
REPORT 2

**MEMORANDUM OF UNDERSTANDING WITH THE ROYAL PORT
NICHOLSON YACHT CLUB**

1. Purpose of report

This report seeks authority for officers to enter into a new Memorandum of Understanding with the Royal Port Nicholson Yacht Club.

2. Executive summary

The Strategy and Policy Committee requested on 12 March 2013 that officers review the Memorandum of Understanding that was signed between Council and the Royal Port Nicholson Yacht Club in 2006.

Officers have reviewed the 2006 Memorandum of Understanding and have developed a new agreement in consultation with the Royal Port Nicholson Yacht Club (attached as “Appendix 1”).

The objective of the proposed Memorandum of Understanding is to set out the terms of the relationship between the Royal Port Nicholson Yacht Club and Council - in particular, regarding the future development and management of the Clyde Quay Boat Harbour, the attraction of events and initiatives to develop yachting and other ocean sports.

The Memorandum of Understanding does not provide any future funding commitment to the Royal Port Nicholson Yacht Club or for the development of the Clyde Quay Boat Harbour.

3. Recommendations

Officers recommend that the Governance, Finance and Planning Committee:

- 1. Receive the information.*
- 2. Agree that the Chief Executive is given authority to sign the Memorandum of Understanding with the Royal Port Nicholson Yacht Club that is attached as “Appendix 1”.*
- 3. Note that in signing the Memorandum of Understanding with the Royal Port Nicholson Yacht Club the Council is not providing any funding commitment. Any future funding for the Clyde Quay Boat Harbour development or the Royal Port Nicholson Yacht Club will be subject to Annual Plan, Long Term Plan and/or other Council processes.*

4. Background

On 12 March 2013 the Strategy and Policy Committee considered a report titled “Clyde Quay Boat Harbour Redevelopment”. One of the resolutions approved by the Strategy and Policy Committee was:

4) “Request officers to review the Memorandum of Understanding with the Royal Port Nicholson Yacht Club under the conditions of the Memorandum and to bring back to Council for endorsement”.¹

A Memorandum of Understanding was previously signed between the Council and the Royal Port Nicholson Yacht Club in 2006. At the Strategy and Policy Committee meeting on 12 March 2013 some Councillors expressed concern about the 2006 Memorandum of Understanding – these concerns were mainly in regards to the perceived funding commitment.

Council later approved funding of \$205,000 in the 2013/14 Annual Plan to allow a wave study, geotechnical investigation, an assessment of the harbour floor and other investigative/design works to be undertaken at Clyde Quay Boat Harbour. These investigative works are underway and are expected to be completed by March 2014.

In December 2013 during the 2014/2015 Draft Annual Plan deliberations the Royal Port Nicholson Yacht Club lodged a submission to the Governance, Finance and Planning Committee for inclusion of the following recommendations in the 2014/2015 Draft Annual Plan:

(a) That funding for detailed design and consenting for the Clyde Quay Boat Harbour Restoration Project of \$250,000 be included in the 2014/2015 annual plan noting that this funding will be recouped through users fees over the useful life of the marina

(b) That funding towards the costs of a Recreational Programmer for the Wellington Ocean Sports Centre of \$50,000 be included in the 2014/2015 annual plan

(c) That the following proposals be developed by Officers and the Club during 2014/2015 so that they can be included for consideration as part of the 2015/2025 long term plan deliberations:

i. A funding proposal for the construction of the Clyde Quay Marina Upgrade with the understanding that this funding will be recouped through user fees over the useful life of the marina as per the Council’s marina policy

ii. A funding proposal for the construction of the Public Space and Wellington Ocean Sports Centre

iii. A contractual arrangements proposal for the transfer of management of the Clyde Quay Boat Harbour to Royal Port Nicholson Yacht Club.

¹ Refer to “Appendix 2” for the full resolution from the 12 March 2013 Strategy and Policy Committee meeting in regards to the Clyde Quay Boat Harbour Redevelopment report.

It is noted that following this submission by the Royal Port Nicholson Yacht Club Council has not allocated any funding in the 2014/15 Draft Annual Plan.

5. Discussion

The objective of the proposed Memorandum of Understanding is to set out the terms of the relationship between the Royal Port Nicholson Yacht Club and Council – in summary this includes:

- The development, maintenance and management of the Clyde Quay Boat Harbour
- Attracting, securing and promoting sailing, boating and other ocean sports events
- The development of strategies and initiatives to develop yachting and other ocean sports.

(Refer to the proposed Memorandum of Understanding in “Appendix 1” for a detailed description).

