustainable and prosperous future for all tribal members.
From <http://www.uriohau.com/about/index.htm>

- creation of a foundation document to guide the ongoing relationship between both organisations;
- ongoing processes for working together and making decisions;
- clarification of the key principles upon which the relationship will be based.

Putting it Together...

The Council team involved with the MOU development agreed that the MOU did not have to be written in 'local government-ese' and that it was more important for both sides to have a shared understanding of what the words actually meant. After a few meetings the Council team asked the Te Uri o Hau team if they wanted to do the drafting for the Council team to consider. From this point on the document was drafted by Te Uri o Hau and then brought back to meetings for discussion, clarification and agreement.

"Some words were changed, but there were not many arguments from iwi over words. For us the important thing was the intent of the document."

- Esther Grey, CEO Te Uri o Hau Settlement Trust Board.

The ambitious nature of the agreement is reflected in its wording that "resolve and genuine intent" will get the parties through the "obstacles and difficulties that lie in wait" (*from the MOU*).

The agreement is in two parts. The first is a one page Memorandum of Understanding or statement of commitment to working together. The second part is a management plan for how the MOU will be practically implemented. The latter document covers areas such as shared decision making, issue resolution, protecting sensitive information, and evaluation.

The MOU was signed at the Council in May 2002 and included a ceremony involving both Council and iwi representatives from both Te Uri o Hau and Te Rūnanga o Ngāti Whātua¹⁷.

Key Agreement Features...

- an introduction to the Memorandum in both Māori and English;
- a clear statement of individual principles that guide each organisation as well as a shared set of values;
- the body of the MOU reflects the voice and spirit of people rather than lawyers;
- includes a commitment to monitor both relationships and outputs from the MOU process;
- includes a cycle of quarterly meetings at the operational level and an annual hui at the governance level to consider the upcoming Annual Plans of both parties;
- notes the importance of "early warnings" around key issues.

Biggest Challenges...

- Time and capacity for both sides to collectively engage on:
 1. a vision for Kaipara and the strategies required to achieve that vision;
 2. mutually beneficial service delivery that will advance local community outcomes

¹⁷ The MOU notes that Te Rūnanga o Ngāti Whātua is the representative body and authorised voice to deal with issues affecting the whole of Ngāti Whātua iwi. Te Uri o Hau has the leading role within its area of interest (defined by its Treaty settlement claim, which includes the Kaipara District), supported by its Iwi Ngāti Whātua. For this reason, both hapū and iwi are signatories to the MOU with the Council.

identified under the Local Government Act 2002;

- resourcing for both sides to enable the potential of the agreement to be fully realised eg. transfer of resource management functions under section 33 of the Resource Management Act 1991;
- redressing the relationship between the Council and iwi. Before 1996, there had been no formal recognition of Te Uri o Hau or Ngāti Whātua by Kaipara District Council. Working out what 'equality' means for both relationships and resources is an ongoing process.

Things That Helped...

- clear mandates from the leadership of both organisations to establish a long term partnership and meaningful relationships;
- whilst acknowledging the complexity of iwi/Council relationships, developing an agreement that was simple and focused on reinforcing the underlying vision for working together;
- giving the pen to Te Uri o Hau and enabling them to develop the MOU in a way that mattered to them.

"This is a document of honour and mutual respect between consenting parties. Optimism invites confidence that the benefits and simplicities of this memorandum far outweigh the obstacles and difficulties that lie in wait."

- from the introduction to the MOU

What Has Happened Since...

In terms of practical actions there is a greater shared understanding of both iwi and council processes, structures, and directions. Skill sets have also been shared.

In 2003, the Council paid for Te Uri o Hau representatives to co-present with Council on their agreement at the annual Local Government New Zealand Conference. This was seen as symbolic of the partnership between the parties and very empowering for those who attended. Council also provided resourcing in 2003/4 for iwi and hapū groups to participate in community outcomes projects that focused on the provision of youth services, access to community services, and tourism support. For its part, Council established staff training workshops around the Treaty and Te Reo. In the first year quarterly and annual meetings were held as scheduled. Both organisations now come together just once a year on the marae to evaluate progress and relationships. Generally speaking most of the contact now takes place at chief executive and management levels across both organisations with little direct iwi engagement with elected councillors.

