



GUIDELINES FOR CONSULTATION WITH THE TANGATA WHENUA:

REPORT TO THE PAKAKURA DISTRICT COUNCIL

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Introduction

This report has been prepared pursuant to Section 16 (1) (b) of the Environment Act following receipt of a complaint from the Huakina Development Trust. The complaint concerns the decision made by the Papakura District Council not to allocate a grant to the Trust. The Council stated in its decision that it will consult the Trust when required by statute.

It is not clear whether this decision was made because of budgetary constraints or whether it was a policy decision made in full recognition of what the Resource Management Act requires of local authorities in regard to consultation with tangata whenua. Suggestions as to how those requirements might be met are discussed below.

Consultation with the tangata whenua under the Resource Management Act 1991

While the Resource Management Act contains some explicit requirements that local authorities consult with the tangata whenua, that is, in the preparation of policies and plans (First Schedule, Part I), it also requires that the matters of Part II of the Act be taken into account by all those exercising powers and duties under the Act. Of particular relevance are Sections 6(e), 7(a) and 8. They all contain matters pertaining to the interests of the tangata whenua. The fact that these matters are expressly reserved under the Act for particular consideration suggests that councils should take a positive and active approach to their relationship with the tangata whenua. While I understand that staff of the Papakura District Council have a good working relationship with the Trust, it seems there are a number of issues to be worked through. These include the framework for consultation with tangata whenua, the circumstances in which such consultation should occur, and how and by whom it should be resourced.

Framework for consultation

Last year the Commissioner released a report entitled: "Proposed Guidelines for Local Authority Consultation with Tangata Whenua". A copy is enclosed for your information. Amongst other things, the report recommends that local authorities need to form an ongoing relationship with the tangata whenua, and that the means of carrying out that relationship be worked out in conjunction with them. Local authorities should recognise that tangata whenua are not "just another interest group" but have special status by virtue of their being long standing inhabitants of the area, pursuant to the principles of the Treaty of Waitangi as provided for in the Resource Management Act and other legislation.

Guideline number 6 recommends that local authorities:

- (a) ask tangata whenua themselves what form of consultation and participation in resource management they feel is appropriate for them, which resources and issues they consider themselves kaitiaki for and which are seen as most important for council action, and how they feel tino rangatiratanga should be reconciled with kawanatanga in the local context; and,
- (b) be prepared to assist tangata whenua financially and technically where they wish to compile reference documents on these matters.

Guideline 7 makes further recommendations that a jointly agreed charter be established with each tangata whenua group, which sets out the areas of interests and respective responsibilities of each party.

The Commissioner understands that the Council has established a Maori Standing Committee. Standing Committees are generally accepted as an evolutionary step toward more direct tangata whenua involvement in decision-making. The Council should ensure that the ground rules for the committee are clearly established and that its role is regularly monitored and reviewed in conjunction with the tangata whenua.

At the same time, the Papakura District Council should open discussions with the Huakina Development Trust to clarify who it represents (if that is not clear already) and under what circumstances a relationship might be established. Separately, it may also be necessary to clarify whether there are any hapu and iwi within the district which are represented by other tribal organisations.

One way for the Council to ensure that it has access to information on tangata whenua concerns is to fund tangata whenua to develop their own policy and resource management plans which would stand as a reference point for future council deliberations. While expensive in the short term, this approach to funding may be cost effective in the long term. Funding issues are discussed in more depth later in this report.

Circumstances in which consultation should take place

Aside from the specific requirements of the Resource Management Act relating to consultation with the tangata whenua, two recent Planning Tribunal cases suggest that councils can meet their responsibilities to the tangata whenua in a number of ways under the Act. In one case (*Haddon v. Auckland Regional Council* A77/93), the Tribunal emphasised the need to ensure that tangata whenua are involved in the resource consent process at an early stage. The Tribunal also recommended that

because the resource under consideration was considered by the relevant hapu to be a taonga, that hapu could have been actively involved in monitoring the effects of the proposal. The recommendation provides a practical example of a means of "having particular regard to kaitiakitanga" as required under section 7 (a) of the Act. The question of ensuring that tangata whenua have adequate resources to do such a job is a further issue which would have to be addressed.

