
REPORT 2
(1215/11/IM)

TRUST DEED - TE WHAREWAKA O PONEKE

1. Purpose of Report

The purpose of the report is to advise the Council on the proposed formation of the Te Wharewaka o Poneke Trust. The report also seeks approval to the Council being settlor to the Trust, and recommends the appointment of Council trustees.

2. Executive Summary

It is proposed that a trust be established to be known as the Te Wharewaka o Poneke Charitable Trust (*the Trust*). The Trust will be responsible for the development and operation of a wharewaka complex to be located on the Wellington Waterfront.

The wharewaka complex will include a building structure and open spaces sited at Taranaki Wharf. Activities undertaken include the housing of a waka, carving and teaching space, hui/conference spaces and ancillary dining/restaurant facilities.

The settlers to the Trust are proposed (under the proposed Deed of Trust – attached as **Appendix 1**) to be the Wellington Tenth Trust, the Palmerston North Reserve, Port Nicholson Block Settlement Trust and the Wellington City Council (*the Council*).

The objectives of the Trust are consistent with the Council's cultural strategy and mana whenua obligations. The waterfront location of the wharewaka complex provides additional reason for Council involvement with the Trust. For these reasons it is recommended that the Council agree to be a settlor to the Trust and appoint two trustees to the board.

The trust deed allows the Council to appoint two trustees, which (with a minimum of 5 trustees) is below the 50% threshold that would automatically create a Council Controlled Organisation under the Local Government Act 2002. The operational benefits of a close involvement with the Trust support the recommendation that Council agree to appoint two Council officers as trustees.

3. Recommendations

Officers recommend that the Committee:

1. *Receive the information.*
2. *Note the proposed draft Deed of Trust for the “Te Wharewaka o Poneke Charitable Trust.*
3. *Agree to Council being a settler to the “Te Wharewaka o Poneke Charitable Trust”.*
4. *Agree to appoint two Council officers as trustees to the “Te Wharewaka o Poneke Charitable Trust”.*
5. *Agree to delegate responsibility for the appointments to the Chief Executive.*
6. *Note that the activities of the “Te Wharewaka o Poneke Charitable Trust” will be reported back to the Council Controlled Organisation Performance Subcommittee, by way of an Annual Report as with all Council Organisations.*

4. Background

It is proposed that a trust be established, under the Charitable Trusts Act¹, to be known as the Te Wharewaka o Poneke Charitable Trust. The Trust will be responsible for the development and operation of a wharewaka complex to be located on the Wellington Waterfront.

The proposed settlers are to be the Wellington Tenth Trust, the Palmerston North Reserve², Port Nicholson Block Settlement Trust³ and the Wellington City Council (*the Council*). The different settlers represent shared interests in the wharewaka complex and integration with the broader waterfront project.

5. Discussion

5.1 Wharewaka complex

The wharewaka complex includes a building and spaces sited at Taranaki Wharf, adjacent to the southern side of Frank Kitts Lagoon. The building will provide for meeting/conferences; dining/restaurant with kitchens to service the

¹ To be registered as a Charitable Trust with the Charities Commission following formation

² The Palmerston North Reserve is a trust created by an order of the Maori Land Court pursuant to section 215 of the Te Ture Whenua Maori Act 1993

³ Port Nicholson Block Settlement Trust is a trust created for the benefit of Taranaki whanui to hold assets derived from the Port Nicholson Block Claims under the Treaty of Waitangi Act 1975

hui/conference spaces; and the wharewaka with carving and teaching space to support the waka activity.

5.2 Council involvement

The settlers to the Trust reflect the relationship between Council and tangata whenua, which is a relationship that is to be maintained throughout all the activities of Council. The proposed wharewaka complex supports learning and development of Maori culture and in this respect represents a project of shared interest between the Council and tangata whenua.

Council involvement as settler to the Trust and with two trustee appointments can be seen as representative of the Council's cultural strategy and commitment to mana whenua. Specifically, it is providing Wellingtonians with the opportunity to experience local Maori culture as an intrinsic part of the city and ensuring the arts of mana whenua and nga iwi o nga hau e wha are valued, promoted and enhanced.

