

MEMORANDUM
OF
UNDERSTANDING

BETWEEN

EARTHSONG
ECO NEIGHBOURHOOD

AND

THE
WAITAKERE CITY COUNCIL

MEMORANDUM OF UNDERSTANDING

Dated this ----- day of ----- 2003

BETWEEN

Cohousing New Zealand Limited and Earthsong Eco Neighbourhood (“Earthsong”)

AND

Waitakere City Council (“The Council”),

INDEX

- 1.0 DEFINITIONS AND INTERPRETATION**
- 2.0 BACKGROUND**
- 3.0 PURPOSE**
- 4.0 OUTCOMES**
- 5.0 OBJECTIVES**
- 6.0 PRINCIPLES OF THE AGREEMENT**
- 7.0 PROCESSES**
- 8.0 COUNCIL OBLIGATIONS**
- 9.0 EARTHSONG OBLIGATIONS**
- 10.0 REVIEW**
- 11.0 LEGAL COMPLIANCE**
- 12.0 PROTOCOLS**
- 13.0 EVENTS PREVENTING PARTIES FROM MEETING OBLIGATIONS**
- 14.0 DISPUTE RESOLUTION**
- 15.0 TERMINATION**
- 16.0 GENERAL PROVISIONS**

1.0 DEFINITIONS AND INTERPRETATION

In this Agreement, unless the context otherwise requires, words or phrases beginning with capital letters are defined as follows

“Agreement” means this Memorandum of Understanding

“Annual Plan Year” means the period from 1 July to 30 June

“The Council” means Waitakere City Council.

“Earthsong” means Cohousing New Zealand Limited and/or Earthsong Eco Neighbourhood jointly and severally.

“Earthsong Eco Neighbourhood” means those individuals who are either full or associate members of the unincorporated society known by that name which is undertaking the co-housing project at 457 Swanson Rd, Ranui

“Working Day” means any day of the week other than a Saturday or Sunday, a public holiday in the place where the obligation is to be performed or any day between the 25 December and the following 15 January inclusive.

2.0 BACKGROUND

Following the Rio Conference in 1992 Waitakere City declared itself an Eco City. This was defined through the Council’s Greenprint which set the direction for sustainable management socially, environmentally and economically. It outlined principles of partnerships and demonstration projects in areas such as community participation, wastewater, energy, water, building and ecological linkages. In November 2002 the Council adopted a draft Strategic Plan which refreshes the City’s vision and sets the City’s direction for sustainable management through to 2013. There are nine strategic platforms underpinning the City’s direction. These are summarised as follows:

- Urban & Rural Villages: Town centres are thriving places providing exciting options for people to live, work and play.
- Transport and Communication: City travel demonstrates integrated, environmentally responsible and innovative design.
- Strong Innovative Economy: Environmentally responsible businesses are supported and flourishing.
- Strong Communities: People are active, healthy and content and feel safe and connected to others.
- Active Democracy: There are high levels of community participation and people respect each other’s views.
- Green Network: The Waitakere Ranges will be permanently protected and a Green Network will link the Ranges and the sea, connecting the everyday lives of the people of Waitakere with the natural world.
- Three Waters: Waitakere is a centre of innovative water management.
- Sustainable Energy and Clean Air: Waitakere City will be an energy cell, not an energy sink. Air quality supports good health.
- Zero Waste: Waitakere City will be a clean and attractive city that turns all its waste into resources.

Earthsong is a co-housing neighbourhood developed by residents through their non-profit company Cohousing New Zealand Ltd. Earthsong was established with the following vision:

“To establish a cohousing neighbourhood based on the principles of permaculture that will serve as a model of a socially and environmentally sustainable community.

Within this vision its aims are:

- *To design and construct a cohesive neighbourhood whose layout, buildings and services demonstrate the highest practical standards of sustainable human settlement*
- *To develop and foster a living environment which uses clear communication, decision making and conflict resolution guidelines that promote tolerance, safety, respect and co-operation*
- *To assist in education and public awareness of sustainability by demonstrating and promoting innovative community design and environmentally responsible construction.”*

Earthsong has chosen to locate in Waitakere City specifically because of the Council's Eco City policies. The founders of Earthsong first had contact with the Council in 1992. Since then its relationship with the Council has been slowly developing.

3.0 PURPOSE

The purpose of this Agreement is to develop a stronger and ongoing relationship between Earthsong and the Council.

The relationship between Earthsong and the Council exists because of the common visions of both parties.

The Council regards Earthsong as a leading example of an environmentally, socially and economically sustainable community in New Zealand and therefore is a key partner in relation to the Council's strategic objectives with a wealth of experience which supports and demonstrates the Council's objectives.

