Te Waihora Co-Governance Agreement

between

Te Rūnanga o Ngāi Tahu

and

Canterbury Regional Council

and

Selwyn District Council

and

Christchurch City Council

Mā te tuakana e tika ai te teina, mā te teina e tika ai te tuakana
Through relationships and respect we can find the way forward

Whākana ki ō manuhiri i tō kāinga
Mana is upheld through fulfilling roles and responsibilities

1st July 2016

Te Rūnanga o NGĀI TAHU

Environment Canterbury Regional Council
Kaunihera Taiao ki Waitaha

Selwyn District Council

Christchurch City Council

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1. Preamble

1.1 This Agreement records the commitments of the Canterbury Regional Council, Te Rūnanga o Ngāi Tahu, Selwyn District Council and Christchurch City Council (together the Parties) to share responsibility for Te Kete Ika a Rākaihautū and the wider Te Waihora catchment. The Parties acknowledge the contribution of the Te Waihora Management Board in the development of the Te Waihora Co-Governance Agreement and express their appreciation for that contribution, the leadership demonstrated in forging this new regime, and the Board's unfailing commitment to Te Waihora. The Parties are jointly commited to maximising and expediting the rejuvenation of the lake and catchment for the benefit of current and future generations, and are confident that working collaboratively in the best interests of the catchment will achieve the greatest outcomes for the catchment and the living relationships people enjoy with the catchment.

1.2 Canterbury Regional Council, Selwyn District Council, Christchurch City Council and Ngāi Tahu all have responsibilities to Te Waihora and catchment: Canterbury Regional Council, Selwyn District Council and Christchurch City Council's responsibilities are sourced in statute, including through the Resource Management Act 1991 and the Local Government Act 2002, which require the Councils to prudently manage the catchment.

1.3 For Ngāi Tahu, Te Kete Ika a Rākaihautū is of paramount significance. Ngāi Tahu responsibilities derive from custom, an inherited body of law conferring on Ngāi Tahu obligations to be enduring kaitiaki over the catchment. For Ngāi Tahu the customary status of mana whenua manifests in part through the reciprocal obligation to the landscape to act as kaitiaki.

1.4 The statutory and customary responsibilities forge a common purpose: successful leadership and stewardship of Te Waihora and catchment.

1.5 This Agreement records the commitments of the Parties to collaboratively exercise the functions, powers and duties of the Councils and reaffirms the Parties' commitment to jointly strive toward appropriate vesting of decision-making powers in the Parties as co-governors over the Te Waihora catchment.

1.6 In exercising functions, powers and duties the Parties agree to jointly manage stakeholder relationships within the catchment, including facilitating consultation, collaborative engagement, and the development of agreements with key stakeholders (including central government) in relation to the management of Te Waihora and its catchment generally.

1.7 For the purposes of clarity, this Agreement is not a joint management agreement under the Resource Management Act 1991. However the Parties reiterate the significance placed on the commitments recorded in this Agreement and affirm their intention to explore structural mechanisms to support enduring collaborative co-governance arrangements.

2. Interpretation

Canterbury Regional Council— means the regional council duly constituted by the Local Government Act 2002 (the Regional Council).

Co-governors— means governance representatives of the Canterbury Regional Council, Selwyn District Council, Christchurch City Council and Te Rūnanga o Ngāi Tahu acting jointly.

Christchurch City Council— means the city council duly constituted by the Local Government Act 2002 (the City Council).

Mahinga kai – means the customary gathering of food and natural materials and the places where those resources are gathered.

Ngāi Tahu— means, for the purposes of this Agreement, the collective of Te Rūnanga o Ngāi Tahu (including its committee, the Te Waihora Management Board) and ngā Papatipu Rūnanga, namely Te Taumutu Rūnanga, Te Ngāi Tūāhuriri Rūnanga, Te Hapū o Ngāti Wheke (Rāpaki) Rūnanga, Koukourārata Rūnanga, Ōnuku Rūnanga and Wairewa Rūnanga holding mana whenua within the Te Waihora catchment.

