TE TIRITI HEALTH CHECK REPORT

BY

WHĀIA LEGAL AND BUDDLE FINDLAY

FOR

TE KAUNIHERA Ā ROHE O TE TAITOKERAU / NORTHLAND REGIONAL COUNCIL

23 SEPTEMBER 2022

1.   PART ONE: INTRODUCTION

1.1   Buddle Findlay and Whāia Legal,[1] were engaged by Te Kaunihera ā Rohe o Te Taitokerau / Northland Regional Council (**Council**) to undertake a Te Tiriti health check. The purpose of the Tiriti health check is to provide an independent assessment as to how the Council understands and implements its Te Tiriti o Waitangi obligations in engaging with tangata whenua and mana whenua.

Scope and process

1.2   In March 2022, the Māori Technical Advisory Group (**MTAG**) provided initial direction by using the Te Arawhiti framework and identified the following six priority areas for the Tiriti health check:

(a)   Governance: Understanding of Māori council relations priorities;

(b)   Relationships with Māori: Relationship management;

(c)   Relationships with Māori: Engagement, partnerships and empowerment;

(d)   Relationships with Māori: Procurement;

(e)   Structural: Addressing institutional racism; and

(f)   Policy and services: Evaluation.

1.3   As part of the work plan developed with the Council, we agreed on proposed questions for the workshops to address the six priority areas. However, it became clear during the course of the workshops, that to allow free and frank discussions between ourselves and participants and to gain the most insight from these workshops, these were better facilitated through broad scope questions, and we could then focus on key issues and challenges / opportunities. The broad scope questions included the following:

(a)   What are the Council's strengths in working with Māori?

(b)   What are the Council's strengths in working in a manner that is consistent with Te Tiriti and its principles?

(c)   What can be improved?

1.4   The discussions naturally addressed MTAG's six priority areas, noting that some groups spoke to different aspects of the six priority areas.

1.5   In undertaking this assessment, we have:

(a)   followed the work plan and scope developed with the Council;

(b)   focused on the six priority areas identified by MTAG;

(c)   used the Te Arawhiti framework to assess Council's performance in the six priority areas;

(d)   reviewed Council documentation provided by the Council as relevant to the six priority areas;

(e)   conducted workshops with (or received written feedback from) the following groups to obtain feedback on the Council's performance in the six priority areas:

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[1] Tai Ahu, Rahera Douglas (Whāia Legal) and Paul Beverley, Frances Wedde, Cerridwen Bulow (Buddle Findlay).

> (i)   Te Taitokerau Māori and Council Working Party (**TTMAC**) and MTAG;
>
> (ii)   kaitiaki;
>
> (iii) Council Executive Leadership Team; and
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> (iv)   Councillors and Council staff;

(f)   prepared a draft report summarising our findings and setting out our recommendations;

(g)   presented the draft report to MTAG, the Executive Leadership Team (**ELT**) and TTMAC and considered any feedback; and

(h)   prepared a final report.

1.6   We also note that, although this report is focused on the Council, there are also Council-controlled organisations / entities, whose functions are significant for Te Taitokerau communities. As such, the findings and recommendations in this report will also be relevant to, and will need to be considered by, those organisations / entities.

Report structure

1.7   To reflect the structure of our workshops, our report addresses:

(a)   **Part One**: Introduction.

(b)   **Part Two**: Te Taitokerau context.

(c)   **Part Three**: What is the current state of the relationship between Māori and the Council?

(d)   **Part Four**: What is working well?

(e)   **Part Five**: What are the challenges / opportunities?

(f)   **Part Six**: Recommendations.

1.8   We have addressed the six priority areas, and the Te Arawhiti framework, in our recommendations section. The Te Arawhiti framework was a useful reference point, but we developed a specific framework for this process, which is reflected in the structure of this report.

1.9   We recognise and understand that the Tiriti health check, and this report, is just one part of the journey of the relationship between Council and Te Taitokerau Māori.

2.   PART TWO: TE TAITOKERAU CONTEXT

2.1   In undertaking this Tiriti health check, it is important to understand the unique context of the area serviced by the Council. By unique context, we mean:

(a)   population structure and demographics;

(b)   iwi and hapū rangatiratanga; and

(c)   the history and relevance of He Whakaputanga and Te Tiriti o Waitangi together, and Treaty settlements.

2.2   We consider each of these elements below.

2.3   We heard that Crown and local government structures have been designed to maintain the 'status quo' and colonial hierarchy where institutions remained in the centre with the power and authority, and others were kept on the outside with little or no influence (not being able to vote was one example). Māori have long been ignored or treated as a party to be consulted, rather than being at the decision-making table as a Tiriti partner. There is a need to ensure that local government and Māori are moving beyond that colonial history and more towards partnership, and we saw positive signs of the beginning of that movement through this health check process.

Population structure and demographics

2.4   The 2018 census put the population count for the Northland region at over 179,000 people spread over an area of 12,500 km.[2] Of that 179,000 over 64,000 (or 36%) of the population were Māori. Comparatively, the 2018 census found that Māori make up 16.5% of the total population of the country.

Iwi and hapū rangatiratanga

2.5   Within the Northland region, there are a number of different collectives of iwi and hapū who held and continue to hold rangatiratanga.

2.6   Te Puni Kōkiri has identified 12 iwi that have been formally recognised by the Crown whose Tākiwa fall, either partially or wholly, within the region. These are Te Aupōuri, Ngāti Kuri, Ngāti Kahu, Te Rarawa, Ngāi Takoto, Ngāti Kahu ki Whangaroa, Ngāpuhi/Ngati Kahu ki Whaingaroa, Ngāpuhi, Ngātiwai, Te Uri o Hau, Te Roroa and Ngati Whātua.

2.7   In its report "He Whakaputanga me te Tiriti", the Waitangi Tribunal recognised the rangatiratanga of hapū at the time of the signing of Te Tiriti. The Tribunal stated that:[3]

> They came from a world in which each hapū was autonomous and exercised power over its own territories, retaining that autonomy even when acting in alliance or concert with other hapū. The rangatira brought also their own individual experiences and concerns, based on the interests of their hapū…

2.8   Hapū autonomy remains an important and distinct feature of the Northland region to this day. During interviews, it was noted that the most recent communication between Council staff and hapū leaders identified more than 300 hapū. A number of hapū actively engage with the Council on their own terms and to represent the interests of their hapū members in the rohe where they hold mana whenua.

