

## **Case study**

### **A Constitutional Change to incorporate provisions for Ti Tiriti o Waitangi, Principles of Responsibility and Climate for Environment and Conservation Organization (ECO).**

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**Case study location:** Aotearoa, New Zealand

**Case study period:** 2013-2016

#### **Case study summary:**

The case study examined the process of adding a principle of responsibility into the constitution of Environment and Conservation Organizations of New Zealand (ECO). ECO is a national, member-based umbrella organization of environmental groups in New Zealand, and engages in international environmental policy, negotiations, and organizations, including the International Union for the Conservation of Nature (IUCN).

Amendments to the constitution in 2013 were proposed by Betsan Martin, a member of the Executive. The constitutional amendment process began with a focus on engagement with Māori interests and principles governance in the Treaty of Waitangi (1840), (re Charter for Responsibility principle on respecting diversity of knowledge systems).

Over a period of three years, 2013 – 2016, the Executive and members considered amendments to the Constitution and adopted principles of responsibility in its Constitution. To support the proposals, and member engagement, Briefing Papers were prepared for the Executive and for members, including reference to principles of responsibility on managing resources for the Common Good, taking account of long term consequences of decisions, and uniting with others are references for constitutional provisions for responsibility and climate policies.

Over the 3 years of discussions, the constitutional amendments were expanded to include specific reference to principles of responsibility and climate. The amendments were approved in August 2016.

## **Case study**

### **Context**

Environment and Conservation Organisations of Aotearoa/New Zealand has amongst its goals the promotion of the protection, restoration and conservation of the biophysical systems and biodiversity of the islands of Aotearoa. It is an umbrella group of environmental organisations that was founded in 1971.

Response Trust is a member of ECO, and Betsan Martin is an Executive member and Vice-Chair, and was Co-Chair from 2014 – Feb. 2016.

The Charter for Responsibility was presented to the ECO Executive in 2013 and accepted as a reference document for ECO, by the Executive. This formed the basis for the adopting principles of responsibility in the ECO Constitution. ECO's engagement with principles of responsibility is actively supported and a point of reference for policy work and submissions.

ECO plays a leadership role of convening environmental organizations to collaborate and develop policy on environmental issues including marine and oceans policy, fisheries, freshwater, climate change, marine protected areas, forestry, certification. The role of ECO as a convening organization with an emphasis on collaboration with stakeholders, partner groups and organizations reflects the Charter of Responsibility principle:

.... responsibility includes uniting with others, and making the effort to become informed.

## Case Study on adding principles of Responsibility and Climate Change into a Constituion

The Alliance-Response Draft Universal Declaration of Interdependence and Responsibility (August 2016) includes amongst its clauses recognition of the potential of human knowledge and that is:

achieved through valuing different knowledge systems and ways of knowing, including indigenous knowledge, sharing them, and applying them in the service of unifying solidarity and a pluralistic culture of peace.

One of the component groups, Response, has encouraged ECO to engage further with the indigenous peoples of New Zealand, known as the tangata whenua, as partners under the context of the Treaty of Waitangi, in their work.

In June 2013 a New Zealand *Constitutional Review* afforded the opportunity for public submissions. These provided a further opportunity to engage with constitutional matters. ECO submitted to a New Zealand government constitutional law review in a paper entitled *Ecosystems, environmental interests and the Treaty of Waitangi*, authored by ECO Executive members Barry Weeber, Cath Wallace and Betsan Martin. Betsan Martin made a submission on behalf of Response Trust and the Common Good network, which profiled a framework of Responsibility (<http://www.response.org.nz/resources/>) and included constitutional proposals emanating from the Treaty of Waitangi.

Both submissions advanced the view that although rights have been strongly advanced in law since the development of international institutions from 1945, little attention has been paid to the development of duties and responsibilities. In arguing for stronger recognition of Treaty of Waitangi agreements it was possible to make a link with responsibility by noting that "An ethics of responsibility is central to indigenous cultures, which emphasise humanity's custodial role in taking care of the land. Maori words such as kaitiakitanga (stewardship), manaakitanga (hospitality), tapu (sacred status), whakapapa (genealogy) and aroha (respect) suggest some of the ideas central to this discussion". ECO and Response Trust submitted in favour of amending our nation's constitution to allow for recognition of our responsibilities to indigenous peoples. The submissions included a framework of responsibility with integration of economy, social commitments, environment and culture.

With regard to the ECO constitutional amendments, there was further development when ECO policy on the Treaty came up for discussion at the organisation's Annual General Meeting in November 2013.