Parties— means the Canterbury Regional Council, Selwyn District Council, Christchurch City Council and Te Rūnanga o Ngāi Tahu.

Selwyn District Council— means the district council duly constituted by the Local Government Act 2002 (the District Council).

Te Rūnanga o Ngāi Tahu— means the legal entity constituted by the Te Rūnanga o Ngāi Tahu Act 1996 to represent the interests of Ngāi Tahu Whānui.

Te Waihora catchment— means the geographical area described in Schedule One to this Agreement.

3. Purpose and Principles

3.1 The Purpose of this Agreement is to provide for an enduring, collaborative relationship between the Parties that includes shared exercise of functions, duties and powers under the Resource Management Act 1991 and the Local Government Act 2002.

3.2 The Parties' agreed principles and aims for collaborative sharing of functions, duties and powers within the Te Waihora catchment are to:

(a) recognise and acknowledge that the Parties will benefit from working together by sharing their respective vision, knowledge, resources and expertise, and accordingly commit to:

i. work together in good faith and with a spirit of co-operation, promoting

co-governance and its effective implementation

ii. maintain early, open and transparent sharing of information in the process of making sound, robust decisions

iii. recognise that the relationship between the Parties will evolve

iv. recognise and affirm the sanctity of their respective responsibilities and respect the independence of the Parties and their individual mandates, roles and responsibilities in relation to the Te Waihora Catchment

v. use their best endeavours in a courageous and innovative manner to overcome any barriers that may constrain this Agreement, whilst acknowledging the statutory frameworks that apply, and the need to recognise and provide for each Party's respective responsibilities and values. As part of their commitment to the highest level of good faith collaboration the Parties will apply the principles of consensus decision making in all endeavours.

vi. approach all material engagement with other stakeholders standing 'shoulder to shoulder/pakahiwi ki te pakahiwi', and

vii. ensuring effective co-ordination, and where appropriate, integration of their respective roles and responsibilities and efforts and actions relating to Te Waihora.

(b) enhance the practice of sustainable management within the catchment and increase outcomes giving effect to cultural, biodiversity, mahinga kai, economic and recreational values, including recognition of:

i. Cultural values–the management and sustainable use of the traditional food and cultural resources, with particular recognition of mahinga kai, the cultural significance of the catchment to Ngāi Tahu and the inherent mauri and wairua of the catchment.

ii. Wildlife habitat and biodiversity values– Te Waihora is a nationally significant wetland influenced by fluctuating lake levels and wind-induced water movement. The lake provides habitat for numerous species of birds, plant, fish and invertebrate species. The vegetation types reflect the great diversity of habitat around the shoreline.

iii. Historic resources – historic Māori occupation around Te Waihora and ensuing Ngāi Tahu and European settlement has positioned Te Waihora as an important part of Canterbury's heritage.

iv. Landforms and landscapes – the flat, spread out nature of Te Waihora is a prominent feature of Ngā Pākihi Whakatekateka o Waitaha/the Canterbury Plains. Te Waihora, as a large brackish coastal lake is a distinctive landform type in New Zealand and is one rare internationally.

v. Recreational use and public access – Te Waihora provides a high quality recreational area for many including fishers, game bird hunters, water-based recreationalists, birdwatchers and those enjoying the wide-open spaces.

vi. Sustainable economies – commercial uses along with other public and agency activities in the catchment. The lake community values these commercial activities based on the natural and ecological values of Te Waihora.

4. Background

4.1 The Councils and Ngāi Tahu respectively hold statutory and tikanga (customary) responsibilities in relation to the Te Waihora catchment and each independently dedicate significant resources and expertise to protecting, restoring and enhancing the catchment.

4.2 The Councils are responsible for integrated management of the natural and physical resources within the catchment and are also one of the lead government agencies for protecting and restoring indigenous biodiversity in the catchment (and wider region). Both Councils and Ngāi Tahu also own land alongside the lake.