2.9   Some iwi and hapū have entered into deeds of settlement and consequent settlement legislation with the Crown, others have not. Those who have settled have formal arrangements with the Council in accordance with their settlement legislation.

He Whakaputanga and Te Tiriti

2.10   The unique context of hapū autonomy in Northland is intertwined with views on He Whakaputanga and Te Tiriti. By He Whakaputanga, rangatira from Te Taitokerau declared their own independence and the independence of their country, and asserted their own sovereignty, independent of any other purported law-making power. The Waitangi Tribunal acknowledged that historical accounts

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[2] https://statsnz.maps.arcgis.com/apps/webappviewer/index.html?id=6f49867abe464f86ac7526552fe19787.
[3] Waitangi Tribunal *He Whakaputanga me te Tiriti* (Wai 1040, 2014) at 2.

from the time support the position that He Whakaputanga was an assertion of sovereignty in accordance with Māori political understandings of the time, that is, when hapū were the main political unit.

2.11   While He Whakaputanga is not referenced in Te Tiriti, the two documents together are an essential statement on the sovereignty of Māori in Northland. The Waitangi Tribunal found that Taitokerau rangatira did not cede sovereignty to the Crown at the time they signed Te Tiriti and our understanding through this process is that Taitokerau Māori continue to maintain that they have not ceded their sovereignty to either central or local government.[4] That position of sovereignty, as envisioned by the rangatira at the time He Whakaputanga was signed, is something that Taitokerau Māori are still striving to achieve.

2.12   In our interviews with interested Māori parties, we heard how political and legal structures inherited under the colonial system have alienated Māori participation in governance. In particular, the local government system was designed to maintain English ideals of class structure. To that end, only landowners could vote for a long period of time; women and Māori were excluded from participation in local government. This history of Māori exclusion has resulted in ongoing low participation from Māori.

2.13   We heard there needs to be a system change to enable those who have genuine passion for Māori empowerment to be effective. While Māori represent a high proportion of the population of Northland, the system has not been built to account for Māori participation nor for the isolation that occurs with rural communities.

2.14   While the Tiriti health check is limited to consideration of Te Tiriti, we recognise the importance of He Whakaputanga as a formal statement of the sovereignty and unity of rangatira in Te Taitokerau. We also acknowledge its essential relevance to the unique context of Taitokerau and have taken this into account in our assessment.

3.   PART THREE: WHAT IS THE CURRENT STATE OF THE RELATIONSHIP BETWEEN MĀORI AND THE COUNCIL?

3.1   This section provides an overview of:

(a)   the legislative context for the relationship between Māori and local government;

(b)   the existing governance / relationship structures between Māori and the Council; and

(c)   the existing strategic direction / frameworks for the relationship between Māori and the Council.

3.2   Our assessment of what is working well, and what the challenges and opportunities are, is addressed in parts four and five of this report.

Legislative context

3.3   There is no one coherent framework of statutory obligations for the relationship between Māori and local government. Rather, discrete statutory obligations have been developed on a statute-by-

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[4] Waitangi Tribunal *He Whakaputanga me te Tiriti* (Wai 1040, 2014) at 2.

statute basis over many years, and they are framed in different ways depending on the statute in question.

3.4 There are different obligations that may apply to a council depending on the circumstances. For example, under the Resource Management Act 1991 (**RMA**) there are certain obligations that are relevant to a council in its regulatory capacity; and others when acting as an applicant for resource consent (eg when seeking consents for three waters infrastructure). The statutory obligations arise under a range of statutes, including:

(a) local government legislation (such as the Local Government Act 2002);

(b) planning and environmental legislation (such as the RMA);

(c) Treaty settlement legislation;

(d) customary rights legislation (such as the Marine and Coastal Area (Takutai Moana) Act 2011); and

(e) other legislation (such as the Reserves Act).

3.5 There are also other obligations to Māori that arise, for example, under RMA national policy statements such as the New Zealand Coastal Policy Statement 2010 or the National Policy Statement for Freshwater Management 2020.

3.6 The specific legal obligations vary depending on the statute and the context, and those differences are important. Obligations may focus on (for example):

(a) Te Tiriti o Waitangi / the Treaty of Waitangi;

(b) recognition of tikanga Māori, values, culture and traditions;

(c) understanding of tikanga and mātauranga Māori;

(d) customary rights (for example in the Marine and Coastal Area (Takutai Moana) Act context);

(e) participation for Māori in local authority decision-making;

(f) recognition of areas or resources of particular significance to Māori; and

(g) processes such as consultation.

3.7 The inconsistencies and gaps in the legislation present challenges to both Māori and councils in terms of understanding what is required in the relationship context.

3.8 One important matter to be explored further is the extent to which the legislation is enabling or constraining in terms of advancing the partnership aspirations of the parties.

Governance / relationship structures

3.9 The governance structure for the Council is made up of:

(a) a full Council comprising of nine elected Councillors (as the ultimate decision-making body for Council matters);

(b) joint committees;

(c) statutory bodies;

(d)   co-governance bodies;

(e)   sub-committees; and

(f)   working parties.

3.10   All joint committees, sub-committees and working parties are required to regularly report progress on their functions to the Council. In addition to those governance structures, there are also a number of collaborative community working groups.

3.11   Māori are currently represented at governance level through representation / membership on:

(a)   certain joint committees, including:

(i)   Joint Climate Change Adaptation Committee;

(ii)   Kaipara Moana Remediation Joint Committee; and

(iii)   the Civil Defence and Emergency Management Group;

(b)   a statutory body, being the Te Oneroa-a-Tōhe Board, which was established through Treaty settlements and is a joint committee for the management of Te Oneroa-a-Tōhe (90 Mile Beach);

(c)   working parties, including:

(i)   TTMAC Working Party;

(ii)   Climate Change Working Party;

(iii)   Planning and Regulatory Working Party;

(iv)   Biosecurity and Biodiversity Working Party; and

(v)   Water and Land Working Party; and

(d)   other groups, such as:

(i)   MTAG;

(ii)   Local Government Elections subgroup;

(iii)   Strategic (Priorities) Intent subgroup 2021; and

(iv)   Tāngata Whenua Water Advisory Group.