Recognition of the Treaty was already set out in the ECO Constitution in Section 5, under ECO Principles made the Treaty provisions subordinate to environmental goals<sup>1</sup>

A Working Group was established at the ECO Annual General Meeting in 2013 and convened by Betsan Martin, a member of the ECO Executive. During the following year discussion papers were prepared to provide a rationale for proposed changes. These related to the 1840 Treaty of Waitangi and provisions for governance responsibilities of the Crown and continued governance of Maori tribes, in particular over lands, resources and all cultural 'treasures'. The Discussion papers proposed strengthening the ECO Constitution to reflect these governance arrangements that were envisaged and were not adhered to in the colonial assumption of sovereignty.

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<sup>1</sup> The goals that existed in the Constitution at that time were:

- (i) Protection and restoration of the environment including its physical systems and cultural heritage.
- (ii) Minimisation of the environmental impacts of human activity and the sustainable management of natural and physical resources.
- (iii) Safeguarding the interests of future people and indigenous biodiversity.

Recognition of the Treaty of Waitangi is included in Section 5, under Principles:

- (iv) Subject to the provisions of Section 2 above ECO will promote the observance of the Treaty of Waitangi.

A workshop was held to consider the proposals, and the Working group reported back to the ECO Executive in July 2014. A core finding of the Working Group was that:

*ECO has a pre-eminent commitment to safeguarding environmental integrity. It is important to appreciate the depth of ecological integrity embedded in tikanga, and that traditional indigenous systems are integrated across environment, social, economic and spiritual arenas, and across inter-generational time spans. Indigenous knowledge therefore offers much to address the fragmentation of westernized systems. It is this fragmentation that lies at the heart of the critical environmental degradation and climate change that we seek to address through sustainable development and other such frameworks to create integration and long term stewardship.*

The Working Group recommended a structure that would give further effect to Te Tiriti by engaging with tangata whenua members of the wider ECO community. The proposal included an innovation of providing for a 'voice' for the environment, 'Te Taiao' so that the interests of the river, forests, birds, fish, ecosystems would be brought to the tables of decision-making - a voice for the well-being of the environment. This would require provision for Maori and Non-Maori representatives with expertise in appreciating the interests of nature and ecosystems. To strengthen environmental accountabilities a 'Chapeau' was proposed:

In order to give preeminence to the wellbeing of ecosystems, te taiao, and to respect principles of Te Tiriti o Waitangi, provision is made for the voice of the environment, te taiao, through kaitiaki and stewards in ECO decision-making and procedures.

Kaitiaki and tauwi stewards from member organizations of ECO will contribute to interpreting the voice of te taiao, environment in decision-making and policy.

A range of organizational models have been introduced in New Zealand to reflect Treaty partnerships and remedy the marginalization of Maori. Professor Mason Durie has identified a 'bicultural continuum' in the context of Maori health and development, and the same model may be applied to work on the recognition of the voice of Te Taiao. The structural arrangements move along this continuum from a mainstream, monocultural institution at one extreme to independent Maori institutions at the other. The stages commence with (1) an unmodified mainstream institution; (2) recognition of a Maori perspective; (3) active support Maori involvement in the mainstream institution; (4) parallel Maori development; finally (5) to Independent Maori institutions.

The Working Group proposals for ECO might be seen as placing ECO in the third stage of this continuum<sup>1</sup>, with with a mechanism to mediate different, often divergent, perspectives, with the advantage of finding common ground in shared responsibility for environmental wellbeing<sup>2</sup>.

### ***Constitutional changes proposed***

A version of Constitutional changes was first presented to the ECO AGM in 2014 in Wellington. Amendments to the Goals of ECO (which are set out in the Constitution) were proposed with the aim of integrating the Treaty with the environmental goals and priorities, rather than the Treaty being subordinate to the environmental goals.

There was opposition to the changes from some members, with a perceived threat to the over-riding environmental interests of ECO. The discussion at the AGM was clouded by some membership issues that were indirectly associated with the issue of Maori engagement. After one year the proposals were not well understood.

During the following year the Working Group gave further consideration to the proposals and in reviewing the constitution, wider issues were given attention. ECO had supported the Charter for responsibility earlier on,

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1 Durie, Mason. *Whaiora: Maori Health development*. 2nd ed. Auckland, Oxford University Press, 1998.