The proposed Memorandum of Understanding does not provide any future funding commitment to the Royal Port Nicholson Yacht Club or for the development of the Clyde Quay Boat Harbour. The proposed Council commitments are described in section 7 of the proposed Memorandum of Understanding.

The 2006 Memorandum of Understanding will terminate once the new Memorandum of Understanding is signed.

It is proposed that that the term of the new Memorandum of Understanding would continue until terminated by either party by not giving less than 12 months notice. The agreement would be reviewed at not less than 3 yearly intervals.

5.1 Consultation and Engagement

Officers have liaised closely with the Royal Port Nicholson Yacht Club in the development of the proposed Memorandum of Understanding. The club has approved the draft Memorandum of Understanding that is attached as “Appendix 1”.

5.2 Financial considerations

The proposed Memorandum of Understanding does not make any funding commitments to the Royal Port Nicholson Yacht Club. Any future funding is subject to Draft Annual Plan, Long Term Plan and Council processes.

5.3 Climate change impacts and considerations

Predicted sea level rises will be considered during development of the Master Plan. The Memorandum of Understanding does not supersede any commitments the Council has with mana whenua.

5.4 Long Term Plan considerations

There are no Long Term Plan considerations.

6. Conclusion

Over the last decade the Royal Port Nicholson Yacht Club and Council have worked together in attracting and hosting sailing events and in delivering ocean sport programmes. Investigative works have also recently been undertaken by Council in respect to the potential development of the Clyde Quay Boat Harbour. The Memorandum of Understanding provides a terms of reference between the Royal Port Nicholson Yacht Club and Council for future programmes, events and development works.

Contact Officer: Glenn McGovern, Sports & Club Partnership Leader

SUPPORTING INFORMATION

1) Strategic fit / Strategic outcome

The Memorandum of Understanding supports Council's overall vision of Wellington Towards 2040: Smart Capital.

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

The Memorandum of Understanding does not commit the Council to any expenditure and states that any Council funding is subject to Annual, Long Term Plan and/or other Council processes.

3) Treaty of Waitangi considerations

The Memorandum of Understanding does not supersede any commitments the Council has with mana whenua.

4) Decision-making

This is not a significant decision.

5) Consultation

a) General consultation

Officers have liaised closely with the Royal Port Nicholson Yacht Club in the development of the Memorandum of Understanding.

b) Consultation with Maori

There has been no consultation with mana whenua as this is not a policy or significant decision.

6) Legal implications

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

7) Consistency with existing policy

This is not a policy decision.

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WELLINGTON CITY COUNCIL ("WCC")

- AND -

ROYAL PORT NICHOLSON YACHT CLUB Inc.
("RPNYC")

MEMORANDUM OF UNDERSTANDING

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- a fundamental link between the Waterfront, Waitangi Park and Oriental Bay;
- a key amenity for connecting Wellingtonians to Wellington harbour;
- a key facility for hosting events on Wellington harbour.

F. WCC and RPNYC seek to:

- establish the Boat Harbour as a base for ocean sports;
- attract world class ocean sports events in Wellington;
- leverage off yachting to promote Wellington, increase visitor numbers, grow industry and enhance the vibrancy of Wellington.

G. This Memorandum of Understanding records the terms of the relationship.

1. **OBJECTIVES**

1.1 The objectives of this Memorandum of Understanding are for RPNYC and WCC to set out the scope of their relationship for the:

- 1.1.1 preparation and implementation of WCC's master plan for the development, upgrading, ongoing maintenance and management of the Boat Harbour ("**Master Plan**");
- 1.1.2 attraction of events on Wellington Harbour that deliver on the objectives and direction of the Wellington City Council Events Policy;
- 1.1.3 implementation of a strategy to leverage off yachting to promote Wellington, increase visitor numbers, grow industry and enhance the vibrancy of Wellington.

2. **2006 MEMORANDUM OF UNDERSTANDING**

2.1 The parties agree that the Memorandum of Understanding between WCC and RPNYC dated 29 June 2006 terminates on the date this Memorandum of Understanding is entered into.

3. **BOAT HARBOUR MASTER PLAN**

3.1 Subject to funding being allocated by the Council to progress the Master Plan WCC will work with RPNYC in relation to:

- 3.1.1 the development of the Master Plan;

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- 3.1.2 the appropriate layout and configuration of all moorings and berthage amenities, structures, piles, and other appendages for the Boat Harbour; and
- 3.1.3 the allocation, occupation, licensing and general administration of use of the moorings, berthing amenities and boat sheds.
- 3.2 WCC acknowledges that the RPNYC has a long term interest in future management of the Boat Harbour.
- 3.3 WCC and RPNYC mutually acknowledge that any proposed transfer in management that may arise out of these discussions will be subject to public consultation and Council approval.