3.12   Members of TTMAC make up the representation / membership on the other working parties and the other groups.[5] The working parties and groups do not have any formal decision-making delegations from the Council.

3.13   The Local Government Elections subgroup, and Strategic (Priorities) Intent subgroup are examples of groups formed for specific projects or pieces of work throughout a triennium to ensure the Council has iwi and hapū expertise and perspectives.

3.14   Māori will also be represented in the full council following the 2022 local body elections. In October 2020, the Councillors agreed to establish Māori constituencies and formally introduce Māori seats to

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[5] A TTMAC member is also a representative on the Joint Climate Change Adaptation Committee.

the full council. We understand it is intended that two of the nine Councillors elected will be from the Māori constituencies.

3.15 In addition there is:

    (a)   Te Kahu o Taonui, the Iwi Chairs Forum which is autonomous from Council; and

    (b)   the Iwi and Local Government Agency Chief Executives Forum (**ILGACE**).

Kaipara Moana Remediation Joint Committee

3.16 The Kaipara Moana Remediation Joint Committee oversees the Kaipara Moana Remediation Programme. The committee is made up of six Kaipara Uri and six council representatives (three from Auckland Council and three from Northland Regional Council). A memorandum of understanding was signed in October 2020 by central government, councils and Kaipara Uri to formalise the equal partnership between Kaipara Uri and the councils to undertake the remediation programme.

Te Oneroa-a-Tōhe Board

3.17 The Board is a co-governance partnership established through the Te Hiku Treaty settlement legislation. The board comprises of members from four iwi and members from the Far North District Council and Northland Regional Council. The purpose of the board is to provide governance and direction to those with a role or responsibility relating to Te Oneroa-a-Tōhe.

TTMAC

3.18 TTMAC was established in 2014, and initially operated as a standing committee (Te Tai Tokerau Māori Advisory Committee). Due to limitations of standing orders and how the committee could operate, it was decided that TTMAC would better operate as a working party. Prior to 2014, TTMAC (or similar constructs) operated / participated in Council processes. New Terms of Reference were agreed in April 2020 (**ToR**). By way of summary, the ToR provide as follows:

    (a)   the Te Kaupapa / Mission statement;

    (b)   He Tirohanga Māori / Vision Statement 2030;

    (c)   Ngā Ture / Values and Ngā whainga / Objectives;

    (d)   membership of TTMAC consists of:

        (i)   21 appointed iwi and hapū members (one representative per iwi and hapū); and

        (ii)   nine elected members (Councillors);

    (e)   TTMAC meets up to 10 times a year (either formally or for workshops at marae focusing on local issues) and provides a summary report to the Council after each meeting;

    (f)   the Council pays the costs for meeting, mileage and attendance at other working parties for non-elected members of TTMAC (iwi and hapū representatives) in accordance with its relevant policy and the ToR; and

    (g)   currently TTMAC has no delegated authority from the Council.

3.19 The Te Kaupapa / Mission Statement in the ToR states that TTMAC provides:

(a)   a forum that emphasises and advocates te Ao Māori; the Māori world view;

(b)   a means by which the Māori perspective is valued, influences and challenges processes and policy;

(c)   a stable platform for whānau, hapū and iwi to connect and communicate with each other;

(d)   a safe haven for open and forthright discussion; and

(e)   strong leadership in consultation with tāngata whenua and Māori communities.

MTAG

3.20   MTAG is a sub-group of TTMAC and provides technical advice and guidance to the non-elected members of TTMAC (iwi and hapū representatives).

3.21   MTAG (previously the Māori Technical Working Party) was endorsed in 2015 to assist the then Te Tai Tokerau Māori Advisory Committee.

3.22   MTAG does not have formal delegations or terms of reference.

Te Kahu o Taonui and ILGACE

3.23   Te Kahu o Taonui was formed in 2006 as a collective of iwi and their Chairs in Te Taitokerau to create opportunities to benefit whanau, hapū and marae. Since its establishment there are now 12 iwi represented in this collective recognised by the iwi authorities of Te Taitokerau independently. These are Ngāti Whatua, Te Roroa, Ngātiwai, Ngāti Hine, Ngāpuhi, Te Rūnanga o Whaingaroa, Kahukuraariki Trust Board, Ngāti Kahu, Te Rarawa, Ngai Takoto, Te Aupōuri, Ngāti Kuri.

3.24   Accordingly, TTMAC has eight mandated iwi members actively representing Ngātiwai, Ngāti Hine, Ngāpuhi, Te Aupouri, Te Rarawa, Te Roroa, Te Uri o Hau, Ngāti Whātua and four iwi memberships that are currently vacant. These are Ngāti Kuri, Ngai Takoto, Ngāti Kahu and Ngāti Kahu ki Whaingaroa.

3.25   In 2019, Whanaungatanga kī Tauranga – the Relationship Agreement was signed by seven iwi and three local body authorities. The intent of this agreement was to establish a more cohesive governance to governance relationship between Te Kahu o Taonui and local government.

3.26   The relationship agreement sets out the common goals and meeting arrangements for the partners.

3.27   The ILGACE meets regularly to work on shared goals and outcomes.

Strategic direction

3.28   A number of planning and other documents have started to shape the strategic direction for the relationship between Māori and the Council. For example:

(a)   *Te Mahere Roa - Long Term Plan 2021 – 2031* and *Te Pae Tawhiti – Our Vision 2021-2031,* Council;

(b)   *Strategic Intent 2021-2040,* TTMAC;

(c)   *Tāiki ē (NRC Te Tiriti Strategy and Implementation Plan),* Council and TTMAC;

(d)   Council policy framework documents, such as *Te Whāriki – Māori Responsiveness Policy Framework* (2019);

(e)   Mana whakahono a rohe under the RMA; and

(f)   Iwi / hapū environmental management plans.

