

Memorandum of Understanding and Protocol between Otago Regional Council, Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago for Effective Consultation and Liaison

Effective Wednesday 22 January 2003

Part A

Memorandum of Understanding

1. Purpose

- 1.1 The purpose of this memorandum is to define mechanisms intended to promote and facilitate effective consultation and liaison between the Otago Regional Council, Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago.

2. Citations

- 2.1 Te Rūnanga o Ngāi Tahu is the tribal representative body of Ngāi Tahu Whānui, a body corporate established 24 April 1996 under section 6 of the Te Rūnanga o Ngāi Tahu Act 1996 (the "TRoNT Act"). Section 5 of the TRoNT Act describes the takiwā (area) of Ngāi Tahu Whānui, which includes the entire area of Otago Region. In the context of this memorandum the term "Kāi Tahu ki Otago" means the signatories to this document other than the Otago Regional Council.
- 2.2 Section 15(1) of the TRoNT Act prescribes that "*Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui.*"
- 2.3 Section 15(2) of the TRoNT Act prescribes that "*Where any enactment requires consultation with any Iwi or with any Iwi authority, that consultation shall, with respect to matters affecting Ngāi Tahu Whānui, be held with Te Rūnanga o Ngāi Tahu.*"
- 2.4 Section 15(3) of the TRoNT Act prescribes that "*Te Rūnanga o Ngāi Tahu, in carrying out consultation under subsection (2) of this section, ---*
- (a) *Shall seek the views of such Papatipu Rūnanga of Ngāi Tahu Whānui and such hapu as in the opinion of Te Rūnanga o Ngāi Tahu may have views that they wish to express in relation to the matter about which Te Rūnanga o Ngāi Tahu is being consulted; and*
 - (b) *Shall have regard, among other things, to any views obtained by Te Rūnanga o Ngāi Tahu under paragraph (a) of this subsection; and*
 - (c) *Shall not act or agree to act in a manner that prejudices or discriminates against, any Papatipu Rūnanga of Ngāi Tahu or any hapu unless Te Rūnanga o Ngāi Tahu believes on reasonable grounds that the best interests of Ngāi Tahu Whānui as a whole require Te Rūnanga o Ngāi Tahu to act in that manner."*

2.5 It is the acknowledged practice of Te Rūnanga o Ngāi Tahu that consultation in the first instance is with the Papatipu Rūnanga. In the Otago Region it is recognised that there are four Papatipu Rūnanga with whom consultation should occur. These are: Te Rūnanga Moeraki; Kati Huirapa Rūnanga ki Puketaraki; Te Rūnanga o Ōtākou; and Hokonui Rūnaka.

2.6 The Otago Regional Council is a Local Authority constituted by the Local Government (Otago Region) Reorganisation Order 1989, and subsequent amendments.

3. Consultation and Liaison

3.1 The Otago Regional Council, Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago wish to continue to develop and maintain effective consultation and liaison mechanisms.

3.2 The Otago Regional Council recognises that it has statutory responsibilities to consult with Iwi on relevant management issues in the region and to take into account the principles of the Treaty of Waitangi. These statutory obligations are primarily under the Resource Management Act 1991, the Ngāi Tahu Claims Settlement Act 1998, the Ngāi Tahu Claims Settlement (Resource Management Consent Notification) Regulations 1999, the Biosecurity Act 1993, and the Local Government Act 2002.

4. Conduct of Iwi Liaison

4.1 By their support and operation of this Memorandum of Understanding and Protocol, Te Rūnanga o Ngāi Tahu, Kāi Tahu ki Otago and the Otago Regional Council will facilitate Ngāi Tahu Whānui consultation and liaison within the jurisdictional boundary of the Otago Regional Council.

4.2 The Otago Regional Council recognises the need to consult Papatipu Rūnanga and Te Rūnanga o Ngāi Tahu in the development, review and implementation of the Council's regulatory plans, policies and strategies under the Resource Management Act and Biosecurity Act. For such plans, policies and strategies consultation and building of knowledge will be mutually supported and facilitated through specific consultancy agreements between the Council and Kāi Tahu ki Otago Limited.