4.3 Ngāi Tahu considers the Te Waihora catchment to be of paramount significance as an important source of mahinga kai[1] that has sustained tribal identity across the generations. Te Waihora is also an important link between the Canterbury Plains/Ngā Pākihi Whakatekateka o Waitaha and Te Pātaka o Rākaihautū/Banks Peninsula. Kaitorete Spit contains a large number of urupā (burial ground), midden, and mahinga kai sites are abundant across the catchment. The mana of Ngāi Tahu is inextricably bound to the health and well-being of the catchment.

4.4 Recognising the significance of the catchment to Ngāi Tahu, the Ngāi Tahu Claims Settlement Act 1998 transferred to Te Rūnanga o Ngāi Tahu the fee simple title to the bed of Te Waihora (Lake Ellesmere) and granted specific planning and bylaw making powers in respect of the lake bed.

4.5 Te Waihora is also part of the natural drainage system of the Harts/Waitātari, Irwell/Waiwhio, Selwyn/Waikirikiri, LII/Ararira, Halswell/Huritini and Kaituna catchments. Since European settlement lake levels have been modified and managed as part of a comprehensive land drainage system to allow farming around the lake. The management of lake levels is important to landholders around the lake foreshore. They are able to farm their properties because of the operation of the land drainage systems.

4.6 Te Waihora supports customary, recreational and commercial fisheries; 33 native species and five exotic species are commonly recorded there. Eel, flounder and mullet are the primary commercial catch species.

4.7 Recognising the potential to enhance the outcomes generated within the catchment through greater co-ordination of resources, the Parties have committed to collaborative co-governance of the catchment.

4.8 Co-governance of the catchment is recorded as a specific goal in the Canterbury Water Management Strategy, which seeks to achieve, by 2015—

> *"A formal co-governance arrangement (developed in partnership by Ngāi Tahu, the Crown and Canterbury local government) for the active management of Te Waihora (Lake Ellesmere) and its catchment."*

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[1] Mahinga kai – means the customary gathering of food and natural materials and the places where those resources are gathered.

4.9 The Parties have also jointly contracted with the Crown, in the spirit of co-governance, to an accelerated cultural and ecosystem restoration programme in the catchment known as Whakaora Te Waihora.

4.10 The involvement of Ngāi Tahu in co-governance and co-management arrangements for Te Waihora and its catchment is consistent with the principles of the Treaty of Waitangi, and will promote the principles set out in sections 6, 7 and 8 of the Resource Management Act 1991 (RMA) and Parts 2 and 6 of the Local Government Act 2002 (LGA).

5. Functions, powers and duties to be jointly exercised

5.1 The Parties have agreed to collaboratively exercise the following statutory and non-statutory functions, duties and powers that the Councils are responsible for:

(a) preparation, review or change of RMA planning and policy instruments
(b) resource consenting
(c) compliance, monitoring and enforcement
(d) annual and long term planning
(e) operational works within the catchment, including lake opening, drain management and other works
(f) biodiversity and biosecurity programmes
(g) bylaw making; and
(h) relationship management.

These functions embrace the principles set out in 4.10 above.

5.2 The collaborative exercise of the functions set out at clause 5.1 is diagrammatically represented in Schedule Two.

5.3 The Parties recognise that each of these functions, duties and powers is an important mechanism that implements values and aspirations for natural resource management.

5.4 The Parties have agreed that within the Te Waihora catchment all of these functions will be exercised collaboratively to better reflect and give effect to Ngāi Tahu values, without fettering or derogating from the Councils' statutory responsibilities.

5.5 Subject to the further specificity set out in Schedule Two, the Parties agree that the nature of collaboration for each function included within the scope of this Agreement will, where possible, include:

(a) Vision— the Parties will jointly prepare and adopt a Vision for the Te Waihora catchment to provide overarching guidance to the objectives, priorities and principles for management of natural resources within the catchment
(b) Functional strategy— the Parties will jointly prepare and adopt a strategy for the exercise of each function, specifying relevant priorities and objectives
(c) Reporting— for each function, the Parties will agree a periodic reporting framework so that the co-governors can jointly monitor how each function is

performing against the intention of the co-governors, as reflected in the Vision and functional strategy

(d) People— where appropriate, the co-governors will encourage people associated with the parties to become engaged in the performance of particular functions

(e) Processes— each function will adopt operational processes to implement and embed clear, effective and efficient processes for enhanced collaboration, particularly to ensure that staff of each party work side by side, where appropriate

(f) Recommendatory approval— on a non-binding basis, the co-governors (or representatives) will provide advice in advance of the Council making statutory decisions, and

(g) No surprises—open and early communication will occur amongst the co-governors on material issues.