3.29   These are summarised briefly below.

Te Pae Tawhiti – Our Vision 2021-2031

3.30   The Council developed *Te Pae Tawhiti – Our Vision 2021-2031* (**Te Pae Tawhiti**), which is a strategic summary document that focuses on community outcomes that the Council wants to achieve and shows the work the Council does, or plans to do, through its Long Term Plan 2021-2031. In particular:

(a)   healthy waters for the environment and our people;

(b)   resilient and adaptable communities in a changing climate;

(c)   protected and flourishing native life;

(d)   meaningful partnerships with tangata whenua;

(e)   a strong and sustainable regional economy; and

(f)   safe and effective transport networks connecting our region.

TTMAC Strategic Intent 2021-2040

3.31   A critically important document developed by TTMAC is the *Strategic Intent 2021 – 2040* (**TTMAC Strategic Intent**).

3.32   TTMAC developed the TTMAC Strategic Intent which sets out:

(a)   Te Kaupapa / Mission "*He iwi tahi tatou kia ora ai te taiao – Kāwanatanga and rangatiratanga work together for the wellbeing of the environment*";

(b)   Te Pae Tawhiti / Vision 2014; and

(c)   Ngā Whainga / Desired Goals for:

(i)   capacity and capability;

(ii)   Māori representation;

(iii)   water / marine;

(iv)   climate crisis; and

(v)   economic development; and

(d)   Ngā Tikanga / Values.

3.33   The TTMAC Strategic Intent formed the basis for Tāiki ē which is discussed below.

Tāiki ē (NRC Te Tiriti Strategy and Implementation Plan)

3.34   *Tāiki ē (NRC Te Tiriti Strategy and Implementation Plan)* (**Tāiki ē**) was endorsed by TTMAC on 14 July 2022 and adopted by the Council on 26 July 2022. Tāiki ē was prepared by a group including TTMAC representatives.

3.35 Tāiki ē focuses on actions to achieve desired goals for capability and capacity and Māori representation from the TTMAC Strategic Intent (two of the five Ngā Whainga / desired goals identified in the TTMAC Strategic Intent).

3.36 Tāiki ē provides that, "*Ina tere ngā kapua, he hau kei muri – progress is built on applying shared values*". When Tāiki ē was presented to Council for adoption it was described that the ingoa or name Tāiki ē denotes the intent to a collective commitment that, "*we come together collectively to get the mahi done*".

3.37 Tāiki ē identifies for each action:

(a) who is responsible;

(b) a timeframe, ranging from underway, commencing within 12 months, 1-3 years and ongoing;

(c) the budget allocated to the action (sometimes the action is 'unbudgeted' or within existing resources);

(d) the Ngā Whainga / Goals it will achieve (identified in TTMAC Strategic Intent including, capability, capacity, partnership, Te Tiriti o Waitangi, decision-making and resourcing); and

(e) priority according to the actions ability to give effect to Te Kaupapa / Mission.

3.38 The 26 actions identified in Tāiki ē are significant and broad ranging – from actions at a strategic / overarching framework level to the development of tools and resources to assist 'on the ground'. By way of an example, some of the actions include:

(a) establishing the Te Tiriti health check and review framework (part of which includes the carrying out of this independent review);

(b) continue to develop Tāiki ē;

(c) support and increase uptake of iwi and hapū environmental management plans and mana whakahono a rohe;

(d) develop and fund a culturally appropriate Council environmental monitoring programme;

(e) deliver specific projects within agreed priority areas of interest;

(f) develop and embed a cultural awareness and competency framework for Councillors, staff and relevant consultants;

(g) invest in building tangata whenua capacity and capability;

(h) develop and maintain a digital tangata whenua contacts database that spatially identifies indicative iwi and hapū rohe boundaries;

(i) ensure the successful and ongoing implementation of Māori constituencies; and

(j) review Council procurement policies and processes and ensure there are fair and equal opportunities for tangata whenua consultants and contractors to obtain Council contracts.

Council policy framework documents

3.39 The Council developed *Te Whāriki: Māori Responsiveness Policy Framework* (**Te Whāriki**) in December 2019. The purpose of Te Whāriki is to "influence, enhance and guide" the Council's "responsiveness to Māori".

3.40 Three Ngā Pou (goals) were identified, being:

(a) Te Pou Wāhi – resilient Māori communities;

(b) Te Pou Tāngata – effective Māori participation; and

(c) Te Pou Huarahi – a culturally competent organisation.

3.41 Shared principles were also identified that underpin and provide guidance on how to implement Te Whāriki.

3.42 For Te Pou Huarahi – a culturally competent organisation, a core cultural competencies framework and training programme was developed. This identifies different competency levels for Te Reo Māori, Tikanga Māori and Te Tiriti o Waitangi. The training programme then identifies which staff within Council are expected to be at which competency level, and establishes a training programme, such as completing specific modules or courses, in order to achieve those competencies.

3.43 More specific policy documents have also been prepared, for example *Engaging Cultural Monitors for consented earthworks / land disturbance* (2021). This policy provides clarity and guidance on the processes involved when engaging cultural monitors and is to be read in conjunction with Te Whāriki. This policy framework provides practical guidance to Council staff working in this space and builds on Te Whāriki and other strategic direction.

Mana whakahono a rohe

3.44 The Council has entered into two mana whakahono a rohe with Te Patuharakeke Iwi Trust Board and Te Rūnanga o Ngāti Rēhia.

3.45 The purposes of mana whakahono a rohe are to:

(a) enable iwi authorities (and hapū authorities where agreed) and local authorities to agree on ways in which tangata whenua (through their iwi authorities) may participate in resource management processes; and

(b) assist local authorities in complying with their statutory duties under the RMA, including through the implementation of sections 6(e), 7(a), and 8 of the RMA.

3.46 Mana whakahono a rohe are binding statutory arrangements that provide for a more structured relationship under the RMA between iwi and/or hapū authorities and councils. The intention was to improve working relationships between tangata whenua and local authorities, and to enhance Māori participation in RMA resource management and decision-making processes.

Iwi / hapū environmental management plans

3.47 There are 14 iwi / hapū environmental management plans that have been developed and recognised by an iwi authority and formally lodged with the Council.