4.3 The Otago Regional Council wishes to facilitate Papatipu Rūnanga and Te Rūnanga o Ngāi Tahu contributions facilitated by Kāi Tahu Ki Otago Ltd to the development of the Council's Annual Plan. To facilitate Kāi Tahu ki Otago contributions the Council will annually convene two meetings with representatives of the four Papatipu Rūnanga and Te Rūnanga o Ngāi Tahu. One such meeting will be at the commencement of consideration of work programmes, and the second will be after the Council has made a full consideration of all proposals suggested for inclusion in the Draft Annual Plan.

4.4 The Otago Regional Council wishes to ensure that consents, approvals and other regulatory permissions, wherever required by statute or when it may otherwise be beneficial to community interests and understandings, will involve consultation with Iwi as set out in the protocol given in Part B below.

4.5 The Otago Regional Council and Kāi Tahu ki Otago seek to maintain and develop their close association for the benefit of all people in Otago. Liaison to provide Iwi

comments, perspectives and advice to the Council, and liaison for the Council to provide support to Iwi, will be facilitated through an appointed Kaitakawaenga.

- 4.6 The Kaitakawaenga shall be appointed by agreement of the Council to a nomination of the four Papatipu Rūnanga of Otago. The Council will provide koha to the Kaitakawaenga in appreciation of the performance of the function. The Kaitakawaenga position is not a “staff” position in the context of the employment law.
- 4.7 The objectives of the Kaitakawaenga position are:
- The maintenance of a direct line of communication between the Chair and Chief Executive of the Otago Regional Council and a Kāi Tahu person who has the confidence of the Otago Rūnanga.
 - For the three individuals to meet at regular intervals and discuss strategic level issues that are relevant to the interests of and ongoing partnership objectives of Kāi Tahu and the Otago Regional Council
 - To facilitate excellent communication and understanding at the executive/governance level of both parties to the MOU.
 - To provide advice to the Otago Regional Council on cultural/protocol matters relating to formal and other occasions, eg; tangi and important ceremonial events.
- 4.8 The Kaitakawaenga position does not substitute the need for continued maintenance of relationships between the Otago Regional Council and Papatipu Rūnanga, Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago Ltd.
- 4.9 The parties to this agreement will have annual meeting in the last quarter of each calendar year to assess the benefits of this agreement, and to determine any desirable changes to either the agreement or the manner in which it is implemented.

Part B Protocol

1. Purpose

- 1.1 The purpose of this protocol is to define the process for facilitating Iwi involvement and consultation in the processes for Resource Management Act consents, Regional Plan changes, and Regional Pest Management Strategy approvals administered by the Otago Regional Council.

2. The Resource Management Act, the Biosecurity Act, and the Ngāi Tahu Claims Settlement Act

- 2.1 The above Acts impose requirements on local authorities to have regard to the principles of the Treaty of Waitangi, to consult with Iwi, and to recognise the matters of importance to Iwi.

3. *Kāi Tahu ki Otago Ltd*

3.1 The four Papatipu Rūnanga of Otago and their encompassed whānau roopu (Otokia Whanau, Moturata Whanau, South Otago Runanga) have combined in the creation of *Kāi Tahu ki Otago Ltd*.

3.2 *Kāi Tahu ki Otago Ltd* employs expertise for processing inquiries relating to Otago Regional Council processing of resource consents, the application of the regional policy statement and regional plans, and approvals under regional pest management strategies.

4. Agreement

4.1 The parties to this protocol agree to use the capabilities and expertise of *Kāi Tahu ki Otago Ltd* to facilitate Iwi consultation and provision of information between the parties. This agreement is for the purposes of Otago Regional Council processing and administering resource consents, the regional policy statement, regional plans, and regional pest management strategies.

4.2 The parties to this protocol acknowledge that *Kāi Tahu ki Otago Ltd* will not be engaged in initiating submissions to the Otago Regional Council. However, the information available to *Kāi Tahu ki Otago Ltd* will be available to Iwi for incorporation into any submission that any Papatipu Rūnanga, Te Rūnanga o Ngāi Tahu or whānau roopu wish to make, individually or collectively.