A mutually supportive relationship between Earthsong and the Council will further the aims of both parties.

4.0 OUTCOMES

Through its relationship with Earthsong, the Council wants to continue demonstrating today's and future practice for sustainable homes and communities. The Council wants to draw from the Earthsong model to learn how to develop future neighbourhoods that demonstrate low environmental impact, are affordable, where people enjoy living and which have a sense of community.

Earthsong wants to be a recognised provider of services, advice and expertise to further the Council's Eco City directions, and for the Council to recognise that role through easier access to the Council's processes, information and resources.

5.0 OBJECTIVES

The objectives of this Agreement are as follows:

- 5.1 To demonstrate best practice for relationships between the Council and organisations that can assist the Council in achieving its strategic goals.
- 5.2 To further strengthen the relationship between Earthsong and the Council.
- 5.3 To provide a mechanism for Earthsong and the Council to work together to achieve their mutual goals in an environment that welcomes innovation.
- 5.4 To ensure that any obstacles to access to Council services are identified and removed.
- 5.6 To develop and implement mutually agreed work programmes
- 5.7 To promote Earthsong as a model in the context of the Eco City directions
- 5.8 For Earthsong to promote the Council's Eco City directions by providing access to the Earthsong site and information for the Council and the public
- 5.9 To recognise Earthsong's contribution to the Council's strategic direction

6.0 PRINCIPLES OF THE AGREEMENT

- 6.1 Each party will work with respect, goodwill, honesty, trust and integrity toward the other party.
- 6.2 The relationship is a mutual two-way relationship and any changes to this Agreement need to involve discussion and agreement between the parties.
- 6.3 The independence of each party is recognised, including:
 - a. Earthsong as a co-operative neighbourhood
 - b. The Council, as a Local Authority, under the Local Government Act 2002 with its role as a decision maker responsible to the wider community and a regulatory authority in terms of the Resource Management Act 1991, the Building Act 1991 and any other application enactmentmeaning that the parties will and need not always agree.

- 6.4 Each party will actively seek to enhance and maintain the relationship.
- 6.5 The parties recognise that adequate resourcing through mechanisms such as an honorarium and contracts is necessary to achieve the objectives of the relationship and to support the processes established to conduct the relationship. This includes:
- a. Resourcing by the Council to recognise ongoing, Council-commissioned input by Earthsong to research projects, community access and education and promotion of the Eco City.
 - b. Resourcing by the Council to support mutually agreed work programmes.
 - c. Support for specific initiatives that the parties agree on and that further the relationship, the needs and aspirations of Earthsong, or are of benefit to the City as a whole; resourcing for such initiatives to be considered by the Council through the Annual Plan process.
 - d. Provision of information by either party to the other.
 - e. The parties agree that any commissioning of work or other agreement pursuant to this clause shall be recorded in writing and executed by an authorised representative of each party. Any purported agreement not so recorded and executed shall have no effect.
- 6.6 The autonomy and independence of each party is protected and maintained.

7.0 PROCESSES

The following processes will be established to conduct the relationship:

7.1 Relationship

- a. Earthsong and the Council will meet formally at least three times a year, in February, June and October to share information on progress and strategic priorities, to negotiate terms of access to the Earthsong site and contracts to meet Annual Plan requirements.
- b. Earthsong may present a regular report to the appropriate Committee of the Council on any issues it wishes to bring to the Council's attention in line with the objectives of this agreement.
- c. Earthsong may provide advice to the Council in relation to the planning and strategic processes
- d. The Council will formally appoint one Councillor and one alternate Councillor to meet with Earthsong on a quarterly basis.
- e. The Council will refer any issues of relevance to Earthsong for review and comment.
- f. The Council will ask Earthsong to appoint representatives to various committees and working parties as it considers appropriate.
- g. The Council will adhere to guidelines for access to the Earthsong site as negotiated according to 7.1(a).

7.2 Organisational Representatives

To maintain an ongoing relationship, Earthsong will nominate one or more Earthsong representatives. The representative of the Council shall be the Chief Executive or his or her nominee. Council's staff and members of Earthsong will work together on an ongoing basis.

7.3 Community and Council Liaison & Access

Earthsong will provide access to the Council and the community by negotiation on a case by case basis. The Council will provide Earthsong with adequate notice and consideration for access.

7.4 Contracts

Any significant contract with value in excess of \$5,000, will be managed to standard Council procedures.

8.0 COUNCIL OBLIGATIONS

8.1 The Council will implement this Agreement.

8.2 The Council will pay for services supplied at Council's prior written request by Earthsong in return for Council and community access to Earthsong facilities, advice and information. Payment may be in cash and/or in-kind (e.g. access to Council staff, resources and services).