3.48   The purpose of these documents is to describe resource management issues of importance for tangata whenua and are relevant to both RMA planning and consenting processes.

3.49   The Council has specific funding for these plans.

4. PART FOUR: WHAT IS WORKING WELL?

Overarching comments

4.1 The 'what is working well' comments below need to be viewed in the context of both the history of the relationship between local authorities and iwi/hapū in Aotearoa and Te Taitokerau, and the fact that there is a long way still to go to achieve genuine partnership in a way that reflects and respects Te Tiriti, He Whakaputanga, and the mana and rangatiratanga of iwi and hapū. As noted earlier, the local government legislation and structures are not designed in a manner that drive stronger partnership with Māori. However, that legislation is more enabling than is often appreciated.

4.2 In overall terms, we consider there are some very positive aspects of this partnership between tangata whenua and the Council including:

   (a)   the relationship has developed significantly since 2014;

   (b)   there is a huge amount of work going on from both partners to support and develop the partnership – there are high levels of commitment from the iwi/hapū members of the various structures such as TTMAC – although there are some questions about the sustainability of the approach given the huge workloads and demands on those members (commented on further below);

   (c)   there is a genuine desire emerging in the leadership structure of Council to take the next step in the partnership journey, to better understand and embrace Te Tiriti, He Whakaputanga, and tikanga Māori and to deliver something meaningful. The 'hearts and minds' of elected members and senior management are moving in the right direction to deliver some meaningful change. There was a real sense of excitement among Council leadership as to this journey they are on, but there can be challenges for elected members in terms of bringing the community with them;

   (d)   there are very positive structures in place to support the partnership – we heard positive comments about the valuable role that TTMAC has played, and there are a number of other structures and committees in place which are designed to move closer to a partnership approach; and

   (e)   there has been excellent work done on Tāiki ē on the back of the TTMAC Strategic Intent – Tāiki ē is an impressive document that was co-designed through a series of workshops where robust discussions were had, and clear actions and accountability/timeframes and budgetary matters identified.

4.3 We consider that this partnership is in a strong place relative to many of the iwi/hapū and local authority relationships across the country. For the reasons outlined above there has been impressive work done particularly over the last few years, and most importantly there is increasingly a leadership level commitment to genuine partnership. We heard that the dial has moved slowly in the right direction, but commitment to keep progressing and tangible outcomes and actions are needed, as is a movement towards genuine partnership where the parties sit equally at the table.

4.4 There is still a long way to go on the journey but the discussions we had and the documentation such as Tāiki ē demonstrated that there is commitment to success and to working together. Implementing the actions in Tāiki ē will be one critical element of that success.

The journey

4.5 Iwi/hapū have been patient in terms of building strong partnership with the Council. For generations iwi/hapū have not been appropriately included in Council business and have observed many negative consequences as a result, including to the whānau and to the taiao.

4.6 Iwi/hapū have had to endure a local government system that was designed to maintain the status quo, from which they were effectively excluded. There have been very low levels of respect for, and understanding of, tikanga Māori and the mana, rangatiratanga and perspectives of iwi/hapū.

4.7 We heard that the dial is shifting in Te Taitokerau, with stronger levels of understanding and respect in the elected member and management/staff levels of the Council. There are some strong examples of partnership-based approaches emerging, but there is still a long way to go before true partnership is realised in a manner that reflects and respects Te Tiriti, He Whakaputanga, and the mana and rangatiratanga of iwi and hapū.

4.8 There has been impressive work undertaken between tangata whenua and the Council. Clearly the partners in recent times have come together determined to forge a new pathway based on partnership. The work done by TTMAC in relation to the TTMAC Strategic Intent and the subsequent agreement of Tāiki ē are powerful examples. What was apparent was the sense of celebration around how Tāiki ē was developed together, how robust conversations were held, and how the parties emerged as partners committed to Tāiki ē and the implementation plan.

4.9 There is also a recognition that the parties are at a point in an important journey, but not the end point. There is much work still to do, including the successful implementation of Tāiki ē, but also reflecting on what the ultimate goals and next steps in the partnership may look like. The role of tangata whenua in the decision-making processes of Council will be one important consideration on that journey.

Commitment from leadership

4.10 There is clearly a strong commitment from the leadership of iwi/hapū and the Council to build a stronger partnership between the parties.

4.11 It was clear that the iwi/hapū leadership are committed to developing a stronger partnership with Council. That was clear from the fact that, despite the generations of being effectively excluded from Council business, iwi/hapū leaders continued to show leadership in terms of how a partnership could be developed and the importance of that partnership for not only iwi/hapū but for all of Te Taitokerau. That commitment must be acknowledged as a central ingredient in the positive gains that have been made.

4.12 We observed a strong desire within the Council leadership structures to continue the journey that the partners are on. There was a recognition that the requisite standards had not been met in the past and that there was still a lot to do. There was, however, a clearly discernible desire within the Council leadership to form genuine partnerships and to move forward in a meaningful way.

4.13 There were comments made to recognise the strong leadership shown by the chair of the Council and the chief executive who is about to finish at the Council. The same was said of the incoming chief executive who similarly had a strong understanding and motivation to develop strong partnerships. That leadership is also critical.

4.14 There is also a sense of celebration in the Council leadership in terms of the work that had been done to date, and the collaborative way in which that work was done between the parties.

4.15 That commitment is significant as it is not always apparent in local government leadership.

Commitment to embracing Te Tiriti, He Whakaputanga, and tikanga Māori

4.16 It was clear that the partners had worked together to assist the Council to develop a stronger understanding of Te Tiriti, He Whakaputanga, and tikanga Māori. Elected members and staff spoke extremely highly in terms of the opportunity to visit marae and to be educated on tikanga Māori, including through the adoption and implementation of Te Whāriki.

4.17 We also heard from Council leadership of the strong intention to focus on Te Tiriti (rather than the Treaty) and to see the partnership through the tangata whenua lens.

4.18 There is a desire to respect He Whakaputanga, but clearly the partners need to work through how to do that in the Council context.

Strong structures have been implemented

4.19 As noted earlier in this report, there are a number of different structures in place to guide the partnership. That is a positive sign, as it is important to embed the partnership in all of the governance, management and operational layers of the Council.

