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# **MEMORANDUM OF UNDERSTANDING TUTOHINGA**

between

**RANGITIKEI DISTRICT COUNCIL**

and

**Te Tangata Whenua O Rangitikei**

**Ngati Rangituhia**

**Ngati Whitikaupeka**

**Ngati Parewahawaha**

**Ngati Hauiti**

**Nga Ariki Turakina**

**Kauangaroa / Nga Wairiki**

**Ngati Kauae /Taurira**

**Ngati Hinemanu / Ngati Paki**

**Whangaehu**

**Ngati Tama Kopiri**

**Rātana Community**

**Represented on Council by  
TE ROOPU AHI KAA**

Version Control	
1	Agreed to by Te Roopu Ahi Kaa on 10 October 2006 Agreed to by Council on 26 October 2006
2	Amended under review by Te Roopu Ahi Kaa on 14 August 2012 (12/IWI/019) Confirmed by Council 30 August 2012 (12/RDC/151)

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# Introduction - Kupu Whakataki

This Memorandum of Understanding has been put together on the basis of:

- Both parties have entered into the Memorandum Of Understanding - Tutohinga in good faith and with a view to making the partnership work.
- Both parties recognise that there may be constraints from time to time in respect of resources.
- Both parties can see mutual benefits being derived from the establishment of the Memorandum of Understanding - Tutohinga.
- Both parties express the wish that their partnership will develop and become stronger over time.

## Tutohinga Memorandum Of Understanding

### 1. Introduction

- 1.1 The Rangitikei District Council and Iwi of the District wish to enter into a number of protocols, which are intended to reflect the basis on which they will conduct their affairs of common interest.
  - 1.2 For the purposes of this Memorandum, the Iwi of the District are the Tangata Whenua that hold Mana Whenua in relation to a particular area of the District. The Tangata Whenua of the District comprise the Iwi and Hapu, which are represented on Te Roopu Ahi Kaa, a present standing committee of Council.
  - 1.3 Iwi and Hapu acknowledge each other's tino rangatiratanga, arising from their Mana Whenua, when speaking for their area.
  - 1.4 Iwi and Hapu put forward delegates to Te Roopu Ahi Kaa to represent issues and consider Council policy, making resolutions and representations to Council. This clause does not preclude direct Iwi, Hapu or individual interaction with Council on issues that concern them directly.
  - 1.5 For Iwi and Hapu, *Te Tiriti o Waitangi* is the starting point for determining their relationship with the Crown, its agencies and the Rangitikei District Council.
  - 1.6 Within the Rangitikei District, the Māori community of Ratana is recognised as being integral to decision-making on Māori issues and therefore, the Ratana community, through their nominated representative, have membership of Te Roopu Ahi Kaa.
  - 1.7 The Council's procedures are governed by statute, and in particular in the context of the protocols set out in Section 2 below, the provisions of the Local Government Act 2002 and Resource Management Act 1991.
  - 1.8 Section 10 of the Local Government Act sets out the purposes of Local Government in New Zealand. Those stated purposes are:
    - (a) *to enable democratic decision-making and action by, and on behalf of, communities; and*
    - (b) *to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.*
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One of the emphases of the Local Government Act 2002 is to place greater decision-making abilities in the hands of communities. This is particularly relevant for Māori as all the areas of well-being directly impact upon them.

1.9 Section 8 of the Resource Management Act provides as follows:

**“Treaty of Waitangi** - In achieving the purpose of this Act, all persons exercising functions and power under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).”

Section 4 of the Local Government Act further provides that as part of the Crown’s responsibility to take appropriate account of the principles of the Treaty of Waitangi, the local authority is charged with facilitating opportunities for Māori to contribute to decision-making.

1.10 Given the provisions of the Local Government Act and Section 8 of the Resource Management Act, the Rangitikei District Council positively recognises that to carry out its functions appropriately, it must make appropriate provision for the specific interests of Māori in its community with particular emphasis on consultation and capacity building.

1.11 To enable it to make such provision, the Rangitikei District Council must take into account the principles of the Treaty of Waitangi, subject to the provisions of clause 1.14 below.