4. WELLINGTON HARBOUR EVENTS

- 4.1 WCC and RPNYC will jointly seek to identify, and consider whether to bid for, promote and conduct events on Wellington Harbour that deliver the necessary economic and social benefits as identified by the Wellington City Council Events Policy, and in pursuit of the Objectives.

5. WELLINGTON OCEAN SPORTS CENTRE

- 5.1 WCC and RPNYC will jointly investigate options for the establishment of the Wellington Ocean Sports Centre as a sportsville facility in the Boat Harbour.

6. WELLINGTON YACHTING STRATEGY

- 6.1 WCC and RPNYC will jointly seek to identify economic and social development opportunities as identified in the Wellington Yachting Strategy (2013)¹ and as arise from time to time.

7. MUTUAL COMMITMENTS

- 7.1 RPNYC undertakes to:

¹ The Wellington Yachting Strategy was developed by the Royal Port Nicholson Yacht Club.

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- 7.1.1 Work with WCC on the development of the Master Plan and assist in facilitating the completion of any works approved by WCC in an efficient and orderly manner;
 - 7.1.2 retain the Boat Harbour as a public space and encourage public participation in the area and assist WCC to achieve its vision for the Boat Harbour and its environs;
 - 7.1.3 use its best endeavours to identify all of those potential regattas, events, programmes and special occasions which focus on sailing and boating regattas and events compatible with RPNYC and the Boat Harbour, international yachting and boating events, harbour-related events, activities, celebrations and occasions;
 - 7.1.4 collaborate in a mutually supportive and constructive manner with WCC in securing, contracting and promoting of all such events and special occasions;
 - 7.1.5 facilitate the provision and use of all Club facilities and the Boat Harbour whenever reasonably requested by WCC to do so for the purposes of any regattas, events, programmes and/or special occasions; any other events, occasions and ceremonial opportunities for which WCC seeks to use such amenities for civic and other special purposes;
 - 7.1.6 continue to develop the Wellington Ocean Sports Programme and collaborate with WCC to endeavour to establish the Wellington Ocean Sports Centre in the Boat Harbour;
 - 7.1.7 use best endeavours to identify and help implement opportunities to leverage of the Wellington Yachting Strategy for the social and economic benefit of Wellington city; and
 - 7.1.8 consult and function in a mutually supportive fashion with WCC.
- 7.2 WCC undertakes to:
- 7.2.1 work with RPNYC on the development of a Master Plan for the Boat Harbour for consideration by Council;
 - 7.2.2 subject to acceptance of the Master Plan by Council, develop an implementation plan for funding for capital works and maintenance of the

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Boat Harbour as part of its Long Term Plan and Annual Plan prioritisation and consultation processes.

- 7.2.3 where appropriate, consult with RPNYC as to the identity and appointment of suitable engineering and Boat Harbour expert(s) for the purpose of preparing plans and advising WCC on the future configuration, development and structural needs which will enhance the Boat Harbour;
- 7.2.4 where appropriate, provide its events promotion resources to consult, advise, assist and facilitate the securing, promotion and facilitation of events which WCC, in its sole discretion, considers suitable and which deliver on identified economic and social benefits, and the Objectives;
- 7.2.5 where appropriate, provide its resources to consult, advise, assist and facilitate the development of the Wellington Ocean Sports Centre;
- 7.2.6 where appropriate, provide resources to consult, advise, assist and facilitate the development of social and economic opportunities arising from the Wellington Yachting Strategy;
- 7.2.7 consult and function in a mutually supportive fashion with RPNYC;
- 7.2.8 seek to utilise the amenities of the Boat Harbour and Club facilities for such general and civic events as may seem desirable and convenient from time to time.

8. COMMERCIAL BASIS

- 8.1 WCC is responsible for the ownership, management and cost of maintenance and enhancement of the physical configuration, structures, appendages, moving pontoons and wharves (if any), boardwalks and walkways and access ways, forming part of the Boat Harbour and its surrounds.
- 8.2 RPNYC is responsible for the ownership, management and cost of enhancement and maintenance of the Club facilities.
- 8.3 WCC and RPNYC will seek to fundraise for the costs associated with the establishment of the Wellington Ocean Sports Centre.
- 8.4 WCC will pay RPNYC at reasonable commercial rates when WCC utilises the Club facilities and/or RPNYC for management purposes related to the Boat Harbour, events, the Wellington Ocean Sports Centre and other uses requested by WCC

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from time to time in accord with the Objectives and the terms of this Memorandum of Understanding.