4.20 We heard positive comments about the valuable role that TTMAC and MTAG have played, and there are a number of other structures and committees in place which are designed to move closer to a partnership approach.

4.21 One matter that was particularly apparent though was the significant personal commitment from the iwi/hapū members that participate in these Council structures (many members are in multiple roles). There is a real need to better support those members including through resourcing.

A plan is in place

4.22 As noted, there has been excellent work done on Tāiki ē that has now been adopted by the Council.

4.23 Tāiki ē was developed following the important foundational work undertaken by TTMAC in its strategic intent document.

4.24 Tāiki ē is an impressive document that was co-designed through a series of workshops where robust discussions were had.

4.25 There are clear actions and accountability/timeframes and budgetary matters identified in Tāiki ē, and there were very positive comments made as to the co-design process for preparing Tāiki ē, and the fact that Council and tangata whenua have a clear action plan they are committed to. The successful implementation of Tāiki ē will be a critical determining factor in the future success of the partnership.

The Council team

4.26 We also heard very positive comments on the role of Pou Manawhakahaere – Group Manager Governance and Engagement and that team in guiding the kaupapa within the Council and within the partnership structures.

4.27   The significant impact that that team is having was plainly visible to us through this process, and must be acknowledged.

There is still a lot to do

4.28   While we heard very positive comments on the progress that is being made and the structures and documents in place (such as TTMAC and Tāiki ē), there was a consistent view that this was a starting point and there is a lot more to do. Importantly, the current approach must be secured through and beyond the local government elections this year.

4.29   Beyond the elections, there are opportunities to implement Tāiki ē effectively, and look to stronger partnerships and structures in the future, particularly in the areas of, for example, shared decision-making and transfers of powers.

5.   PART FIVE: WHAT ARE THE CHALLENGES / OPPORTUNITIES?

5.1   Our assessment identified a number of challenges and opportunities for the relationship between the Council and Māori Tiriti partners and collectives. While many of the Māori focussed groups had indicated a strong support, there were differences in perspective about implementation of Te Tiriti o Waitangi.

5.2   In this part, we consider a number of challenges and opportunities:

(a)   the importance of continuing to support a culture shift and increasing staff capability and capacity in Te Tiriti and te ao Māori;

(b)   the importance of understanding the internal Māori landscape and the need to protect and safeguard Māori representatives in Council structures;

(c)   the importance of ensuring governance and operations align within Council;

(d)   the trajectory of the relationship between Māori and the Council over the long-term;

(e)   opportunities to support the delegation of decision-making to Māori and co-designing frameworks;

(f)   the level of funding and resourcing to deliver on Te Tiriti obligations;

(g)   the 'who' question – opportunity for the Council to develop a better understanding of who to deal with and in what context; and

(h)   legislative uncertainty as to what can be achieved in the partnership.

A culture shift – increasing staff capability and capacity in Te Tiriti and He Whakaputanga

5.3   A number of Māori groups emphasised that there is a need to continue to support a culture shift within Council. A number of TTMAC members commented that Council do not always fully understand the Māori worldview and the mindset of having to ensure tino rangatiratanga is upheld. Although there have been positive developments over a number of years, many felt that staff capability and capacity within Council remains an issue for improvement.

5.4   Some mana whenua groups supported involving hapū or iwi (perhaps through TTMAC):

(a)   to be involved in the recruiting and appointment processes for key staff positions in Council, and to encourage secondments between iwi and the Council (and vice-versa) to enable each party to understand the unique context in which each party operates;

(b)   to be involved or have direct input into setting key performance measures for key roles within Council, and monitoring ongoing progress or achievement;

(c)   in a secondment framework, so that iwi and hapū could spend a designated amount of time working within the Council structure. Some kaitiaki groups supported the idea of having Council staff be required to work within iwi and hapū groups on secondment, so that Council staff learn of the constraints and limitations that iwi and hapū work within; and

(d)   have an open-door policy to allow Māori to raise issues with relevant staff rather than just the Iwi Relationship Manager. Some groups offered to run some 'hapū 101s' which have not been taken up.

5.5   We received comments that Council staff needed to continue to familiarise themselves with mana whakahono a rohe and their respective hapū management plans. There were concerns expressed that certain mana whakahono a rohe had 'not eventuated into much'.

5.6   Some considered that there is an internal lack of understanding as to the role of the Council as a Tiriti partner. It was also commented that there was inconsistent engagement by the consents team with them as mana whenua, and the type of engagement depended on the particular project at hand and the Council staff working on the project.

5.7   ELT commented that, in respect of He Whakaputanga, the Council does not have a strong understanding of He Whakaputanga and Te Tiriti even though Council staff have had Te Tiriti training. Members of ELT noted there is a need to understand how Te Tiriti aligns with He Whakaputanga and how those principles can be articulated to Council and embedded throughout the Council's key strategic documents and operations.

5.8   ELT commented that it is important for Council to develop the confidence to navigate Te Tiriti relationships and expectations properly. In addition, concerns were also raised around the understanding of what can be achieved within the statutory framework in the context of partnerships with Māori, as it had been suggested that the statutory framework was constraining the ability to move to the next level of partnership (which is not necessarily the case).

5.9   Some MTAG members felt as though internal staff were not always familiar with Māori dynamics and structures.

5.10   Some kaitiaki felt it was positive that the Council has a good understanding of the maramataka, and increased focus on karakia and mātauranga. However, learning and embedding is a long journey.

Understanding the internal Māori landscape and tensions for Māori representatives in Council structures

5.11   We heard from a number of Māori representatives in Council structures, that there are often difficulties in managing hapū and iwi interests / expectations within those Council structures. Māori representatives are required to make decisions on behalf of Māori often within quick timeframes, and sometimes it is difficult to have an opportunity to engage with hapū and iwi when operating within Council timeframes.

5.12   We consider it is important for the Council to be aware of that internal landscape and the challenges that can have for Māori representatives on Council structures. This is something to be borne in mind when setting agendas or in the context of certain action points / work programmes, and the Council should ensure there are sufficient safeguards for those representatives to manage those challenges, such as providing appropriate timeframes for engaging with hapū and iwi and responding to matters.