"Meetings don't take place as often as they used to but there is an open and frank relationship between Council and Te Uri o Hau. As Chief Executives of our respective organisations, we have trust and confidence in each other. If there is anything of concern we just pick up the phone and talk."

- Jack Mckerchar, Chief Executive Kaipara District Council

On reflection both sides feel that the agreement process has been very useful. Although it is seldom referred to anymore it still provides the key vehicle for the relationship.

However, frustrations exist on both sides that resourcing continues to constrain the implementation of some of the processes and plans indicated in the implementation plan of the MOU.

"The current situation is work in progress."

- Esther Grey, CEO Te Uri o Hau Settlement Trust Board

Best Advice For Others...

- start with informal meetings and choose a place to meet that is not threatening - use a marae if everyone is comfortable there;
- don't have one side do the writing for the other;
- give staff the mandate to move things forward, not all the detail has to be sorted out at the governance level;
- use language that everyone understands.

Management Implementation of Memorandum Understanding Between Kaipara District Council and Te Uri O Hau, Ngati Whatua

Greetings

Tuatahi e mihi atu ki to tatou Matua nui ite rangi
Me mihi hoki ki o tatou tini mate haere nga mate haere haere tonu atu
Karanga mai e nga reo e nga waka e nga maunga rangatira
Karanga mai, piki mai kake mai mihi mai
E mihi ake o roto ite whakaputanga nei a
Te Kaunihera Kaipara, Te Uri o Hau Te Hapu me Ngati Whatua Te Iwi
Mihi mai whakatau mai i roto ite kaupapa 'Whakakotahitanga' e whakaae ana matou
Ko te tino tikanga o nga whakaritenga i wharikitia mai hei oranga ma tatou e nga iwi katoa o te Kaipara.

First and foremost we pay homage to our creator
Lest we forget our dearly departed and we bid them a continued farewell
Greetings to all who grace this auspicious occasion welcome
to this day of proclamation for Te Uri o Hau, Ngati Whatua and Kaipara District Council.
Our proclamation of coming together in thought and spirit to work collectively
in partnership for the benefit of the Kaipara and the people, one and all.

Memorandum of Understanding Dated The 28th Day Of May 2002

Between

Kaipara District Council, Te Uri o Hau, Ngati Whatua

This is a leading document for the future of Kaipara District Council, and Te Uri o Hau, Ngati Whatua which is based on the Treaty of Waitangi and principles as being the founding document of Aotearoa - New Zealand and thereby pronouncing a commitment to work together in genuine partnership for the common good of the people and within the true spirit of the Treaty.

Memorandum Principles

of partnership

Both parties are obliged to act in truth and with utmost good faith.
Both parties will ensure that their working relationship encourages equitable opportunities and outcomes.
Kaipara District Council recognises Te Uri o Hau, Ngati Whatua cultural and spiritual values are integral to their wellbeing.
Te Uri o Hau, Ngati Whatua welcome and recognise the cultural diversity of the wider Kaipara Districtcommunity.

of dominion

Kaipara District Council recognises Te Uri o Hau, Ngati Whatua Mana Whenua, Mana Moana.
Te Uri o Hau, Ngati Whatua recognises Kaipara District Council representation of the Kaipara District.

of resources

Kaipara District Council with Te Uri o Hau, Ngati Whatua agree that the allocation and use of resources will be based on parity, fairness and equality.

of consultation

Consultation and communications will be conducted appropriately, timely and within the protocols of each partner.

And with the signing of this document our worthy intentions are clear, except that each year we agree to assemble during the month May of autumn to affirm this relationship in the context of goodwill and the principles we declare.

In respect of;

Kaipara District Council	Te Runanga o Ngati Whatua	Te Uri o Hau Settlement Trust
Mayor Graeme	Ramsey (1998 - 2004)	Sir Graham Latimer (Chair)
Jack Mckerchar (CEO)	Russell Kemp (Chair)	Morehu Kena
		Allan Pivac (CEO)
		Hemi Connelly
		Hare Pomare
		Rawson Wright
		Wikiriwhi Hetaraka

MANAGEMENT IMPLEMENTATION OF MEMORANDUM UNDERSTANDING BETWEEN KAIPARA DISTRICT COUNCIL AND TE URI O HAU, NGATI WHATUA

Management Implementation

This section outlines the areas that will facilitate the implementation of the principles and intentions of the Memorandum of Understanding as endorsed by the Governance Heads (Rangatira) on the 28th of May 2002.