In the case of *Gill v. Rotorua District Council* (1993) 2 NZRMA 604, the Tribunal pointed out that in accordance with the duty to "take into account the principles of the Treaty of Waitangi" (section 8), councils have a duty actively to consult with the tangata whenua over consent applications, rather than simply to notify them and trust that the applicant will deal with and resolve any issues of concern. Councils should attempt to identify issues of concern to tangata whenua and attempt to address them prior to the matter going to a hearing and potentially to the Planning Tribunal, which can only prove costly for all parties concerned.

The two cases referred to serve to reinforce the need for councils to establish and develop ongoing relationships with the tangata whenua on a mutually agreed basis.

Resourcing (including funding)

It would be helpful for the Council to identify what kind of assistance and information might be required from the Trust during the financial year and at the same time, to establish with the Trust whether it needs resources (people, equipment, funding) to provide that assistance. There are a number of situations where the Council will probably need assistance from the Trust as in the preparation of the district plan, processing of consent applications, and monitoring activities (either of conditions on a specific consent, or general monitoring functions). As suggested earlier, funding tangata whenua to develop their own policy and resource management plans may be one way of ensuring that information on matters of concern to the tangata whenua is available for use in all the above situations. Council would do well to establish with the Trust what options are appropriate and to identify the advantages and disadvantages of each.

With respect to the duties placed on councils to consult, the concept of an annual payment or "retainer" could be a starting point for further discussion. As you have problems with the idea, clarify what the Trust's proposal is intended to cover. The constraints of the Local Government Act need to be discussed. You may need to point out that under the requirements of that Act, the use of funds paid to the Trust by the Council would have to be audited for compliance with the functions authorised by the Resource Management Act.

Resourcing for participation by the Trust in the resource consent process should be distinguished from that provided for input into policy development and planning, where the responsibility for consultation rests solely with public authorities. In the case of the resource consent process, there will be times when applicants themselves will be required to consult the tangata whenua, and to meet the costs of that consultation themselves.

It may be beneficial for councils and tangata whenua to jointly work through an approach to the issue of payment by applicants so that consistent criteria can be applied across all consent applications. There appear to be two main options. The first involves the approach taken by the Huakina Development Trust, where applicants for resource consents consult with the Trust, even though there is no direct obligation on them to do so. Consultation and any fees associated with that process are for the applicants and the Trust to negotiate, as on a time and expertise basis.

However, provided plans are specific on the matter, as required under Section 75 (1) (f), Council has the power under Section 92 to require further information from applicants, including information as to the consultation that has been undertaken. Moreover, under Section 92 (2) (c), Council can itself commission a report on, or review the information supplied by applicants, with a power under Section 36 to pass on to them the cost of obtaining information from the tangata whenua.

The level of information required of applicants in relation to each kind of consent should be established with the tangata whenua in the district planning process. In the case of some applications, a phone call may be all that is required to obtain the necessary information. In others, detailed assessments of effects, including site visits, may be necessary. Applicants should understand that in these cases, the tangata whenua are "experts", in the same way as scientists and engineers.

As far as monitoring functions are concerned, councils can again fund the tangata whenua to carry out the monitoring of consents by passing on charges through application fees under section 36 of the Resource Management Act. Separately, they could also transfer more general monitoring functions to the tangata whenua under Section 33 of the Resource Management Act. Funding would have to be provided through the annual planning process.

Regardless of the options chosen, it would be beneficial for all parties, including applicants, to understand the rules from the start. The District Plan should include a policy and methods for dealing with these issues.

While the suggestions made in this report involve detailed matters of planning, the Council can only benefit by taking a long term approach to its relationship with the tangata whenua.

Summary

Consultation with the tangata whenua is a complex issue for all councils. For the Papakura District Council, the issues appear to be:

- 1 the need to clarify structures and procedures for consultation with tangata whenua, including the role of the Maori Standing Committee and the role of tribal organisations such as the Huakina Development Trust;
- 2 discussions with the Huakina Development Trust to determine:
 - (a) who it represents in your district;
 - (b) its relationship with the Council;
 - (c) its role in:
 - (i) preparation of the District Plan;
 - (ii) consent applications;
 - (iii) monitoring;

and resources/fees required to fund the role within the constraints of the Resource Management Act 1991 and the Local Government Act 1974.