2 *Proposed ECO Constitution Amendment Discussion paper*, 11 July 2014, Prepared and amended by Betsan Martin, RESPONSE Trust in consultation with Garry Watson, Nga Uri o te Ngahere Trust, The ECO Treaty of Waitangi Working Group, and with ECO Executive and Members.

and renewed attention was given to principles of responsibility. In particular the themes in the following principles are relevant to ECO's direct interests, and prompted the timeliness of including reference to climate responsibility in the ECO Constitution :

The possession or enjoyment of a natural resource induces responsibility to manage it to the best of the common good.

Responsibility involves taking into account the immediate or deferred effects of all acts, preventing or offsetting their damages, whether or not they were perpetrated voluntarily, and inclusive of effects on subjects of law, all biota and ecosystems. It applies to all fields of human activity and to all scales of time and space.

A Further discussion paper was prepared and circulated to members with amendments as follows:

### **ECO's Goals are:**

- i) The protection, restoration, and conservation of the biophysical systems<sup>i</sup> (including terrestrial, climate, oceans and polar systems), indigenous biodiversity<sup>ii</sup>, Te Taiao (environment), indigenous taonga and cultural heritage;
- ii) The sustainable management of any use of natural and physical resources, within the limits of biophysical systems, the health of the environment, indigenous biodiversity health and ecological functioning, and for the sustainability of societies.
- iii) The prevention of environmental degradation and negative impacts of human activity;
- iv) The adoption of safeguards to protect the environment and of measures to implement the Precautionary Principle, and the Principles of responsibility, public good, open government, due process and environmental integrity in all levels of government and in society.
- v) That respect is given to the provisions and principles of Te Tiriti o Waitangi.
- vi) That in the pursuit of i)- v) above, provision is made for the "voice" (ie the interests) of the environment / Te Taiao to be heard in government, society and within ECO. Provision for the "voice" of the environment can be made through Kaitiaki and 'stewards' interpreting that "voice".

These goals were then proposed for the 2015 AGM Christchurch. This version was then slightly modified in response to those discussions and a decision was deferred.

The changes were then advanced as a Constitutional amendment at the ECO AGM in August 2016 in Auckland, proposed by ECO Member Group Response.

### **Value and Reflection**

ECO's support and advocacy for responsibility has brought a value added dimension in work with other organizations. For example, ECO is a member of IUCN (International Union for Conservation of Nature) and Executive members of ECO hold, or have previously held senior leadership positions representing NZ as Councillors on the governing body of IUCN. During a Strategic Planning meeting of IUCN Oceania, in Fiji 2015, ECO actively promoted a framework of responsibility for the IUCN global strategic plan, and prepared a supporting briefing paper to this effect.

While adopted at the regional level this has not made its way to the global policy. There is currently strong momentum for the 'rights of nature' – which is to establish legal standing for nature, as a basis for legal proceedings on behalf of nature. During the 2016 World Congress in Hawai'i, Betsan gave a workshop presentation on Law for responsibility, along with three panellists on Earth Centred Law, the Rights of Nature, and Liability for Environmental Damage.

During the 2016 Hawai'i Congress, there was a brilliant and audacious introduction of a framework for the Environmental Rule of Law in IUCN, and a 'Judges and Nature' theme to strengthen governance for ecological integrity and interpretation of the law for environmental responsibility.

This may well be a promising pathway for further impetus for responsibility interests – pursuit of this will take dedicated time, conceptual and legal research.

The Public Good and environmental stewardship interest are supported through member activities such as the new publication of *Policy Matters*, led by Diana Shand, ECO Co-Chair and IUCN Chair of Commission on Environment, Economy and Social Policy. Castka, P., Leaman, D., Shand, D., Cellarius, D., Healy, T., Mead, A., de Franco M., Timoshyna, T. (eds) (2016) Certification and Biodiversity *Policy Matters*. Issue 21 September 2016. Published by CEESP, IUCN.

## Communications

Documentation for this project:

- Briefing papers for ECO members for Constitutional amendments
- Briefing for IUCN Oceania
- Website documents: [www.response.org.nz](http://www.response.org.nz) and [www.eco.org.nz](http://www.eco.org.nz)
- Two submissions for NZ Constitutional Review
- Submission on NZ Climate Policy
- Submissions on environmental policy: Freshwater 2015 and Resource Legislation 2016
- Presentations at International conferences: IUCN 2012, 2016; Christian Conference of Asia Workshop on Climate Change, Medan Indonesia (2016); UNU Asia Pacific Conference on Climate Change, Cha'am, Thailand (2016)

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<sup>i</sup> Biophysical systems include all the physical and biotic systems and their interactions.

<sup>ii</sup> Biodiversity includes all the diversity of life at all scales and includes genetic and species diversity, assemblage and community diversity and the diversity of ecosystems and biomes.