He tono nā

Te Rūnanga o NGĀI TAHU

ki te

PRODUCTIVITY COMMISSION

e pā ana ki te

TOWARDS BETTER LOCAL REGULATION – DRAFT REPORT

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1. EXECUTIVE SUMMARY

1.1 Te Rūnanga o Ngāi Tahu (Te Rūnanga) appreciates the opportunity to contribute feedback on the Productivity Commission's comprehensive examination of local regulation, contained in the draft report '*Towards Better Local Regulation*'.

1.2 As identified in Chapter 13, 'Local Regulation and Māori', the quality of the relationship between local authorities and iwi authorities is central to the Crown's fulfillment of Treaty obligations. Local authorities must afford the same level of protection to iwi as the Crown is required to provide under the Treaty, if the Crown is to meet its obligations. Mana whenua are naturally local groupings, working with local authorities, and are therefore heavily dependent on local regulatory processes in order to give expression to rangatiratanga and to facilitate their roles as kaitiaki.

1.3 Beyond the duties of the Crown and rangatira, strong local partnerships between iwi and local authorities have significant benefits for economic, social and cultural development and environmental sustainability, creating win/win situations when they work well. Local regulatory design and implementation has a pivotal role to play in the function of the relationship between local and iwi authorities. Consequently, Te Rūnanga has a strong interest in moving towards better local regulation and supports the work of the Commission.

1.4 Te Rūnanga recognises that fresh ideas are needed around the involvement of Māori, and particularly iwi authorities, in Local Government processes. The suite of tools identified in the Report is limited, and some of the links to insights contained in other chapters of the report are missing. Te Rūnanga has given attention to expanding on the potential suite of tools and outlining different ways of approaching iwi involvement, in the hope of generating new thinking in this key area of development.

2. TE RŪNANGA STATEMENT OF POSITION ON THE REPORT

2.1 The position of Te Rūnanga in relation to the Report is that:

- An iwi perspective needs to be woven into the various chapters of the Report, so that discussion of Māori interests and values is not set apart from the wider questions of the Commission, and enables all chapters to complement the chapter dedicated to Māori and Local Government relationships.

2.2 Overall Recommendations

The overall recommendations made by Te Rūnanga ,in the interests of weaving an iwi perspective into the Report, to strengthen the findings and recommendations contained within it, are as follows:

a. **That the Commission considers the potential for Local Government to facilitate sustainable regional development through strong partnerships with local iwi and local businesses;**

b. **That the Commission considers introducing iwi specific questions into the proposed matrix that will assist in regulatory design and**

assessment of regulatory impacts by Government Departments and the Treasury;

c. **That the Commission considers the financial impact of regulatory processes on iwi authorities, similar to unfunded mandates imposed on Local Government, and how funding might be provided to enable iwi to participate in new processes;**

d. **That the Commission considers the importance of quality assurance criteria in relation to consultation with iwi authorities and analysis of the impact of regulation on iwi authorities, and expands on the notion of policy partnership to incorporate Treaty partners;**

e. **That the Commission considers the benefits of local authority cooperation from an iwi perspective, in light of resource capacity issues faced by iwi;**

f. **That the Commission further explores the idea of a funding source independent of local authorities to be used for high cost prosecutions, particularly in the area of environmental monitoring and enforcement;**

g. **That the Commission recognises the importance of environmental monitoring and enforcement from an iwi perspective;**

h. **That the Commission considers the role of activity status in planning instruments, and best practice models, as they relate to the resources required to participate in RMA consenting processes;**

i. **That the Commission examines the potential for a partnership approach to plan development between iwi and Local Government, collectively in consultation with local business and communities of interest, to reduce plan appeals;**

j. **That the Commission further examines the role of Statutory Acknowledgements, from an iwi perspective;**

k. **That the Commission acknowledges the value of other non-statutory mechanisms that provide for an improved partnership approach to resource management, and economic development; and**

l. **That the Commission considers iwi engagement as an element of Local Government performance that requires monitoring, assessment or measurement.**

3. TE RŪNANGA O NGĀI TAHU

3.1 This response is made on behalf of Te Rūnanga o Ngāi Tahu (Te Rūnanga). Te Rūnanga is statutorily recognised as the representative tribal body of Ngāi Tahu whānui and was established as a body corporate on 24th April 1996 under section 6 of Te Rūnanga o Ngāi Tahu Act 1996 (the Act). We note for the Commission the following relevant provisions of our constitutional documents:

Section 3 of the Act States:

"This Act binds the Crown and every person (including any body politic or corporate) whose rights are affected by any provisions of this Act."

Section 15(1) of the Act states:

"Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu whānui."

3.2 The Charter of Te Rūnanga o Ngāi Tahu constitutes Te Rūnanga as the kaitiaki of the tribal interest.

3.3 Te Rūnanga respectfully requests that the Commission accord this response the status and weight due to the tribal collective, Ngāi Tahu whānui, currently comprising over 49,000 members, registered in accordance with section 8 of the Act.