9. RELATIONSHIP OF THE PARTIES

9.1 Nothing in this Memorandum of Understanding constitutes the parties as partners or agents for one another. No party has any authority to bind the other or act on its behalf.

9.2 WCC's implementation of the Objectives, any plan or event, or the carrying out of any obligation pursuant to this agreement is subject always to:

9.2.1 specific approval and any necessary decisions being made, permits or consents being granted pursuant to WCC's Long Term Plan, Annual Plan and any other relevant regulatory consent procedure;

9.2.2 WCC determining in its sole discretion the appropriate timing or manner of implementation; and

9.2.3 appropriate funding being sourced or made available in WCC's sole discretion;

9.3 RPNYC acknowledges that WCC is the territorial authority in the area in which the Boat Harbour and Club Facilities are located and that this Memorandum of Understanding shall not restrict or affect in any way the manner in which WCC may act in the exercise of its statutory rights, powers and duties as the territorial authority.

10. REVIEW

10.1 WCC and RPNYC shall meet at not less than three (3) yearly intervals to conduct a general review of this Memorandum of Understanding and its progress.

11. AMENDMENTS

11.1 No amendment to this Memorandum of Understanding will be effective unless it is in writing and signed by both parties.

12. DISPUTES RESOLUTION PROCESS

12.1 If WCC or RPNYC believes that a dispute between them has arisen regarding the interpretation or implementation of this Memorandum of Understanding either party

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may give written notice to the other party of the existence of such a dispute and the particulars of it.

- 12.2 RPNYC and WCC appointed representatives shall then meet in good faith and seek to resolve the dispute and if it is not resolved within 14 days of the notice referred to in clause 12.1 they shall seek to agree on a process for resolving the dispute through means other than litigation or arbitration such as conciliation or independent expert determination. If they cannot reach agreement on such a process for resolving the dispute they shall refer the dispute to mediation and for that purpose they shall use the assistance of a dispute resolution person or organisation nominated by the president of the New Zealand Law Society.
- 12.3 RPNYC and WCC may not use any information or documents obtained through the dispute resolution process for any purpose other than in an attempt to settle the dispute.
- 12.4 Save for applications for urgent interlocutory relief, no party to a dispute may refer the dispute to arbitration or commence proceedings in any Court unless the dispute has been referred to a dispute resolution person or organisation in accordance with clause 12.2 and there appears to be no likelihood of a resolution of the dispute by that process.

13. **PUBLIC STATEMENTS**

- 13.1 Neither party will make any public statement about matters contemplated by this Memorandum of Understanding without the prior written approval of the other party.

14. **TERM**

- 14.1 This Memorandum of Understanding shall continue until terminated by either:-
- 14.1.1 mutual written agreement; or
 - 14.1.2 either party giving to the other not less than 12 months' notice in writing.

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EXECUTION

**SIGNED by WELLINGTON
CITY COUNCIL**

)
)
)

Authorised Signatory

in the presence of

Witness signature

Full Name

Address

Occupation

**SIGNED by ROYAL PORT
NICHOLSON YACHT CLUB**

)
)
)

Authorised Signatory

in the presence of

Witness signature

Full Name

Address

Occupation

“APPENDIX 2”

Strategy & Policy Committee 12 March 2013

RESOLVED:

THAT the Strategy and Policy Committee:

1. *Receive the information.*
- ~~2. *Agree that no funding is allocated for the upgrade of the Clyde Quay Boat Harbour in the 2013/2014 Draft Annual Plan due to financial constraints, the risks associated with the marina upgrade business case and higher priority for other capex renewals and upgrades in the 2012-2022 Long Term Plan.*~~
23. *Agree that feasibility funding of \$205,000 for a wave study, geotechnical investigations and an assessment of the harbour floor for the proposed Clyde Quay Marina Upgrade is ~~reconsidered~~ during the 2014/2015 Draft Annual Plan deliberations. Included in the 2013/14 Draft Annual Plan for consultation.*
34. *Request officers to review the Memorandum of Understanding with the Royal Port Nicholson Yacht Club under the conditions of the Memorandum and to bring back to Council for endorsement.*
45. *Note that any funding for the capital works of the Clyde Quay Boat Harbour Redevelopment Plan will be subject to normal Council Annual and Long Term Plan processes and that no funding is guaranteed as a result of any amendment passed in this report.*

NOTED:

The Resolution differs from the officer's recommendations as follows:

The Committee added the text in **bold** and removed the text with strikethrough.