With the proposed waterfront location, the construction and operation of the wharewaka complex forms a component of the on-going development of the Wellington waterfront project. This provides another reason for Council involvement with this project. With the appointment of two trustees the Council will gain the ability to more actively influence and monitor issues arising from the development and management of the wharewaka complex. This will benefit the Council in terms of co-ordinating with the Council's vision for the waterfront as set out under the Wellington Waterfront Framework. This is particularly important in light of the recent Council decision⁴ to transfer implementation functions of the waterfront project into the Council in 2010.

5.3 Trust Deed

Under the proposed Trust Deed, the objectives of the Trust are –

- *to be responsible for the planning, development, construction, ownership, operation and maintenance of a wharewaka (waka house) on the waterfront at Wellington as a permanent expression of Maori art and culture, for the benefit of the people of New Zealand;*
- *to encourage and facilitate displays and other activities that support or are ancillary to the wharewaka;*
- *to achieve these objects through public and private support and patronage;*
- *generally to do all acts, matters and things that the Trustees consider necessary or conducive to further or attain the objects of the Trust set out above; and*

⁴ Currently out for publicly consultation

- *to administer the wharewaka and the Trust Fund on a prudent commercial basis so that it is a successful, financially autonomous community asset.*

The Trust Deed requires that there shall not be less than five, and no more than six Trustees. The Council would appoint up to two Trustees, with the other Trustees being appointed as follows

- Up to two trustees appointed by Wellington Tenth Trust
- One Trustee appointed by the Palmerston North Reserve
- One Trustee appointed by the Port Nicholson Block Settlement Trust

With a minimum of five trustees overall, and no more than two trustees being appointed by the Council, the Trust will not be a Council Controlled Organisation (CCO) i.e. the Council appointees represent less than 50% of the Board. It will, however, be a Council Organisation (CO), which, under the Local Government Act 2002, will require the Council to monitor the performance of the Trust. This would be done via an Annual Report to the Council Controlled Organisation Performance Subcommittee (CCOPS).

Because the Trust will not be a CCO there is no requirement to complete a special consultative procedure prior to the establishment of the Trust. The draft Trust Deed has been assessed on behalf on the Council by DLA Phillips Fox.

5.4 Appointments Policy

The Council will need to appoint two trustees to the Trust. Under the Council's Appointments Policy, the Council may choose to appoint an officer to the board of a CO as a way of ensuring Council's interests in the entity are monitored and managed. In such cases, the responsibility for the appointment is usually delegated to the Chief Executive.

Following the construction, the governance of the complex will be largely focused on matters relating to the operation of the wharewaka. It is therefore recommended that, in this instance, the Council appoint officers to the Trust in recognition of the operational focus. This has been the approach adopted previously where the Council involvement in a company or trust is limited or relates more to a monitoring or operational role (as opposed to CCOs where the Council usually has greater governance and strategic interest).

5.5 LTCCP Implications

The proposal does not have financial implications for the LTCCP.

6. Conclusion

The objectives of the Trust are considered to be aligned with the Council's cultural strategy of greater engagement and participation in cultural activities.

The Council's involvement with, and obligations to, the Trust are limited by the less than 50% representation on the board. The two appointments do, however, provide the benefit of closer Council involvement with the development and operation of the wharewaka complex.

It is not intended that the Trustee positions will be remunerated. Due to the operational focus and the monitoring roles of the Council appointments it is considered appropriate to appoint officers in this instance. The Trust will be monitored and reported on to Councillors via the Council Controlled Organisations Subcommittee.

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Supporting Information

1) Strategic Fit / Strategic Outcome

Council appointment to the Trust supports Council's overall vision of Creative Wellington – Innovation Capital. Agreement to the appointments will contribute to Council meeting the desired outcomes of the Cultural Strategy.

2) LTCCP/Annual Plan reference and long term financial impact

The proposal does not have LTCCP implications

3) Treaty of Waitangi considerations

The proposal is to be located on a site that Mana Whenua regard as important and represents a partnership project with the Council

4) Decision-Making

This is not a significant decision. The report sets out a number of options and reflects the views and preferences of those with an interest in this matter who have been consulted with.

5) Consultation

a) General Consultation

All affected parties have been identified. Council is not required under legislation to consult on this matter.

b) Consultation with Maori

The proposal is initiated by Mana Whenua

6) Legal Implications

Council's lawyers have been consulted during the development of this report.

7) Consistency with existing policy

This report recommendations are consistent with Council policies

Appendix 1

Draft Trust Deed