3.4 Notwithstanding its statutory status as the representative voice of Ngāi Tahu whānui "for all purposes", Te Rūnanga accepts and respects the right of individuals and Papatipu Rūnanga to make their own responses in relation to this matter.

4. TE RŪNANGA INTERESTS IN THE REPORT

4.1 Te Rūnanga notes the following particular interests in the Report:

- *Treaty Relationship* – Te Rūnanga has an expectation that the Crown will honour Te Tiriti o Waitangi (the Treaty) and the principles upon which the Treaty is founded. This is particularly relevant in relation to management of the environment and natural resources within the takiwā of Ngāi Tahu whānui, for which Ngāi Tahu whānui have kaitiaki responsibilities and over which Ngāi Tahu whānui maintain rangatiratanga status. The Crown apology to Ngāi Tahu (see Appendix One) is a recognition of the Treaty principles of partnership, active participation in decision-making, active protection and rangatiratanga, which are to be manifested at the Local Government level. The Te Rūnanga o Ngāi Tahu Act 1996 statutorily defines the Ngāi Tahu takiwā, as illustrated in the map contained in Appendix Two.
- *Kaitiakitanga* – In keeping with the kaitiaki responsibilities of Ngāi Tahu whānui, Te Rūnanga has an interest in ensuring sustainable management of natural resources, protecting taonga and mahinga kai resources for future generations. Ngāi Tahu whānui are both users of natural resources, and stewards of those resources.
- *Whanaungatanga* – It is the role of Te Rūnanga to consider the needs of whānau and work to improve the lives of Ngāi Tahu whānui, including through the development of tribal assets, to enable delivery of programmes, services and disbursements to whānau. Partnering with Local Government is one way that Te Rūnanga can work for the benefit of whānau. At all times, Te Rūnanga is guided by the tribal whakataukī: "mō tātou, ā, mō kā uri ā muri ake nei" (for us and our descendants after us).

4.2 Te Rūnanga also has a specific interest by virtue of the Ngāi Tahu Claims Settlement Act 1998 (the Act). The Act provides for Ngāi Tahu and the Crown to enter a new age of co-operation. An excerpt of the Crown apology from the Act is attached as Appendix One, as a guide to the basis of the post-Settlement relationship, which underpins this response.

5. REGIONAL ECONOMIC DEVELOPMENT

5.1 The first question presented in the Report (Q3.1) asks the extent to which Local Government should play a role in regional economic development. Te Rūnanga considers that Local Government has a fundamental role to play in regional economic development, and that Local Government in partnership with iwi can provide a platform for the goals identified in *He Kai Kei Aku Ringa – The Crown-Māori Economic Growth Partnership* (the Māori Economic Development Strategy), in addition to Central Government roles identified in that strategy document.

5.2 Of the six goals listed in *He Kai Kei Aku Ringa*, there are three that have potential links to Local Government. One goal is simply that Government will work in partnership with Māori to enable growth. Another is that active discussions will occur with Māori about development of natural resources, which connects directly with the RMA functions of Local Government. Lastly, Māori Inc (which is a way of describing actors in the Māori economy), are to be viewed as drivers of economic growth.

5.3 Partnership

Local Government functions require development of an in-depth understanding of local economic, social, cultural and environmental characteristics. Local authorities could be well placed, as a result of local knowledge and established relationships, to identify and facilitate opportunities for regional economic growth that factor in those characteristics. Local Government leaders and iwi leaders are equally motivated to see sustainable growth occur where they live, and in that respect, are natural partners. The local planning framework can enable, or hinder, growth in areas of the local economy, so is a key tool to enable desirable, and sustainable, growth. Local Government, working in partnership with iwi and local businesses, could provide a sound platform for regional growth, based on good local information, long-term relationships, a mature outlook and a beneficial planning framework. Replicated in various local contexts, an overall growth in the national economy could be expected.

5.4 Resources and Growth

In that context, iwi are intergenerational investors in local and regional economies. In a post-Settlement era, iwi have increased resources to invest (financial, natural and physical) so should be viewed as drivers of economic growth at the local level. Often, Local Government interaction with iwi focusses on consultation as part of statutory processes, particularly RMA processes. While acknowledging kaitiakitanga is a necessary component of the relationship, this may not recognise the full role that iwi play in the regional context. Other stakeholders may be consulted on issues as key actors in the local or regional economy, such as primary producers or major infrastructure providers, while iwi tend to be overlooked as economic actors, and considered to belong in a different category of engagement.

5.5 Iwi are unique, as Tangata Whenua and by virtue of statutory recognition of the Treaty of Waitangi. Iwi are also part of the wider economic picture. The idea, repeated twice in the Report, that reference to tikanga may be perceived as a way of obtaining commercial advantage, appears to be a mashing together of roles that iwi play, as kaitiaki and as economic actors. A mature understanding of iwi entities is needed. Iwi as economic actors are similar to other economic actors, such as local

primary producers or infrastructure providers, and should expect an equivalent voice. That voice will also necessarily have a cultural tone, which should be viewed as an asset in collaborative processes, leading to mutual gain, rather than considered to be evidence of self-interest.