5. Otago Regional Council Resource Consent Process

Resource Consent Administration

5.1 Figure 1 and Figure 2 illustrate key decision making processes that the Otago Regional Council uses to make an orderly and consistent administration of resource consent applications.

Non-Notified Applications

5.2 Where a resource consent application is requested to be processed non-notified and the Otago Regional Council considers that Iwi may be an affected party the Council will refer applicants to *Kāi Tahu ki Otago Ltd* for obtaining written approvals on behalf of relevant Papatipu Rūnanga. Such applications will not be processed until the applicants append written approvals to their application.

5.3 Where a resource consent applicant requests the Otago Regional Council to seek Iwi approvals the Council will do so, from *Kāi Tahu ki Otago Ltd*, on the applicant's behalf. Any costs associated with this process will be recovered from the applicant.

5.4 The Otago Regional Council recognises that *Kāi Tahu ki Otago Ltd* will be unable to recover most costs associated with giving written approvals for non-notified consents referred by the Council. Accordingly the Otago Regional Council will make a quarterly payment to *Kāi Tahu ki Otago Ltd* for the reasonable costs incurred in providing this community assistance.

5.5 It is noted that the process defined in 5.1 to 5.5 does not remove any obligations on the Otago Regional Council in relation to the Ngāi Tahu Claims Settlement (Resource Management Consent Notification) Regulations.

Notified Applications

- 5.6 Where a resource consent application is proposed to be publicly notified and the Otago Regional Council considers that Iwi may be an affected party, the Council will not process the application until evidence of consultation with Iwi is appended to the application. Such evidence of consultation shall state and appropriately detail the issues of relevance to Iwi. The Council will refer applicants to *Kāi Tahu ki Otago Ltd* to assist and/or undertake Iwi consultation with the applicant.
- 5.7 For the purpose of clause 5.6 above, the Otago Regional Council will make all relevant application information available to *Kāi Tahu ki Otago Ltd/Office of Te Rūnanga o Ngāi Tahu*. Should further information be required, the issues involved will be discussed by *Kāi Tahu ki Otago Ltd/ Office of Te Rūnanga o Ngāi Tahu* with both the Otago Regional Council and the applicant.
- 5.8 Once notified, summary information of notification be supplied to affected Papatipu Rūnanga; if required, further information should be supplied.

6. Mutual Assistance

- 6.1 *Kāi Tahu ki Otago Ltd* will maintain a dynamic guideline manual to assist ORC staff identify what is of interest to Iwi so that “affected party” status can be determined and the type of information that should accompany consent applications, and the time frames for approvals. *Kāi Tahu ki Otago Ltd* will identify the type of consent applications where Papatipu Rūnanga do not wish to be treated as an affected party. This manual will be regularly reviewed to meet changing circumstances. Council staff will be briefed through periodic workshops and training sessions.
- 6.2 The Otago Regional Council will support *Kāi Tahu ki Otago Ltd* to organise and hold workshops to promote the process for Iwi approvals, involvement and consultation in the consent process.
- 6.3 The Council will periodically update its pamphlet information for applicants clearly identifying the key points of this protocol and will assist *Kāi Tahu ki Otago Ltd* with a public education and information programme.