1.12 The Rangitikei District Council and Iwi of the District acknowledge that the principles of the Treaty of Waitangi are continuing to evolve.

1.13 However, in a document published in 1989 by the then Labour Government, several principles were identified. They were:

(i) *The Kawanatanga Principle:* The Government has the right to govern and make laws.

(ii) *The Rangatiratanga Principle:* The Iwi have the right to organise as Iwi, and, under the law, to control their resources as their own.

(iii) *The Principle of Equality:* All New Zealanders are equal before the law.

(iv) *The Principle of Reasonable Co-operation:* Both the Government and the Iwi are obliged to accord each other reasonable co-operation on major issues of common concern.

(v) *The Principle of Redress:* The Government is responsible for providing effective processes for the resolution of grievances in the expectation that reconciliation can occur.

1.14 Both the Rangitikei District Council and Iwi of the District acknowledge these principles and accept that they apply to the Crown. However, they further accept that they can only apply to the Rangitikei District Council to the extent that any empowering legislation applicable to the Rangitikei District Council contemplates.

1.15 The Rangitikei District Council and Iwi of the District agree that the extent to which the application of the principles of the Treaty of Waitangi to the Rangitikei District Council is so contemplated by the empowering legislation, is reflected in the protocols that are set out below.

1.16 The Rangitikei District Council and Iwi of the District further agree that these protocols will need to be reviewed from time to time as the application of the principles of the Treaty of Waitangi continue to evolve and other principles emerge.

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- 1.17 The Rangitikei District Council and Iwi of the District therefore wish to agree the protocols set out in Section 2 below.
- 1.18 These protocols are intended to reflect a partnership between the Rangitikei District Council and Iwi of the District, which is to be exercised in the utmost good faith to ensure that the needs of both Māori and the wider community will be met.

## **2. Protocols**

- 2.1 These protocols constitute policy of the Rangitikei District Council and can be reviewed from time to time.
- 2.2 When these protocols are reviewed they must be reviewed by the Council in consultation with Te Tangata Whenua o Rangitikei.
- 2.3 If, at the conclusion of any such consultation, agreement cannot be reached concerning the form of protocols to apply thereafter, to the extent that agreement cannot be reached, the Memorandum of Understanding shall lapse, (i.e., the Memorandum shall only lapse in relation to those matters on which agreement cannot be reached).
- 2.4 Further, if following that consultation, further protocol(s) are agreed, they can be added to the Memorandum of Understanding by way of amendment and without otherwise affecting the protocols earlier entered into unless any earlier protocol(s) also need to be amended due to the further protocols agreed.
- 2.5 Te Roopu Ahi Kaa, as a Standing Committee of the Rangitikei District Council, may recommend to the Rangitikei District Council, any changes to the representation of Iwi and/or Hapu on Te Roopu Ahi Kaa from time to time.
- 2.6 Te Roopu Ahi Kaa, as a Standing Committee of the Rangitikei District Council, must recommend to the Rangitikei District Council, who will represent each Iwi and/or Hapu on Te Roopu Ahi Kaa within three months of each triennial election.
- 2.7 The Council's total financial liability pursuant to these protocols shall be determined by the Rangitikei District Council following consultation with Te Roopu Ahi Kaa annually as part of the Council's annual planning process.
- 2.8 Te Roopu Ahi Kaa will be responsible for the provision, and satisfactory delivery, of the work specified below for, and on behalf of, the Tangata Whenua of the Rangitikei District.
- (i) To review the relevant processes of Council and make recommendations on steps to be taken to assist Council in carrying out its functions and responsibilities in a bicultural manner taking into account the principles of the Treaty of Waitangi.
  - (ii) To develop draft proposals which recognise the Tangata Whenua of the Rangitikei District's Kaitiakitanga (the exercise of Guardianship) and Rangatiratanga in a manner consistent with the provisions of the Resource Management Act 1991 and the Local Government Act, 2002.
  - (iii) To provide advice and assistance with the Council's Policies, Bylaws, Rating and Funding, Strategic Plan, Annual Plan and other activity plans (ie, recreation, library, transport, etc).
  - (iv) Te Roopu Ahi Kaa will support and assist the Council to discharge its obligations to the Tangata Whenua in relation to procedures and issues that arise under the Resource Management Act 1991 and the Local Government Act 2002.
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- (v) To respond on appropriate issues including, but not limited to, notified resource consent applications where the Council is required to determine issues relating to the management, use, development and protection of the District's physical resources.
  - (vi) To ensure appropriate persons are consulted or available to provide such information as may be required from time to time on items of interest to Te Roopu Ahi Kaa and/or the Rangitikei District Council.
  - (vii) Te Roopu Ahi Kaa will support and assist the Council in establishing the steps necessary to build Māori capacity to contribute to its decision-making processes.
  - (viii) In carrying out (i) to (vi) above, it will ensure that Tangata Whenua groups are consulted, including the arranging of hui when agreed and to keep the Council advised of outcomes or decisions reached.