5.6 The Parties agree that the collaborative exercise of the powers, functions and duties, as set out in Schedule Two, will:

(a) not fetter the statutory powers of either the Councils or Te Rūnanga o Ngāi Tahu

(b) not derogate from the responsibility of Ngāi Tahu as kaitiaki of the lake and the catchment, and

(c) be given effect to through operational processes that will be jointly approved and adopted by the Chief Executive Officers of the Councils and Te Rūnanga o Ngāi Tahu.

6. Catchment Vision to provide direction to joint exercise of functions, powers and duties

6.1 As per clause 5.5(a), the Parties agree to jointly prepare and adopt a Vision for the Te Waihora catchment to provide overarching guidance to the objectives, priorities and principles for management of natural resources within the catchment.

7. Operational process protocols to give effect to joint exercise of functions, powers and duties

7.1 As per clause 5.6(c), the Parties agree that operational process protocols will be adopted by the Chief Executive Officers of the Councils and Te Rūnanga o Ngāi Tahu to give effect to this Agreement.

7.2 The purpose of the operational process protocols is to:

(a) recognise, promote and give effect to the purpose and principles of this Agreement

(b) ensure that statutory functions, duties and powers are satisfied, and

(c) maximise efficacy and efficiency of the implementation of joint exercise of functions, duties and powers provided for under this Agreement.

7.3 The operational process protocols will provide for:

(a) Mechanics—the timing, nature, content and form of staff level collaboration as provided for under this Agreement.
(b) Training—any applicable training processes to enable staff and other associated people to fulfil the intent and provisions of this Agreement, and
(c) Any other matters the Chief Executive Officers consider necessary.

8. Co-Governance of Whakaora Te Waihora

8.1 The Parties agree to:

(a) Approve any relevant management and/or operational plans, work programmes and budgets developed for the implementation of the Whakaora Te Waihora accelerated restoration programme, and
(b) Provide leadership to the organisations and the community in relation to the Whakaora Te Waihora accelerated restoration programme.

9. Additional Co-Governance Responsibilities

9.1 The Parties agree to jointly:

(a) Identify significant existing and emerging issues affecting Te Waihora and its catchment. Unless it is defined otherwise by agreement of the Parties, a "significant" issue is any that is considered to be such by either of the Parties
(b) Receive advice, reports, briefing papers and other relevant information from staff of the three Councils, Te Rūnanga o Ngāi Tahu and other relevant organisations
(c) Approve policy and protocols related to the artificial opening and closing of Te Waihora
(d) Input into statutory policy statements and plans that relate to Te Waihora and its catchment. Such policy statements and plans include but are not limited to iwi and hapū management plans, regional policy statements, regional plans, district plans, rating district asset management plans, annual plans and long term council plans
(e) Input into the appointment of hearing commissioners, which may include Ngāi Tahu commissioners, to hear notified and called-in resource consent and private plan change applications within the Te Waihora catchment, whilst acknowledging that any person appointed as an independent commissioner must consider any such application in accordance with their legislated mandate, and is not bound by the provisions of this Agreement
(f) Input into the Zone Implementation Programme (ZIP) and Regional Implementation Programme (RIP) of the Selwyn –Waihora CWMS Zone Committee and the Regional CWMS Committee respectively, insofar as they impact on Te Waihora and its catchment, and
(g) Manage stakeholder relationships within the catchment, including:
    i. Facilitate consultation and collaborative engagement amongst and between the Parties, the organisations and with other stakeholders

ii. Develop collaboration agreements with key stakeholders, that outline the extent and nature of engagement in relation to the management of Te Waihora generally and in particular to the implementation of the Whakaora Te Waihora accelerated restoration programme, and

iii. Initiate and progress engagement with key stakeholders (including central and local government) to ensure they have a clear understanding of the long-term formal co-governance arrangements between Ngāi Tahu and the Councils for Te Waihora and its catchment.