5.6 Te Rūnanga can provide practical examples of how Local Government working in partnership with iwi can deliver iwi development alongside regional development. Te Tai Poutini, the West Coast, is where the majority of pounamu is found within the Ngāi Tahu takiwā, and at least half of the mining operations on the coast are in pounamu rich areas. Until recently, pounamu discoveries were not declared to Ngāti Waewae (kaitiaki of the taonga where it occurs north of Māwhera (Greymouth)) despite the resource north of Mawhera being wholly owned by Te Rūnanga o Ngāi Tahu, and despite mining operations being permitted by local authorities. Excavated pounamu was either returned to the ground, or found its way on to the black market. Te Rūnanga o Ngāti Waewae have worked hard to find a solution, working with local mining companies and local authorities, which results in excavated pounamu being declared and returned to the iwi. As a consequence, the stone can be worked legitimately and Ngāi Tahu authenticated pounamu can be traded locally, to meet tourist demand. Local Government have played a role in this situation, but that role could be stronger, in recognition of the regional benefits of an appropriately supported pounamu trade.

5.7 On a bigger scale, Te Rūnanga has also been closely involved in the rebuild of Christchurch following the earthquakes of 2010/2011, as a consequence of being given an improved mandate to partner with Local Government. Specifically, the Christchurch Earthquake Recovery Act 2011 required the recovery strategy for the city to be prepared with Te Rūnanga and local authorities working together. The result of that partnership and collaboration has been overall gain for the city, through fresh design perspectives and a variety of iwi resources being invested in the rebuild. The new Christchurch will better reflect the shared history of Ōtautahi, and a shared future. A strong partnership at the local level, in honour of the Treaty, is providing a sound, and enduring foundation for sustainable, and visionary, development of the city.

5.8 Te Rūnanga considers that, in general, there would be value in Central Government: supporting the role of local authorities as facilitators in the local economy; encouraging local authorities to view iwi as partners and economic actors; and recognising the importance of local knowledge and strong relationships at the local level in delivering economic growth regionally, which ultimately leads to national economic growth.

5.9 *Recommendation*

Te Rūnanga recommends the following:

a. That the Commission consider the potential for Local Government to facilitate sustainable regional development through strong partnerships with local iwi and local businesses.

6. ALLOCATION OF REGULATORY ROLES

6.1 The Report includes five questions associated with the allocation of regulatory roles (Q4.1 – Q4.5), which follows on from discussion of the impact on Local Government

of regulation made by Central Government. Although later in the Report, within Chapter 13, the Commission identifies that the capacity of iwi to engage in statutory and regulatory processes is often limited, there is no consideration of the capacity of iwi in terms of regulatory design. For that reason, Te Rūnanga contends that the answer to Q4.1 is "Āe", an important consideration is missing, and in answer to Q4.4, Regulatory Impact Statements should be required to assess regulations against the One Page Guide, provided that within the assessment matrix there are questions that ask those drafting regulations to consider the role of iwi, such as:

- "What is the role of iwi in this regulatory process?"
- "What will be required of iwi engaging in this process?"
- "Will iwi have capacity to participate as partners in this process?"
- "How does this process interact with other regulatory processes involving iwi?"
- "How can this process be designed to better facilitate iwi participation?"

6.2 The answers to these questions can be framed in terms of central versus local regulation. Iwi are local entities, involved in both Central and Local Government processes. Reducing the number of processes iwi are engaged in is one way to address the issue of capacity, which may favour centralisation. Conversely, designing responsive processes that take into account local conditions can assist iwi to engage when resources are limited, and that may be done better at the local level.

6.3 It is worth noting that an aspect of the role of the Treasury in assessing proposed regulations is to determine economic impacts. Viewing iwi development as an important component of economic development should result in assessment of the economic impacts on iwi of regulation. Every process that iwi are involved in takes resources, and those resources might otherwise be allocated to investments or more productive processes. Iwi have a responsibility, as Treaty partners, to engage, but cannot match Crown resources. This should be acknowledged and considered as a matter of course at the design stage, so that maximum benefit can be gained from iwi resources.

6.4 *Recommendation*

Te Rūnanga recommends the following:

b. That the Commission consider introducing iwi specific questions into the proposed matrix that will assist in regulatory design and assessment of regulatory impacts by Government Departments and the Treasury.

7. THE FUNDING OF REGULATION

7.1 Following on from the discussion above, in the same way that Central Government may impose unfunded mandates on Local Government, and expect rates to cover new processes in addition to existing processes without any additional funding for implementation, new regulatory processes often impose new costs on iwi authorities. A recent example of this is the passing of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act (the EEZ Act), which will involve iwi in marine consent processes. The legislation is welcome, but the impact on iwi

resources needs to be acknowledged. While iwi authorities are not regulators, they are partners in Crown management of resources by virtue of the Treaty relationship, and have duties and responsibilities as a consequence of the Treaty partnership, which are referenced in many statutes in terms of Treaty principles and specific associated provisions. Treaty principles include participation in decision-making and information sharing, neither of which can happen without appropriate resourcing.