- 8.3 The Council representative will nominate a staff person within the Council who has the authority to act as a liaison person between Earthsong and the Council to facilitate Earthsong's compliance with the Council's processes.

9.0 EARTHSONG OBLIGATIONS

- 9.1 Earthsong will implement this Agreement.
- 9.2.1 ~~9.2~~ Earthsong will provide community access to Earthsong facilities, advice and information as requested by the Council in accordance with this agreement. Earthsong reserves the right to refuse access on specific occasions.
- 9.3 Earthsong accepts that any payments under this agreement may be subject to the Council's Annual Plan process.

10.0 REVIEW

- 10.1 The Agreement will be reviewed on a three yearly basis or sooner if both parties so agree.
- 10.2 Any review should be carried out within the context of the Long Term Council Community Plan and requirements to establish 3 year work programmes and relevant funding.

11.0 LEGAL COMPLIANCE

The parties agree to comply with all statutory obligations that either party may have that are relevant to this Agreement.

12.0 PROTOCOLS

- 12.1 Neither party will criticise the other publicly without first discussing in good faith any matters of concern with the other.
- 12.2 This clause does not restrict any party from discussing any matters with their staff, members and sub-contractors, agents, advisors or persons for whom that party is responsible.
- 12.3 Neither party may use the name or logo of the other party without prior written consent.
- 12.4 Parties acknowledge that they each have different internal reporting and feedback processes which will require adequate notice of issues to be discussed.

13.0 EVENTS PREVENTING PARTIES FROM MEETING OBLIGATIONS

- 13.1 Each party has a role to play as outlined earlier in this Agreement. Any party can formally give notice if they believe that one party is in serious breach of the obligations outlined in that role.
- 13.2 No party shall be liable for any default or delay in any obligation under this Agreement due to an event reasonably beyond their control.

14.0 DISPUTE RESOLUTION

- 14.1 Any potential dispute arising from this agreement must be discussed in good faith with the other party before any further action. Note that this does not in any way compromise Council's duties to take action required under any enactment.
- 14.2 If the dispute is not resolved under clause 14.1 the party claiming that a dispute exists must give written notice to the other party specifying the nature of the dispute.
- 14.3 On receipt of a notice given under clause 14.2 both parties agree to use their best endeavours to settle the dispute by negotiation.
- 14.4 If the dispute is not settled by negotiation, then unless both parties agree otherwise in writing, both parties will participate in mediation with a mutually acceptable mediator appointed if necessary by the Chairperson of the Arbitrators and Mediators Institute of New Zealand.

14.5 Both parties will continue to comply with the obligations in this Agreement until the dispute is resolved, provided that payments or reimbursements may be withheld to the extent that they are disputed.

15.0 TERMINATION

15.1 If any party fails to meet its obligations under this Agreement and in the opinion of the other party that failure can be remedied, the other party will give formal notice specifying the nature of the failure and requiring it to be remedied within a specified timeframe which is reasonable having regard to the nature of the failure. This formal notice will follow open discussion of the actions or failures considered to be in breach of this Agreement.

15.2 Either party may terminate this Agreement by giving three months notice in writing to the other party. The parties agree that if this Agreement is terminated, all monies paid in advance in respect of any projects under this agreement will be repaid within 10 working days of the date of the notice of termination.

15.3 Termination of this Agreement shall be without prejudice to other rights and remedies of the parties arising out of any default which occurs before the termination; and any claim for monies payable as at the date of termination or in respect of work done or liabilities incurred before the termination.

16.0 GENERAL PROVISIONS

16.1 Severance

Any clause under this Agreement that is or becomes unenforceable, illegal or invalid for any reason shall not affect any other clauses of this Agreement.

16.2 Waiver

Either party may waive specific rights to the others in writing. Any such waiver shall not affect the remaining rights of either party under this agreement.

16.3 Variation

No variation to this Agreement shall be effective unless it is in writing and signed by all parties.

16.4 Privity of Contract

No third party may enforce this Agreement.

16.5 Confidentiality and Intellectual Property

The parties agree to share information subject to any confidentiality and intellectual property requirements of either party.

16.6. Previous Agreements between the Council and Earthsong regarding site access.

This Agreement supersedes any previous agreements between Earthsong and the Council regarding access to the Earthsong site.

Signed on behalf of Earthsong
by:

Director Cohousing New Zealand Limited

Director Cohousing New Zealand Limited

For Earthsong Eco Neighbourhood

Signed on behalf of the Council by:

Harry O'Rourke
CHIEF EXECUTIVE

Dated this day of 2003