Ensuring governance and operations align within Council

5.13   Some kaitiaki groups commented that the discussions that take place at a governance level between Māori representative groups and Council do not always filter down to the operational staff. For example, discussions with Councillors are positive but projects are often controlled by key Council contractors or planners who make the operational decisions that can exclude some Māori.

5.14   It was commented that the Councillors are receptive during presentations, but the traction does not filter to an operational level. At the ELT meeting, one member commented that there may be a certain disjunct between governance and operations and that was a 'fair assessment'.

5.15   TTMAC members commented that there is sometimes little awareness of what is happening 'on the ground' and that the Council needs to ensure it maintains a presence at hapū and iwi occasions.

5.16   Some Councillors noted that the process of consents is 'fraught' because there are certain things Māori expect that cannot always be done within the statutory framework. Comments were made that the Council tries to give Māori a longer 'heads up' but the level of discretion the Council has over granting consents is not as much as Māori sometimes think. One ELT member commented, for example, that the legislation does not allow for hapū and iwi to consult forever. However, if Māori had more capacity and resources, they may be able to contribute in a more meaningful way.

5.17   One Councillor at the Councillor's meeting noted that there are structural barriers and there is a 'hands-off' approach to consenting which might not pass the 'partnership' principle under Te Tiriti o Waitangi.

5.18   Some kaitiaki noted that governance discussions can sometimes be characterised as 'lip service and fluffy duck stuff' that do not always 'filter down' into operations.

The trajectory of the relationship over the long-term

5.19   A number of groups we interviewed commented on the positive developments that have occurred in the relationship generally with Council and Māori. However, many noted the steps taken should be viewed with a long-term lens, and in that respect there is still a long way to go to fully embed Te Tiriti and to lay a foundation for working forward together (as discussed in part four).

5.20   The Councillors generally considered that good progress has been made to embed Māori frameworks into Council, particularly through the work TTMAC and MTAG are doing. At a governance level, the Councillors considered that it is positive that there will be Māori Councillors, which will support the willingness to listen and learn for consensus at the Council. Some Councillors cautioned against being lulled into a false sense of security in terms of how the Council is implementing Te Tiriti.

5.21   ELT commented positively that the Council has a willingness and openness to work with Māori. While the Council might not always get it right, there is a genuine desire to do the right thing for Māori. The challenge was that the pace of change is sometimes slower than what Māori might expect.

5.22   ELT were positive about the ability and willingness of the Council to front up when it needed to, and that Council was not 'faceless' but have a direct relationship with Māori. However, Council was not always confident or consistent in their approach but had made some positive developments.

5.23   ELT commented that the Council now has 'reasonable governance systems and processes in place', particularly in relation to TTMAC. ELT commented that, to ensure TTMAC remains influential, it is not perceived as a Council construct by hapū and iwi. There is also a need for better alignment of expectations.

5.24   Relationships were broadly conceived, and included as directing actions, to obtaining funding, facilitation and engagement.

5.25   A Councillor noted that the Council needs to take the time and invest resources to work with mana whenua to do more joint work together. For example, putting in a submission to government on three waters, resource management law reform etc.

5.26   One kaitiaki noted that there is a need for the Council to know 'who is in the hood', who to consult with and ensure that the Māori liaising teams are trained in the basics of a consent process.

Supporting the delegation of decision-making and co-designing frameworks

5.27   Many Māori commented that there needs to be increased decision-making given to appropriate Māori within the Council structures. Overall, Māori and senior executive management spoke positively about the influence and intention of the Council, but that expectations were not always clear or being met in terms of decision-making of Māori.

5.28   TTMAC in particular made strong comments that TTMAC only making recommendations to Council was not always satisfactory. The level of influence that TTMAC has is positive, but there may need to be more delegations. This was consistent with ELT's view that TTMAC has been a 'good platform' supported by a strong Māori engagement team and frameworks. Some of the TTMAC members are on other working groups, such as the Biodiversity Working Party, Water and Land Policy and Co-Governance.

5.29   Some TTMAC members were positive about the influence that TTMAC has had over the long-term but noted that the challenge is to ensure it has impact across Te Taitokerau generally.

5.30   ELT noted there could be earlier co-design of solutions for hapū in certain areas, for example flood schemes and stop banks. Ultimately, however, the success of these initiatives can come down to resources.

5.31   MTAG commented that their role is largely determined by the Council's agenda and framework, and they do not get the chance or the resources to consider matters of their own motion that are important to Māori. MTAG members considered they also need a space to create their own agenda. Some MTAG members considered that the agenda for MTAG meetings has been pre-determined and resolutions are already drafted. It was also noted that the Council did not clearly communicate back to iwi/hapū how their input has been addressed.

The level of funding and resourcing to support delivery of Te Tiriti obligations

5.32   Nearly all Māori groups within Council (TTMAC and MTAG), and kaitiaki outside of the formal Council structure, raised the issue of funding and resourcing to support capability for and delivery of Te Tiriti obligations. There are a number of threads to consider:

(a)   The internal funding of key Māori structures within Council: Members of TTMAC and MTAG noted that the pay for daily fees is low. For TTMAC, there is a set meeting fee for members but the fee only remunerates for attendance at meetings. The meeting fee does not recognise or remunerate for the significant amount of work preparing for meetings or subsequent work post-meetings. Similarly, MTAG members considered the fee structure was not fair given the sometimes very lengthy agendas.

(b)   The funding of external kaitiaki groups to deliver on their own aspirations for te taiao and how they want to work with the Council: We received comments that kaitiaki are not well resourced, particularly where they do not have a Treaty settlement unlike some of the other

Te Taitokerau tangata whenua. Also, kaitiaki individually were not always paid on particular consent projects or applications. Concerns were raised about the level of funding and resourcing and it was noted that kaitiaki staff are involved in the field work but do not want to lead their 'on the ground' projects. It was emphasised that the Council cannot be said to be complying with the spirit and intent of Te Tiriti o Waitangi if it is not resourced and Māori are not given opportunities to lead projects.

5.33   TTMAC commented that the strategic intent and aspirations of the Council also need to be reflected in budget setting across the Council's work programme.