In pursuit of their respective and collective aims and aspirations, the true value of the memorandum of understanding will be gauged by how well the 'management partnership' implements the memorandum's intent. This is a living document and by all means is not definitive.

Contents:

1. Implementation Overview
2. Area Of Interest
3. Representation
4. Shared Decision Making
5. Expectations
6. Legislative Provision for Partnership
7. Issue Resolution
8. Resources
9. Transfer of Functions
10. Protection of Sensitive Information
11. Evaluation

1. Implementation Overview

Operational and Strategic approach:

- Defining an approach to Treaty of Waitangi obligations by Kaipara District Council with Te Uri o Hau, Ngati Whatua that can be met on both a daily and long-term directional basis.

Administrative Relationship:

- Establishing an administrative relationship between Kaipara District Council with Te Uri o Hau, Ngati Whatua that gives mutual benefit and recognition to Hapu, Iwi and local Kaipara communities.

Living Document:

- To establish a living document approach through defining and engaging a commitment to an ongoing partnership for joint decision-making that will “Promote The Intentions and Principles” as declared by the partnership governance.

Hands on Approach:

- Enabling a “Hands On” approach to partnership decision making that is easily understood and evaluated on an annual basis to ensure mutual benefits are achieved and maintained.2. Area of Interest
- Ngati Whatua Mana Whenua and Mana Moana Area of Interest is accorded to Te Runanga o Ngati Whatua being the representative body and authorised voice to deal with issues affecting the whole of Iwi.
- Te Uri o Hau Mana Whenua Mana Moana Area of Interest is defined in the Te Uri o Hau Deed of Settlement To Historical Land Claims.
- While Te Uri o Hau is the leading role within its Area of Interest, the recognition of and support by its Iwi Ngati Whatua is sustained.
- Where matters are of Iwi significance that affect the Area of Interest of Te Uri o Hau, the Te Uri o Hau representative aligned to the particular Ngati Whatua Iwi forum, will be the representative of Ngati Whatua. The representative having responsibility to keep the Iwi / Te Runanga o Ngati Whatua informed.

3. Representation

Kaipara District Council with Te Uri o Hau, Te Runanga o Ngati Whatua both have governance and management structures as part of their respective organisations.

Governance And Management:

- In addressing of any matter between Kaipara District Council, and Te Uri o Hau, Ngati Whatua it will be determined whether the matter is a governance or management issue. Governance matters relate to policy and the directional ends in being consistent with the memorandum of understanding. Management is the alignment and implementation of policy established through governance to reflect the sounding principles of the memorandum of understanding.

Portfolio Approach:

- Both Kaipara District Council and Te Runanga o Ngati Whatua have a portfolio approach to the allocation of governance responsibility. Te Uri o Hau has a Settlement Trust with elected representatives for overall policy.

Management Responsibilities:

- The formal statutory processes for responding to statutory responsibilities under the Resource Management Act will establish joint representation on Judicial Committee Hearings. On matters that have a high Te Uri o Hau cultural significance provision will be made for Te Uri o Hau representation. The most effective way for Te Uri o Hau, Ngati Whatua to undertake this role will be as Commissioner(s) on the Judicial Committee. Where there is a conflict of interest an Independent Commissioner will be appointed.

Transparency:

- When either of the partners is involved with development that requires a resource consent, they will ensure their governance and management structures provide a high level of Transparency and Accountability to enable both roles to be undertaken.

In non-notified resource applications the following steps will be undertaken.

Acknowledgement of Area Of Interest:

- Kaipara District acknowledges the Mana of Te Uri o Hau as an affected party to resource consents within their Area of Interest as defined by the Deed of Settlement.

Notification of Culturally Significant Areas of Consent Applications:

- Te Uri o Hau will outline to Kaipara District areas where non-notified resources consent applications are culturally significant.

Applicant to consult with Te Uri o Hau:

- The applicant will be required to consult with Te Uri o Hau and have the application signed with any comments prior to the Resource Consent application being lodged as a non-notified application.