7.2 The Report asks questions about how Central Government might assist Local Government to implement regulations in a way that avoids unfunded mandate situations (Q5.1 to Q5.3). Ideas are explored around a grant system and how that system might be accountable. The funding solution is likely to depend on the nature of the implementation required, but any system that was initiated on a 'per transaction' basis would be likely to have high accounting costs. A lump sum based on rating base and estimated activity (with reference to advice from the local authority) would be a simpler method, with potential for local authorities to argue for more in subsequent years if the estimate proved to be inadequate, and for Central Government to audit as required. Similarly, consideration could be given to funding iwi authorities to participate in particular regulatory processes, or enabling iwi authorities to recover a proportion of costs incurred.

7.3 There are examples of this occurring at the local level within the Ngāi Tahu takiwā. Environment Southland provides annual bulk funding for Te Ao Mārama, an entity representing four Murihiku Rūnanga, which responds to policy and plan development, individual consenting processes and other statutory processes that involve consultation with local hapū and iwi members. This is a good example of Local Government partnering with local iwi. Another entity representing four Ōtākou Rūnanga, Kāi Tahu ki Ōtākou, works primarily on a cost recoverable basis to enable those Rūnanga to respond to RMA processes in particular. In the bulk funded example, Te Ao Mārama can make choices about how to use the funding for maximum benefit to hapū and iwi. A cost recovery approach restricts activities that Kāi Tahu ki Ōtākou can engage in. Local authorities in the Otago region have recognised the value in providing additional funding to Kāi Tahu ki Ōtākou Limited (KTKO) by each contributing a set amount for the participation of KTKO in a new regional forum, Te Rōpū Taio Otago (Te Rōpū). For that reason, Te Rūnanga considers that there is benefit in a lump sum funding principle to apply to any potential grant to iwi authorities to participate in statutory processes.

7.4 Any funding system would increase costs for Central Government, but it needs to be acknowledged that if those costs do not fall centrally, then they will be absorbed by local authorities and iwi authorities, which may not be beneficial on the whole. Resources stretched in order to deliver specific regulatory processes may take investment away from more productive activity, affecting local economic development.

7.5 *<u>Recommendation</u>*

Te Rūnanga recommends the following:

c. That the Commission considers the financial impact of regulatory processes on iwi authorities, similar to unfunded mandates imposed on Local Government, and how funding might be provided to enable iwi to participate in new processes.

8. REGULATION MAKING

8.1 Chapter 7 of the Report challenges Central Government to improve consultation processes with Local Government, and assessment processes, to ensure that centrally designed regulations meet particular quality standards. Te Rūnanga supports the intent of the Commission to build improvement in this area, and notes that improved consultation with both local authorities and local iwi is needed, as well as improved assessment of regulatory impacts on iwi authorities. In the same way that the Commission identifies use of Local Government forums as a potential "go to" place for consulting on proposed regulation, those developing regulation can look to the Iwi Chairs Forum as a place to test regulatory design (which provides a partial answer to Q7.1).

8.2 The Iwi Chairs Forum consists of mandated leaders from iwi authorities, who are directly accountable to iwi members through iwi governance structures. In that sense, they are an appropriate place to go to obtain an iwi perspective. The process for engaging with the Forum involves seeking agreement from the host Chair to include an agenda item, so building quality relationships with iwi leaders will be important. As with consultation with a Local Government forum, the value of consultation will depend on the extent to which those designing regulation are prepared to incorporate the views expressed. Too often, iwi present local knowledge, knowledge of processes from an iwi perspective, and potential design solutions, only to find that little changes in the content or design of regulations.

8.3 In the same way that a quality assurance process might apply to impacts on Local Government of centrally designed regulation, quality assurance is needed in relation to incorporating consideration of impacts on iwi authorities. Assessment will require development and dissemination of quality assurance criteria that outlines best practice consultation with iwi authorities and appropriate analysis of the impacts of regulation on iwi authorities.

8.4 The culture change referred to in Chapter 7, which seeks to move towards a view of Central Government and Local Government as policy partners, needs to incorporate iwi into that picture. Iwi span both tiers of government, as Treaty partners, and have a useful role to play in bridging the two tiers. Iwi have intimate understanding of Local Government processes and the local context, but also develop familiarity with Central Government processes and the agencies working within Government. Iwi are well placed to understand the impact of proposed regulation, and can work with both levels of government to improve proposals in terms of implementation and outcomes.

8.5 *Recommendation*

Te Rūnanga recommends the following:

d. That the Commission considers the importance of quality assurance criteria in relation to consultation with iwi authorities and analysis of the impact of regulation on iwi authorities, and expands on the notion of policy partnership to incorporate Treaty partners.

9. COOPERATION

9.1 A potential benefit of cooperation between local authorities is that these authorities are likely to share relationships with local hapū or iwi. Common issues may be able

to be discussed collectively, and solutions developed that cross local authority boundaries, so that the experience of hapū or iwi members dealing with the different authorities is consistent. Resource management issues in particular can benefit from a collaborative approach. This could have significant benefits for iwi authorities as a means of reducing the amount of resource needed to address a particular regional issue. It is another way of overcoming capacity issues faced by all iwi authorities.