10. Structural machinery for co-governance entity

10.1 The Parties agree to explore jointly the constitution of a statutory body to exercise and oversee the joint governance of functions, duties and powers under this Agreement.

10.2 In the period between commencement and the constitution of such a body, the Parties agree to jointly exercise the functions under this Agreement through an unincorporated co-governance framework consisting of the Te Waihora Co-Governance Group and the Joint Officials Group.

Te Waihora Co-Governance Group

10.3 The Te Waihora Co-Governance Group will:

(a) Comprise three Canterbury Regional Council Commissioners, an elected member of Selwyn District Council, an elected member of Christchurch City Council and five members appointed by Te Rūnanga o Ngāi Tahu

(b) Be chaired jointly, and the chairs are to be known as Co-Chairpersons. One Co-Chairperson will be the Chairperson of Canterbury Regional Council and one Co-Chairperson will be the Kaiwhakahaere of Te Rūnanga o Ngāi Tahu

(c) A representative of the Ministry for the Environment will participate as a member of the Co-Governance Group when any matters directly related to the Whakaora Te Waihora Project 2011 – 2016, to which the Crown has contributed funding, are being considered

(d) The Co-Governance Group shall meet on a monthly basis, or such other frequency as is agreed by the Group. Meeting dates will be set in January for the forthcoming calendar year. The location of meetings of the Co-Governance Group shall be chosen by the Parties.

(e) The quorum for meetings is seven members, made up of at least one of the Co-Chairpersons, any three of the five members appointed by the Regional, District and City Councils, and three Te Rūnanga o Ngāi Tahu members, and

(f) All members of the Co-Governance Group must act in good faith, in a manner that achieves the Purpose and Principles of this Agreement, and follow the principles of consensus decision-making.

10.4 The Co-governance Group may choose to appoint a sub-committee for agreed purposes. Any sub-committee shall:

(a) Comprise a membership not exceeding a total of six

(b) Have membership of the Councils and Ngāi Tahu

(c) Serve as an advisory body that makes recommendations to the Co-Governance Group and for the purposes of clarity, shall not have decision making powers, and

(d) Operate according to the principles and practices applying to the Co-Governance Group.

10.5 All decisions of the Co-Governance Group are to be reached through the highest level of good faith engagement and made on a consensus basis, while having regard to statutory frameworks and the mana whakahaere of Ngāi Tahu, represented by the Te Rūnanga o Ngāi Tahu members.

10.6 Every effort shall be made by members of the Co-Governance Group to reach a consensus decision, and in the event of difficulty in this regard, reference should always be made back to the Purpose and Principles of this Agreement for guidance. A consensus means a consensus between a majority of the Council members and a majority of the Te Rūnanga o Ngāi Tahu members, rather than a consensus between all of the individual members of the Co-Governance Group.

10.7 All decisions made by the Co-Governance Group must demonstrate, and be aligned with, the Purpose and Principles of this Agreement.

10.8 In carrying out the functions specified in this Agreement, all business of the Co-Governance Group shall, in the first instance, be undertaken 'face to face/kanohi ki te kanohi' at an official meeting of the Co-Governance Group. However, the Parties recognise that some of the functions specified in this Agreement relate to statutory powers, functions and responsibilities of the Councils, and that the exercise of these can be subject to statutory timeframes. In the event that statutory timeframes and the timing of Co-Governance Group meetings do not allow for 'face to face' consideration of a matter, there shall be direct engagement between the Co-Chairpersons and/or between the members of the Joint Officials Group to reach agreement on the actions to be taken in accordance with the nature of the issue.

Joint Officials Group

10.9 The Joint Officials Group will:

(a) Comprise at least two staff members from each of the Canterbury Regional Council, Selwyn District Council, Christchurch City Council and Te Rūnanga o Ngāi Tahu. At least one of the staff members from each of the organisations is to be at senior management level

(b) A quorum for the Joint Officials Group meetings shall be at least one member from each organisation, and

(c) An official from the Ministry for the Environment shall be nominated as the key contact for the Joint Officials Group for all matters relating to the delivery of the Whakaora Te Waihora accelerated restoration programme as it relates to the Ministry funding.