Decisions notified:

- The decisions on these non-notified applications with comments will be forwarded to Te Uri o Hau.

District Plan Change Initiated

- If the resource consent process identifies recurring issues which impacts on Te Uri o Hau, a change to the District Plan would be considered.

5. Expectations

Facilitating Growth: The expectations of the Partnership are to provide jointly an integrated organisational capability to address the needs of the rohe and district by encouraging economic, social, cultural and sustainable environmental development:

Managing Expectations Through Defining The Participation Process:

- Through clearly defined processes as outlined in the management Memorandum of Understanding both parties will work towards shaping the Kaipara in a form that meets both parties expectations. The processes established will enable both parties to define and encourage the form of development seen as appropriate rather than being forced to respond / react to situations. Early consultation and the encouragement of sustainable economic development are seen as a key aspect as outlined in attachment 2.

6. Legislative Provision For Partnership

The following legislative requirements have to be formally and statutorily considered as part of the partnership as Central Government's acknowledgement of the Treaty of Waitangi in legislation. The following is not a definitive list as there are also other acts which will affect the partnership.

Resource Management Act 1991: Section 6(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, section 7a Kaitiakitanga and section 8 Treaty of Waitangi are given prominence.

Treaty of Waitangi: The principles outline an essential bargain of respect for rangatiratanga and partnership/mutually beneficial relationship.

Local Government Act 1974: Section 37K, statement of purposes of local government in New Zealand. A Local Government Bill is currently before government that outlines significant changes for the enhancing the partnership arrangements between Maori and Local Authorities. In particular clause 63 that looks at fostering capacity of Maori, Clauses 73 & 74 Community Outcomes and priorities and Clause 75 Long Term Council Community Plans.

Transit New Zealand Act 1989: Section 27, Maori issues required to be taken into account before funding allocated for roading development.

Historic Places Act 1980: Requires mandatory consultation with Tangata Whenua prior to making an application to modify or destroy any archaeological feature.

Iwi Planning documents: Policy statements contained within these documents reflected in district policy.

Reserves Act 1977: And its link to the Conservation Act 1987, to reflect the principles of the Treaty of Waitangi.

7. Issue Resolution

To outline a process to be followed for any issue resolution.

- Quarterly meetings will be established at a management level and contact outside these meetings at governance level (portfolio holder of the Kaipara District/ Director, Chairman of Te Uri o Hau, Ngati Whatua responsible for governance issue) or if appropriate at a management level with those with the specific management responsibility. This will encourage the resolution of issues at an early stage before they become conflict.
- Should a conflict be evident on a matter then an independent party may be consulted to facilitate resolution.

8. Resources

- The resources (provision of skills / funding / other) that both parties have available for maintaining the partnership process.
- Is a matter to be resolved on a continuing basis, the appropriate level for this is at a Governance level, this will initially be undertaken between Kaipara District with Te Uri o Hau, Ngati Whatua by those who have been allocated the responsibility.

9. Transfer of Functions

- As part of the MOU it is considered that the phasing of the transfer of functions to Iwi authorities, (Te Uri o Hau, Ngati Whatua) under section 33 of the Resource Management Act, will be undertaken. At this early stage of the partnership it is considered more important to monitor progress and evaluate the effectiveness of the partnership in its current administrative form before Te Uri o Hau, Ngati Whatua takes upon additional responsibilities.

10. Protection Of Sensitive Information

- Te Uri o Hau, Ngati Whatua and Kaipara District Council may provide each other with sensitive and confidential information. In accordance to sections 6 and 7 of the Local Government Official Information and Meetings Act 1987 and Resource Management Act section 42(i) (a) Council respects and recognises sensitive files or plans held by Te Uri o Hau, Ngati Whatua. The same expectation will be undertaken with Te Uri o Hau, Ngati Whatua when the Kaipara District Council supplies them with sensitive information

11. Evaluation

- That an evaluation is undertaken of the effectiveness of the relationship as outlined in the MOU through key indicators on an annual basis.
- As part of this process indicators will be established so that the effectiveness of the MOU can be ascertained on an annual basis. These indicators will relate to the implementation of the relationship process and to the outputs from this process.
- That an Independent assessment can be undertaken as part of the evaluation.
- An annual evaluation will be held at the June quarterly meeting.