9.2 Te Rōpū Taio Otago (Te Rōpū), as referred to in Section 7.3, has been specifically designed to address the need for greater regional collaboration, as it relates to the impact on iwi resources. The forum provides a platform for Kāi Tahu ki Otago and the local authorities of Otago to engage collectively. Te Rōpū has particular objectives: to facilitate mutual understanding; to improve the efficiency of iwi engagement and resourcing for council-oriented business; to foster and grow iwi capacity in local government activities, processes and governance; to develop a combined work programme that avoids duplication of effort for iwi, and enables stable resourcing and prioritisation; and to assist the local authorities to fulfill their statutory obligations. It is a newly established model that has many potential benefits for iwi members and local authorities, which will be tested as new planning instruments emerge in the regional context.

9.3 *Recommendation*

Te Rūnanga recommends the following:

e. That the Commission considers the benefits of local authority cooperation from an iwi perspective, in light of resource capacity issues faced by iwi.

10. MONITORING AND ENFORCEMENT

10.1 The Report poses a question around the potential need for a funding source independent of council budgets, as set by elected councillors (Q10.1). Te Rūnanga would support such a mechanism, as enforcement of local regulations, particularly in the area of resource management, can be difficult in some cases where the costs of prosecution are high and there are political factors at play that may reduce the likelihood of a local authority pursuing the matter through the court system. From the perspective of Te Rūnanga, there is a need for deterrence to change behaviour and for resource users to understand the consequences of poor environmental performance, particularly in cases where behaviour is intractable and at the extreme end of the scale. As kaitiaki, mana whenua need to know that the system is working to protect resources for future generations, and that lack of local authority funding is not a barrier to appropriate resource protection.

10.2 In relation to levels of monitoring, the resources available to local authorities vary markedly depending on rating base and other factors, which are well covered in the Report, and corresponds with the experience of Te Rūnanga. There are a wide variety of local authorities in the Ngāi Tahu takiwā (over 20), all with different resource levels and different approaches to monitoring and enforcement. Iwi need to know that appropriate stewardship is in place, in order to meet kaitiaki responsibilities. For that reason, Te Rūnanga supports establishment of consistent standards of monitoring and enforcement to be applied to all local authorities, including levels of monitoring, methods of monitoring, and expectations of

enforcement, with appropriate resourcing available, to enable consistency to be delivered in practice. Having access to a variety of enforcement tools is also needed, so that behaviour is influenced and managed across the spectrum. Differing resource levels is likely to be a fundamental factor limiting some local authorities from delivering appropriate levels of monitoring and enforcement. However, establishing standards ensures that local authorities focus resources in this area, which is a critical component of resource management, from an iwi perspective.

10.3 *Recommendation*

Te Rūnanga recommends the following:

f. That the Commission further explores the idea of a funding source independent of local authorities to be used for high cost prosecutions, particularly in the area of environmental monitoring and enforcement; and

g. That the Commission recognises the importance of environmental monitoring and enforcement from an iwi perspective.

11. RMA DECISION-MAKING

11.1 The Report asks about the low level of RMA applications being declined. Te Rūnanga notes that local authorities are often intent on the 'enabling' function of RMA decision-making, which seeks to see the benefits of a proposal realised, particularly from an economic or social perspective, while its adverse environmental impacts are minimised. Applicants are generally aware of the thresholds contained in planning instruments and the RMA, and will pitch applications to fit within those thresholds, although it is not uncommon for Te Rūnanga to respond to proposals that push the limits. Non-complying applications are relatively common, but in those cases, applicants will expend considerable resources explaining how particular mitigation measures will ensure that the overall effects of the activity are no more than minor on the environment (which includes people and communities), or consistent with overall planning objectives despite being non-compliant.

11.2 Through the application process, non-complying activities and discretionary activities are the most likely to be improved as a consequence of concerns raised by affected parties, such as iwi, generally by way of consent conditions or mitigation packages. However, the resources required to argue non-complying activities, in particular, for the applicant and for iwi, are significant, and from the perspective of Te Rūnanga, greater use of prohibited activity status would be beneficial. In the case of discretionary activities, an emphasis on developing best practice criteria, working with iwi, which is provided to applicants, could substantially reduce costs for all, and improve outcomes. Standard incorporation of an iwi perspective in best practice criteria is warranted. Te Rūnanga is often seeking for consistent basic measures to be applied (ie native riparian planting). A partnership approach between Local Government and iwi authorities could explore ways to implement consistent measures sought by iwi, enhance the planning framework for overall benefit, and provide certainty for all involved.

11.3 In relation to appeals, Te Rūnanga uses the appeal process as a means of ensuring that an iwi perspective is incorporated into documents where there is a lack.