2.9 The Council will otherwise be responsible as follows:

- (i) To ensure that consultation takes place in instances where Council is the applicant for a resource consent and as otherwise required pursuant to the provisions of the Resource Management Act 1991.
  - (ii) To ensure that consultation takes place prior to and during the preparation of Council's Bylaws, Rating and Funding Policy, Strategic Plan, Annual Plan and other activity plans. This will normally mean prior to the adoption by the Council of the draft documents and before the documents are put out for initial public consultation. The Council will ensure that sufficient information and time is made available to Te Roopu Ahi Kaa to determine what issues, if any, require further investigation and/or consultation.
  - (iii) The obligation of consultation will be carried out for the purpose of defining any issues of concern to Iwi of the District, to identify any reports that may be required to address such issues and to otherwise determine the methodology and resources (financial or otherwise) necessary to properly achieve Protocols 2.9 (i) and (ii), and such consultation will otherwise be conducted in a manner which is consistent with a rigorous process of consultation appropriate to the circumstances of any particular issue.
  - (iv) That Council develops, in consultation with Te Roopu Ahi Kaa, steps to build Māori capacity for contributing to its decision-making processes.
  - (v) In undertaking any consultation, both parties will ensure that the timeframes otherwise specified in any relevant legislation are complied with.
  - (vi) The Council will ensure that Te Roopu Ahi Kaa is kept informed of all progress in relation to the preparation of the District Plan and any reviews or variation thereto after that plan becomes operative.
  - (vii) That the Council Officers will provide information and advice to Te Roopu Ahi Kaa to enable the Rangitikei District Council to meet its obligations outlined in Protocols 2.9 (i) and 2.9 (ii) of the Memorandum of Understanding.
  - (viii) Where the Council requires Te Roopu Ahi Kaa to undertake any work, which is not otherwise identified in the Memorandum of Understanding, that work will be specified in a separate consultancy agreement.
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### **3. Indemnity**

3.1 At no time will the Council bear responsibility or liability in respect of any unlawful action arising out of the conduct of Te Roopu Ahi Kaa or its agents.

### **4. Dispute**

4.1 If any disputes arise concerning the interpretation or application of these protocols, the parties will mutually agree the appointment of an independent mediator, with a view to the parties reaching agreement by way of mediation concerning that dispute.

4.2 If no such agreement can be reached following mediation, any disaffected party must thereafter be free to pursue any legal remedy that may otherwise be available to it, should it choose to do so.

### **5. Vires**

5.1 The application of these protocols must at all times be subject to the provisions of the Local Government Act 2002 (and any amendments or re-enactment thereof), the Resource Management Act 1991 (and any amendments or re-enactments thereof) and/or any other legislation applicable to the process being undertaken pursuant to these protocols from time to time.

5.2 The Rangitikei District Council and Te Roopu Ahi Kaa hereby both acknowledge that the interpretation, application and operation of these protocols is at all times subject to the relevant empowering legislation.

### **6. Review**

6.1 The Memorandum of Understanding: Tutohinga will be reviewed at the same time as each Representation Review.

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