Figure 1: Iwi Consent Approval/Comment Process

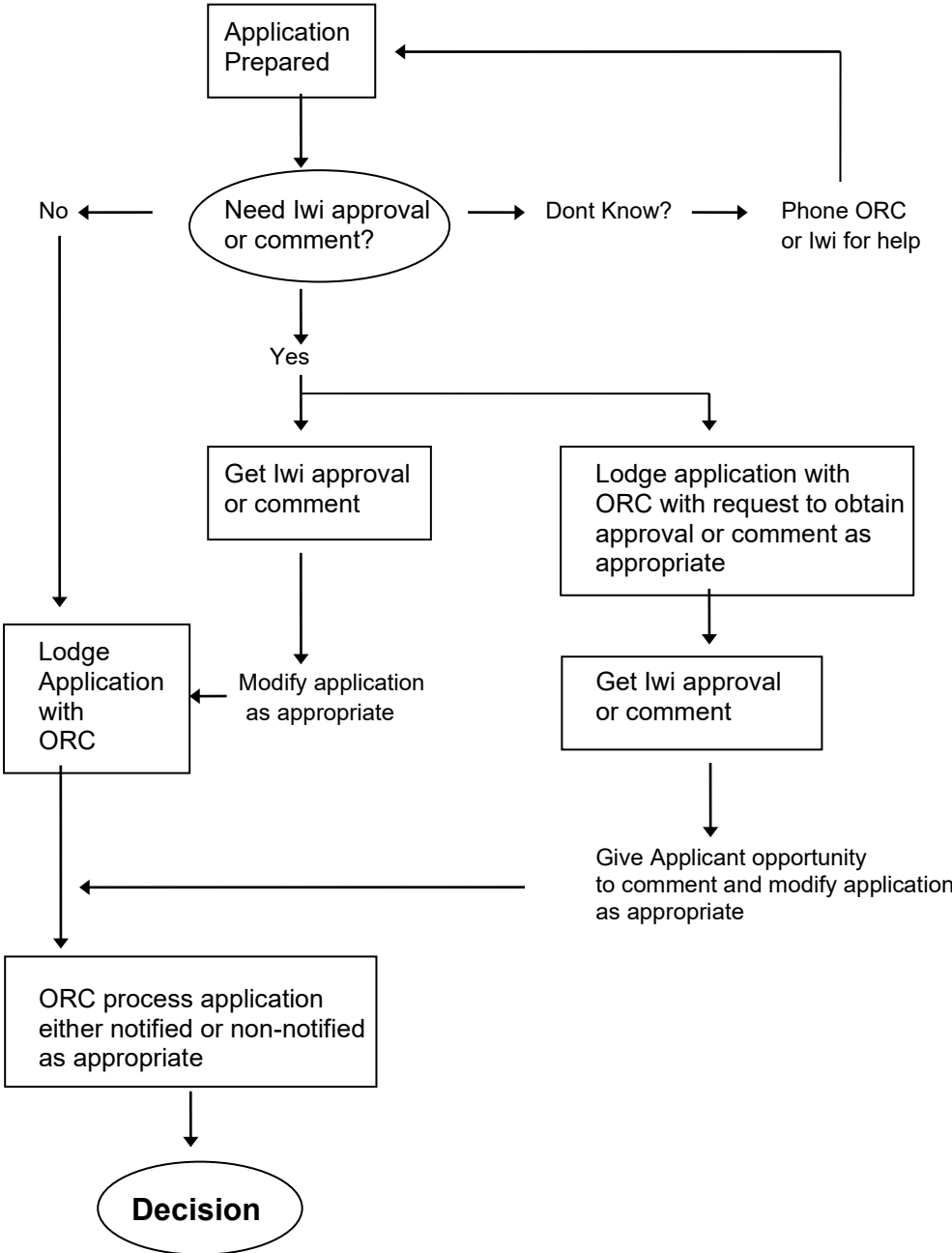
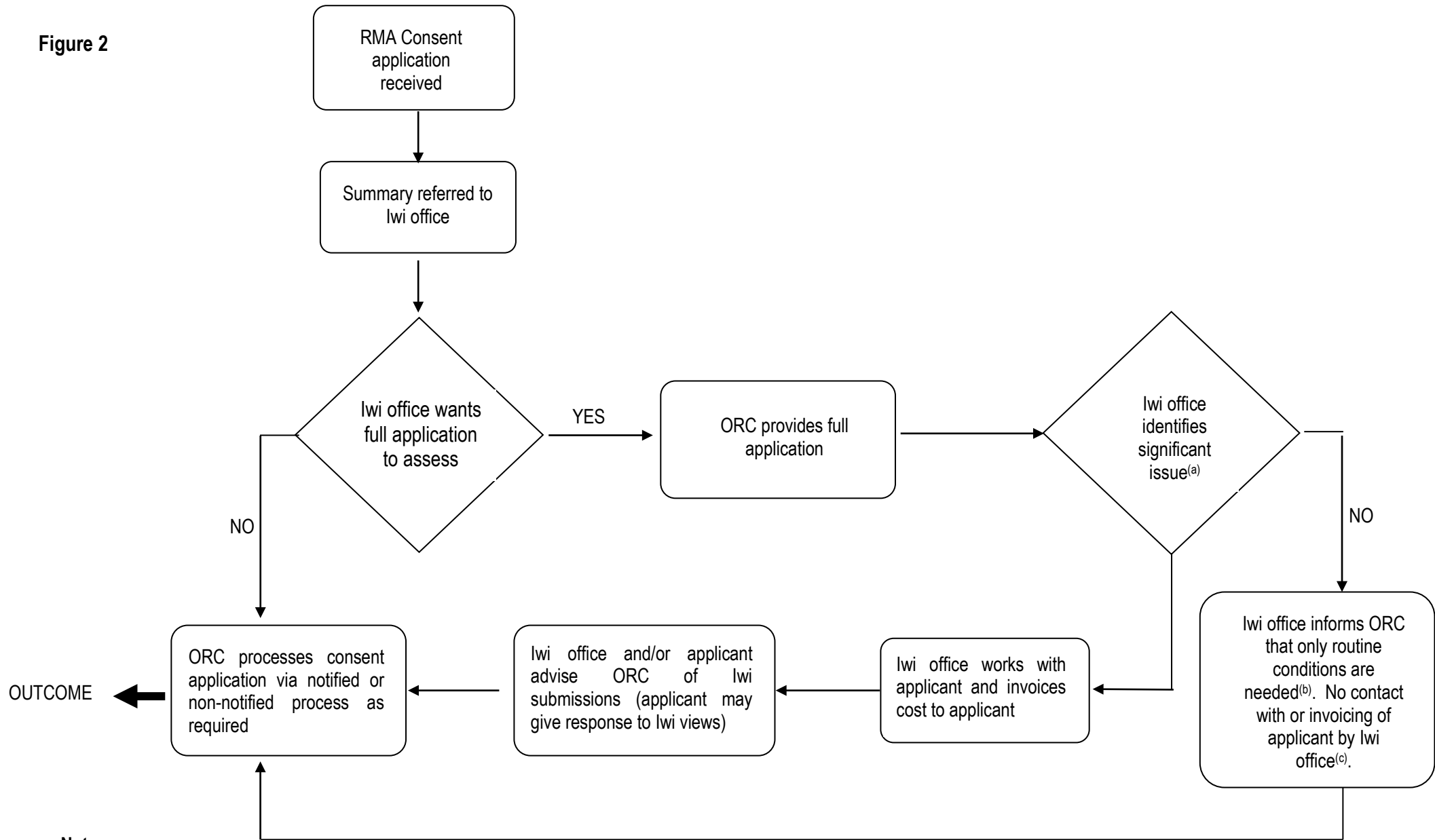


Figure 2



Notes:

- (a) A significant issue is one that may be responded to by opposing submissions and/or recommendation that special consent conditions be applied.
- (b) Routine conditions are standard consent conditions routinely applied to consents for the proposed type and scale of activity irrespective of affected party comments or submissions.
- (c) The Otago Regional Council provides a bulk grant to the lwi office to defray non-recoverable costs in making these assessments.

The parties to this Memorandum of Understanding and Protocol are:

Otago Regional Council by
Duncan Butcher
Chairperson

Te Rūnanga o Moeraki by
Trevor McGlinchey

Kāti Huirapa Rūnanga ki Puketeraki by
Matapura Ellison

Te Rūnanga o Otakou by
Kua Langsbury

Hokonui Rūnanga by
Netta Mackintosh

Te Rūnanga o Ngāi Tahu by
Edward Ellison