Sometimes the perspective is lacking entirely, and other times, it will be a particular provision that is contrary to stated iwi positions. Incorporating an iwi perspective is most likely to relate to a substantive matter, rather than a point of law, which is why *de novo* hearings are an important option for iwi authorities. Te Rūnanga use of appeals could be substantially reduced if the planning processes included greater participation of iwi from start to finish (see Appendix Three, which shows a potential process for incorporating an iwi perspective into freshwater management; and Appendix Four, which illustrates the importance of the Treaty as a foundation for RMA outcomes).

11.4 In particular, an iwi perspective is vulnerable to exclusion or dilution to the point of ineffectiveness, when Te Rūnanga are consulted only after policy positions have already been formed in consultation with others, or when Te Rūnanga is treated as one of many stakeholders, with no particular emphasis given to iwi views. The Canterbury Water Management Strategy committee processes are an example where progress has been made because iwi representatives are around the table with other stakeholders, and that has been genuinely beneficial for all involved in terms of developing shared understanding, but the process has also resulted in dilution of the iwi voice. However, as the Treaty partner, Te Rūnanga is not just another stakeholder. There is need for a genuine partnership approach to apply, and for that approach to incorporate the views of other stakeholders, but originate from a genuine collaboration between iwi authorities and local authorities.

11.5 *Recommendations*

Te Rūnanga recommends the following:

h. That the Commission considers the role of activity status in planning instruments, and best practice models, as they relate to the resources required to participate in RMA consenting processes; and

i. That the Commission examines the potential for a partnership approach to plan development between iwi and Local Government, collectively in consultation with local business and communities of interest, to reduce plan appeals.

12. LOCAL REGULATION AND MĀORI

12.1 The Report identifies some key issues for iwi authorities participating in Local Government processes, including: capacity issues, the significance of the Treaty relationship between iwi and the Crown, the importance of kaitiakitanga, and the difference in operating styles between iwi authorities and local authorities. However, elements are missing, or need expanding upon. Some of these have been covered in the sections above, but also need attention in the area of statutory acknowledgements and non-statutory mechanisms for achieving participation in decision-making, from a basis of partnership.

12.2 Statutory acknowledgements are described, but their role in the relationship between local authorities and iwi authorities is not pursued. In the experience of Te Rūnanga, these are often part of a tick box exercise by local authorities, which results in iwi being advised of an application, but not necessarily being considered an affected party in relation to a proposed resource use. If Te Rūnanga does not respond to the advice that an application has been received, this can be treated as a

proxy for "less than minor effects on cultural values" within the framework of the RMA. The intent of the Statutory Acknowledgements was that it would enable meaningful dialogue to occur between iwi authorities and local authorities about management of wāhi taonga. That can only occur during the plan development process, in a spirit of Treaty partnership. At the consenting stage, positions should have already been developed together to guide local authorities about what is important, in terms of cultural effects, and what is not important, and therefore can safely be considered a less than minor effect. In the experience of Te Rūnanga, this is not common practice. Local authorities will likely point to the capacity of Te Rūnanga as a reason for failure in this area, which is certainly part of the picture, but not the whole picture.

12.3 The Report asks a key question around what mechanisms might exist to include Māori in decision-making (Q13.1). Māori Advisory Committees, joint management agreements and statutory processes are cited as the three ways used at present. There are other non-statutory mechanisms that can be employed, and that Environment Canterbury has begun to employ, to better incorporate an iwi perspective into decision-making. Secondments are identified earlier in the Report as a way of improving Central Government and Local Government interaction, and consequently regulatory design. The same approach can be taken to interaction between iwi authorities and local authorities. Engaging iwi at a strategic level, prior to statutory plan development is another important way to weave in an iwi perspective. Both those mechanisms are about sharing operations and functions, developing mutually beneficial expertise and cross-pollinating knowledge. Te Rūnanga considers that these kinds of internal invitations to participate and share are essential to establishing a partnership approach based on shared understanding and shared goals, which necessarily leads to cultural change. These are also cost effective measures.

12.4 Environment Southland funding of Te Ao Mārama is another way of ensuring a more active participation by local iwi in local authority processes. The establishment of a dedicated, funded body, enables Environment Southland to draw on the expertise of that organisation in the same way that local authorities work with consultancies to improve planning instruments. In that sense, Te Ao Mārama is a professional body, with specific and relevant expertise, not just a committee of interested representatives. Kāi Tahu ki Ōtākou plays a similar role in the Ōtākou region. Committees are important, but a broader suite of options and tools and ways of representing or incorporating an iwi perspective is needed. Again, Te Rōpū Taio Otago, involving a collective of local authorities, provides a good example of a strategic approach being taken outside of statutory processes, that then feeds in to those processes.

12.5 *Recommendations*

Te Rūnanga recommends the following:

j. That the Commission further examines the role of Statutory Acknowledgements and other Treaty Settlement mechanisms, from an iwi perspective; and

k. That the Commission acknowledges the value of other non-statutory mechanisms that provide for an improved partnership approach to resource management and development.

13. ASSESSING PERFORMANCE

13.1 In response to the question around regulatory capabilities (Q14.2) Te Rūnanga notes that capability has to extend to understanding of the Treaty of Waitangi, knowledge of tikanga Māori and ability to incorporate an iwi perspective into decision-making. The performance of local authorities in relation to iwi engagement needs to be assessed, along with other performance measures. Whatever system is chosen to monitor and assess local authorities must incorporate this kind of measure.