5.34   It was also commented that while resourcing and capacity remained an ongoing issue, there were some positive developments. For example, those sitting on the Tangata Whenua Advisory Panel were finally being paid at a 'normal rate'.

Sharing of information

5.35   Some Māori felt as though information was not shared in an efficient or timely way.

5.36   MTAG members considered that they did not always feel fully briefed, have limited time and do not want to miss opportunities for tangata whenua.

5.37   Some MTAG members commented that the 'feedback loop' does not always exist. Some MTAG members feel as though they do not always know the outcome of a particular issue they have recommended to Council, and if those recommendations were adopted by Council. For example, an insufficient amount of time was provided prior to the Long-Term Plan being reviewed by MTAG.

5.38   Some TTMAC members commented that internal communication between Council staff is not always consistent, and that there needs to be a clear agreed communications strategy internally and externally.

6. PART SIX: RECOMMENDATIONS

6.1 Our recommendations are set out below:

(a) the partners should develop a shared view of what successful partnership looks like in the immediate, medium and long-term, and plot a pathway towards that, including where appropriate through the evolution of the current structures and the movement towards shared decision-making models and other models (including transfers of powers);

(b) the current state is a positive point in the journey, but it should not be seen as the end point – that must be clearly conveyed, including to the incoming Council, as there is still significant work to be done;

(c) that an agreed work programme be developed that allows the Council and its Treaty partners to identify areas where they share a common objective or view, and then a process for working towards a joint outcome (for example, on major legislative reform such as the RMA or the three waters reform);

(d) the issue of the extent of legislative constraints should be addressed and tested, so the partners have a clear view of what is possible in terms of the future shape of the partnership (in other words, the legislation does not necessarily operate as an impediment to the partnership aspirations of partners);

(e) Tāiki ē should continue to be implemented, funded and reviewed with key performance and review measures that Council and TTMAC can agree on – that is an excellent plan for moving forward and will support a successful long-term partnership;

(f) consider how tangata whenua members of the various structures can be fully resourced and supported to contribute and participate – the current demands on a small number of people are too high and that is not sustainable (including, for example, by partnering on applications for funding from the Crown);

(g) set clear parameters for funding Tiriti partners to participate in Council processes and projects involving mana whenua;

(h) ensure that the Council is clear on which iwi/hapū/other entities it should be talking to in each context and prepare a clear strategy / direction for this. This could also involve building off some of the Tāiki ē actions, for example action 20 and the development of spatial maps etc;

(i) ensure that tangata whenua feedback on proposals (eg through TTMAC and MTAG) is clearly recorded and reported back on;

(j) consult with and/or involve Māori in processes for recruitment and appointment of Council staff (which has been the practice in relation to senior appointments), and to explore opportunities for secondment of Māori to Council or vice versa, as appropriate. In the first instance the Council could undertake a review of its process for appointments and seek further direction / input from tangata whenua on how that could be improved and informed by tangata whenua. For example, the options could include feedback on job description criteria and demonstrating an understanding of Te Tiriti o Waitangi;

(k) implement a regular review of processes for internal communication and planning between governance and operations staff at the Council, to ensure consistency of engagement and delivery on projects and Te Tiriti objectives;

(l) develop (or continue to develop and implement through Te Whāriki) an agreed work plan on building the capability and capacity of Councillors and Council staff in Te Tiriti (as set out in Te Whāriki) and He Whakaputanga, and implement regular reviews of the work programme. The scope of the capability and capacity training programme could be agreed with TTMAC and/or kaitiaki as appropriate, and would include both the historical circumstances surrounding the signing of Te Tiriti and He Whakaputanga as well as contemporary views and perspectives on how those obligations apply today;

(m) develop a clear framework for the identification and appropriate treatment of mātauranga Māori within the operations of the Council and how it can be protected and developed in Tāiki ē. The methodology for the mātauranga Māori framework could be developed in conjunction with TTMAC and informed by the Waitangi Tribunal's Wai 262 report; and

(n) identify the specific issues of Māori in relation to the considering and granting of resource consents and develop a regular plan and review mechanism to respond to issues raised by hapū and iwi.

6.2 We also recommend that this report and its recommendations be presented to the incoming Council. We acknowledge that the priority for the Council was to complete and receive this report prior to the 2022 elections and that the implementation and adoption of the recommendations in this report will need to be considered by the incoming Council.

6.3 Below we set out a table identifying the six priority areas identified by MTAG and, based on the matters outlined in this report, provide a summary assessment of each of those areas. We also provide a competency level for each priority area – the competency levels identified in the Te Arawhiti framework range from 'unfamiliar', 'comfortable', 'confident' to 'capable'.

Summary assessment of six priority areas identified by MTAG (based on Te Arawhiti framework)
1. Governance: Understanding of Māori council relations priorities
For the reasons explained in this report, we consider the Council to be moving towards 'confident' in terms of the Te Arawhiti framework, but there is a way still to go.
2. Relationships with Māori: Relationship management
For the reasons explained in this report, we consider the Council to be moving towards 'confident' in terms of the Te Arawhiti framework, but there is a way still to go.
3. Relationships with Māori: Engagement, partnerships and empowerment
For the reasons explained in this report, we consider the Council to be moving towards 'confident' in terms of the Te Arawhiti framework, but there is a way still to go.

4. Relationships with Māori: Procurement
We note that this is covered in part in actions 24 and 25 of Tāiki ē, but it will need to be implemented. We consider the Council to be moving from 'unfamiliar' towards 'comfortable' in terms of the Te Arawhiti framework, provided those actions are implemented.
5. Structural: Addressing institutional racism
We note that this is covered in part in action 17 of Tāiki ē – this report discusses the need for ongoing work on cultural competency and understanding of and respect for tikanga and mātauranga Māori in the work of the Council. We consider the Council is moving from 'unfamiliar' towards 'comfortable' in terms of the Te Arawhiti framework, but there is a way still to go.
6. Policy and services: Evaluation
We consider there is more work to do in the area of evaluation and implementing Tāiki ē effectively will be key to that (noting the 'monitoring and review' section at the end of Tāiki ē). We consider the Council is moving from 'unfamiliar' towards 'comfortable' in terms of the Te Arawhiti framework, but there is a way still to go.