

16 September 2019

Tēnā koe

**Te Arawhiti submission on Productivity Commission draft report on local government funding and financing**

1. Thank you for accepting a late submission from Te Arawhiti on your draft report of July 2019 *Local government funding and financing (the draft report)*.

*Ko wai matou? (Who are we?)*

2. Te Arawhiti is a new Crown agency dedicated to fostering strong, ongoing and effective relationships with Māori across government. Our name, Te Arawhiti, means ‘the bridge’. The name symbolises the bridge between Māori and the Crown, the past and the future, and the journey from grievance to partnership. Our functions, which include that of the former Office of Treaty Settlements, involve negotiating the settlement of historical Treaty of Waitangi claims, and safeguarding the durability of historical Treaty settlements.

*Ko matou tāpaetanga tenei (Our submission)*

3. Our submission responds to section 4.4 of the draft report, which addresses costs for local government arising from historical Treaty settlements. In broad terms our submission sets out:
  - a. the policy framework the Crown uses to determine Crown contributions to local government costs; and
  - b. steps that central government is already taking to respond to concerns expressed by local government with central government’s approach.

## The Crown's policy framework

4. Te Arawhiti recognises that iwi hold profound cultural relationships with natural resources. Te Arawhiti also acknowledges the invaluable role of local authorities in providing for iwi input into resource management. Local government and iwi have made significant achievements in implementing Treaty settlement arrangements across the country. It is however important to trace some of the context for these achievements.
5. The draft report notes some, but not all of the local government's statutory responsibilities to iwi. Not mentioned in the draft report are the significant provisions in Part 2 of the Resource Management Act, specifically sections 6(e), 7(a) and 8. Nor does the draft report mention the mechanisms available under sections 33 and 36B of the RMA. These provisions, along with those from the RMA and other legislation referred to in the draft report, created strong expectations among iwi about how they were to be involved as Treaty partners in natural resource management.<sup>1</sup>
6. However, iwi in Treaty settlement negotiations have consistently informed the Crown that these expectations have not been met and with very rare exceptions local government has not made use of the mechanisms available under sections 33 and 36B.<sup>2</sup> As a result iwi have sought natural resource arrangements through Treaty settlements.
7. The Crown's decision that enhanced roles for Māori in resource management can be provided through Treaty settlements was made in this context. However in 2011, recognising that that these arrangements may present added costs for iwi and local government, Cabinet agreed an approach for determining what contribution the Crown will make, if any, to such costs. Cabinet decided it would consider contributing on a case-by-case basis to the following costs of local authorities arising from Treaty settlements:
  - a. the one-off set up costs of new arrangements;

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<sup>1</sup> It is important to acknowledge successful arrangements have established without any requirements set by the government through Treaty settlements. An obvious example is Greater Wellington Regional Council's Te Upoko Taiao Committee which prepares the council's planning documents and provides for 50:50 representation of councillors and iwi.

<sup>2</sup> The Waitangi Tribunal has found on several occasions that implementation of the RMA to be inconsistent with the Treaty and its principles. See for instance: *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims*, Wai 2358, 2019, ch. 7, *Ko Aotearoa Tēnei – A Report into the Claims Concerning NZ Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, ch.3; *He Maunga Rongo – Report on the Central North Island Claims*, Wai 1200, 2008, vol.4, ch.19; and *The Whanganui River Report*, Wai 167, 1999, ch.11.

- b. the costs of preparing any new plans not provided for in councils' long-term plans; and
  - c. ongoing costs for a transitional period up to a maximum of three years.
- 8. Cabinet further agreed the level of contribution would be at its discretion and assessed using criteria including complexity, the ability of a council to pay, the capacity of iwi to participate, the level of existing commitment of the council to involving iwi in natural resource management and the likely difference between existing and new arrangements.
- 9. In agreeing to contribute towards local government costs, Cabinet noted such arrangements contribute to local government's statutory responsibility to involve iwi in resource management processes and as such should become part of councils' standard business. It is possible to take a narrow view, with reference to certain legislative definitions, of the Treaty relationship to exclude local government. However:
  - a. While Treaty settlements are between the Crown and Māori the claims settled include acts and omissions of local government (particularly with regard to environmental management, public works takings, local representation and ratings); and
  - b. Māori themselves take a broader view and see the Treaty as central to their relationship with local government, as evidenced by the feedback Minister Davis received when he consulted on the scope of the Māori-Crown relations portfolio – for more information see <https://www.tearawhiti.govt.nz/te-kahui-hikina-maori-crown-relations/>.
- 10. The arrangements created through Treaty settlement negotiations have not been created only to help resolve grievances against the Crown. The arrangements, and the Crown's contributions, also help to support good environmental outcomes and strong relationships between iwi and councils. It is encouraging to see the recognition of the benefits local authorities derive from these arrangements recognised in the draft report and in some of the submissions already received by the Productivity Commission.
- 11. Te Arawhiti considers that any assessment of the Crown's approach to making contributions should be set in the full context outlined above.
- 12. More detailed summaries of the Crown's policy framework are set out in **Appendix 1**.

Response to date from central government to local government concerns

13. In 2017 Local Government New Zealand provided Ministers with a report on Treaty settlement costs, *Treaty Settlements: Whakataunga Tiriti* (the **LGNZ report**). The LGNZ report sets out a case for increased contributions from the Crown and provides a costs framework to record costs for local government arising from Treaty settlements. The LGNZ report includes points about the Crown's approach to funding which are similar to findings 4.7 – 4.9 in the Productivity Commission's draft report.
14. In 2018, in response to the LGNZ report the Minister for Treaty of Waitangi Negotiations decided the Crown's policy framework is still generally fit for purpose but recognised it needed to be applied more systematically, based on more accurate assessments of actual costs than has been possible previously. Te Arawhiti is currently working with other central agencies to develop an assessment methodology to give effect to this direction. This work has been informed by aspects of the LGNZ report. Local government representatives have also provided feedback on the draft assessment methodology. Ministers will receive further advice on the methodology later this year.
15. Te Arawhiti recognises that more thinking needs to be done about costs associated with building iwi capacity and capability to participate effectively in natural resource arrangements created through Treaty settlements – just as some local authorities need support to build their capacity to engage with Māori. The need for funding to increase iwi capacity and capability to participate in local government processes was raised at almost every hui conducted by Minister Davis, when he was seeking feedback on his Māori/Crown Relations portfolio. Te Arawhiti would welcome further analysis from the Productivity Commission on this issue.
16. For matters relating to this submission please contact Benedict Taylor (Principal Adviser) at [Benedict.Taylor@tearawhiti.govt.nz](mailto:Benedict.Taylor@tearawhiti.govt.nz) or 04 466 1825.

Nāku noa, nā

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