13.2 *Recommendations*

Te Rūnanga recommends the following:

I. That the Commission considers iwi engagement as an element of Local Government performance that requires monitoring, assessment or measurement.

APPENDIX ONE: TEXT OF CROWN APOLOGY

The following is text of the Crown apology contained in the Ngāi Tahu Claims Settlement Act 1998.

Part One – Apology by the Crown to Ngāi Tahu

Section 6 Text in English

The text of the apology in English is as follows:

1. The Crown recognises the protracted labours of the Ngāi Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngāi Tahu proverb 'He mahi kai takata, he mahi kai hoaka' ('It is work that consumes people, as greenstone consumes sandstone'). The Ngāi Tahu understanding of the Crown's responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngāi Tahu ancestors. Tiramorehu wrote:

   "'*This was the command thy love laid upon these Governors … that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily … and remember the power of thy name."*

   The Crown hereby acknowledges the work of the Ngāi Tahu ancestors and makes this apology to them and to their descendants.

2. The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu's use, and to provide adequate economic and social resources for Ngāi Tahu.

3. The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu's use and ownership of such of their land and valued possessions as they wished to retain.

4. The Crown recognises that it has failed to act towards Ngāi Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngāi Tahu saying 'Te Hapa o Niu Tireni!' ('The unfulfilled promise of New Zealand'). The Crown further recognises that its failure always to act in good faith deprived Ngāi Tahu of the opportunity to develop and kept the tribe for several generations in a state of poverty, a state referred to in the proverb 'Te mate o te iwi' ('The malaise of the tribe').

5. The Crown recognises that Ngāi Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of Waitangi and duties as citizens of the nation, especially, but not exclusively, in their active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngāi Tahu's loyalty and to the contribution made by the tribe to the nation.

6. The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.

7. The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu raNgāti ratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tangata whenua of, and as holding raNgāti ratanga within, the Takiwā of Ngāi Tahu Whānui.

Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of co-operation with Ngāi Tahu."

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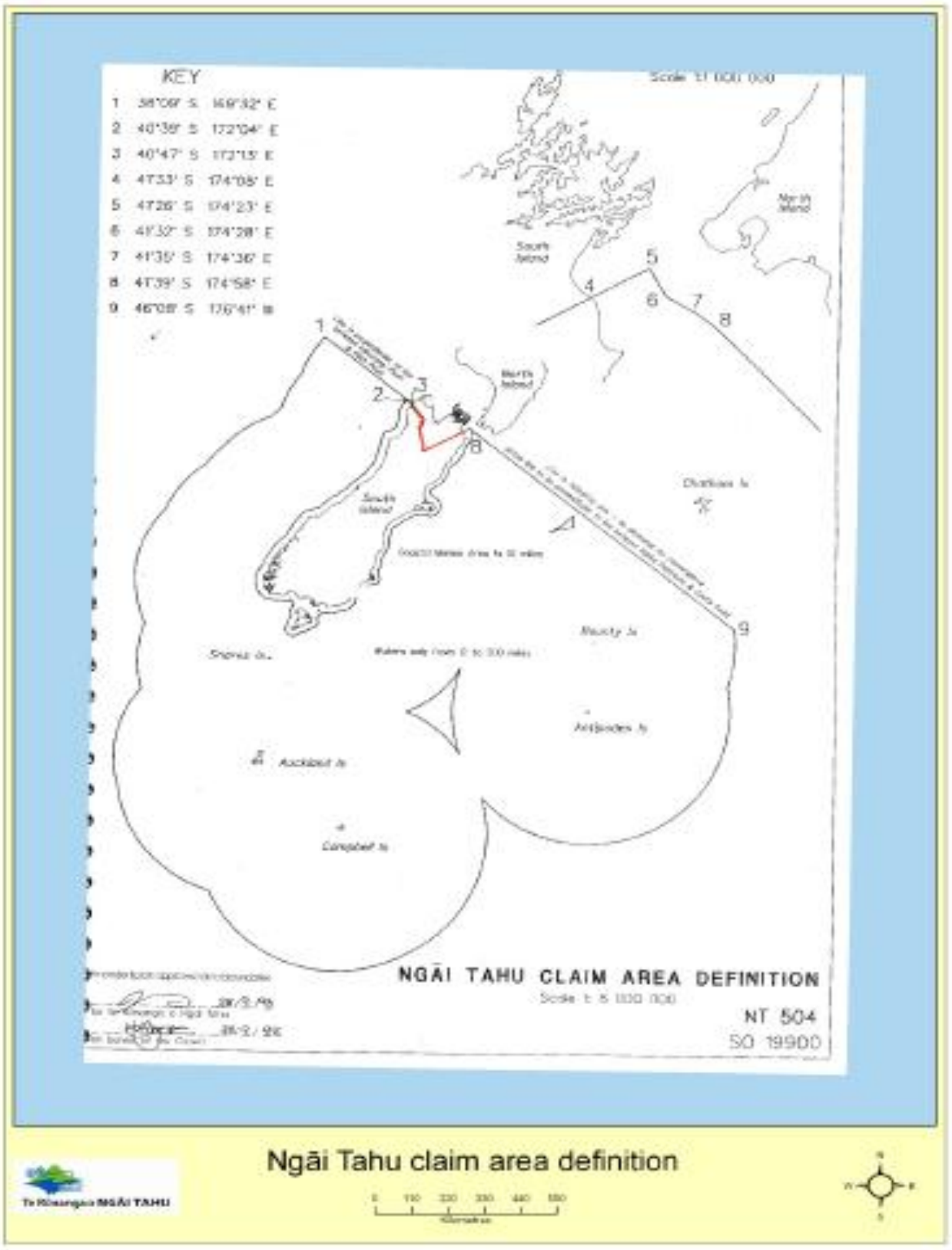
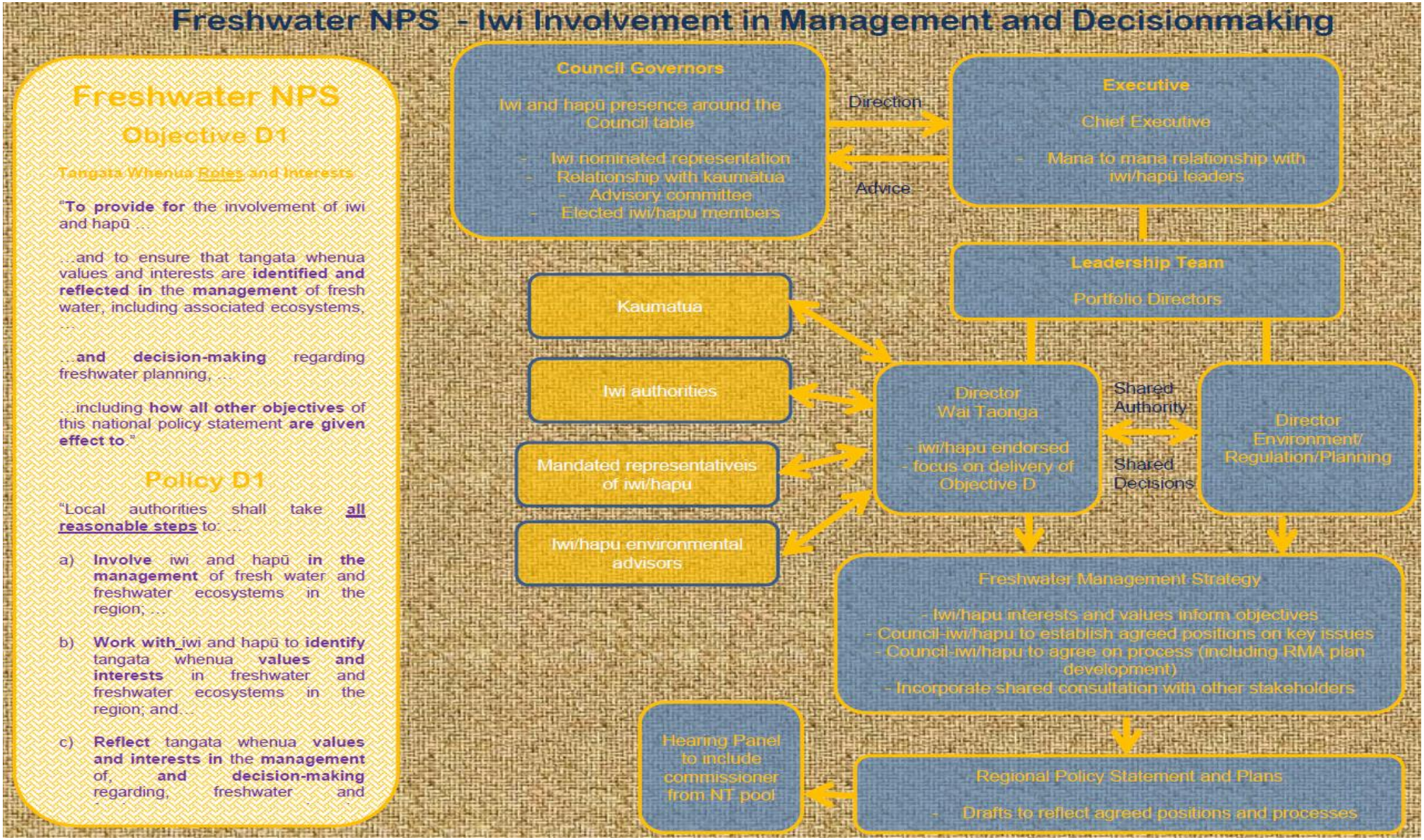
APPENDIX TWO: NGĀI TAHU TAKIWĀ



APPENDIX THREE: PLANNING IN PARTNERSHIP DIAGRAM



APPENDIX FOUR: TREATY FOUNDATION DIAGRAM