10.10 The functions of the Joint Officials Group include, but are not limited to:

(a) Ensuring a strategic and integrated approach to management of issues within the organisations that relate to Te Waihora and its catchment

(b) The development, management and delivery of the Whakaora Te Waihora accelerated restoration programme, as well as the provision of the leadership and integration within the organisations with regard to that programme
(c) Responsibility for oversight and coordination of all reports, briefings, presentations etc, received by the Co-Governance Group
(d) Active collaboration and engagement with key stakeholders
(e) The development and review of strategies and policies that relate to Te Waihora and its catchment
(f) The provision of research, analysis and recommendations for long-term formal co-governance framework options for Te Waihora and its catchment
(g) The development of policy and protocols related to the artificial opening and closing of Te Waihora
(h) Other functions as directed by the Co-Governance Group, and
(i) Input into all (material) consents or Resource Management Act 1991 processes in the Te Waihora catchment.

10.11 Wherever possible staff recommendations to the Co-Governance Group should be joint recommendations from the Joint Officials Group. Where a joint recommendation cannot be agreed, separate recommendations and associated rationale shall be provided.

Conduct within Co-Governance Framework

10.12 The Parties agree to:

(a) Regular and effective communication and co-ordination between staff of the organisations (via the Joint Officials Group), and between the Co-Chairpersons of the Co-Governance Group, and
(b) The provision and exchange of all information, advice, and any other communication between the Parties, either at the Joint Officials Group or Co-Governance Group, shall allow reasonable opportunity for due consideration of the matter, and shall take account of all reasonable internal communication processes of the Parties.

11. Joint decision making to be implemented for agreed functions, powers and duties

11.1 The Parties will explore joint exercise of decision making over agreed functions, powers or duties and reach an agreement on whether or not to incorporate shared decision making power under this Agreement.
11.2 The Parties commit to exploring, without limitation, the vesting of non-statutory and/or statutory decision-making powers in the co-governors.

12. Reservations and conditions pertaining to joint exercise of functions, powers and duties

12.1 Nothing in this Agreement shall devalue or derogate from the rights of Ngāi Tahu to exercise its rangatiratanga, or other tikanga requirements, and/or give effect to those matters confirmed as part of the Ngāi Tahu Claims Settlement Act, including statutory

functions and powers, or any other statutes or regulation, or at law generally. In relation to the Settlement, this Agreement shall look to continue the process of healing and enter the new age of co-operation with Ngāi Tahu as set out in the Apology of the Crown contained in the Ngāi Tahu Claims Settlement Act.

12.2 It is accepted that the Councils have functions, duties, and obligations pursuant to statute and at law generally. The Parties acknowledge that nothing in this Agreement restricts, fetters or derogates from the statutory functions, duties and obligations imposed on the Councils by the Local Government Act 2002, the Resource Management Act 1991, the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 or any other statute or regulation, or at law generally. If anything in this Agreement is inconsistent with any of the Councils' functions, duties or obligations pursuant to statute or at law generally, then the functions, duties, and obligations of the Councils pursuant to statute or at law generally shall prevail and this Agreement shall be construed and interpreted accordingly.

12.3 The Councils may carry out functions or exercise the power on their own account and not in accordance with this Agreement if:

(a) An emergency situation arises, or
(b) A statutory timeframe for the carrying out of the function or the exercise of the power is not able to be complied with under this Agreement.

12.4 Nothing in this Agreement precludes the Councils from affecting a transfer or a delegation of function, duty or power to Ngāi Tahu.

13. Administration of Agreement

13.1 Each Party will bear their own costs in relation to their separate activities and contributions pursuant to this Agreement. The Parties agree that from time to time payment may be made from one Party to another for specific services in relation to the implementation of co-governance where the Parties agree that in the circumstances it is appropriate to do so.

Execution

Signed by: Tā Mark Solomon
On behalf of Te Rūnanga o Ngāi Tahu

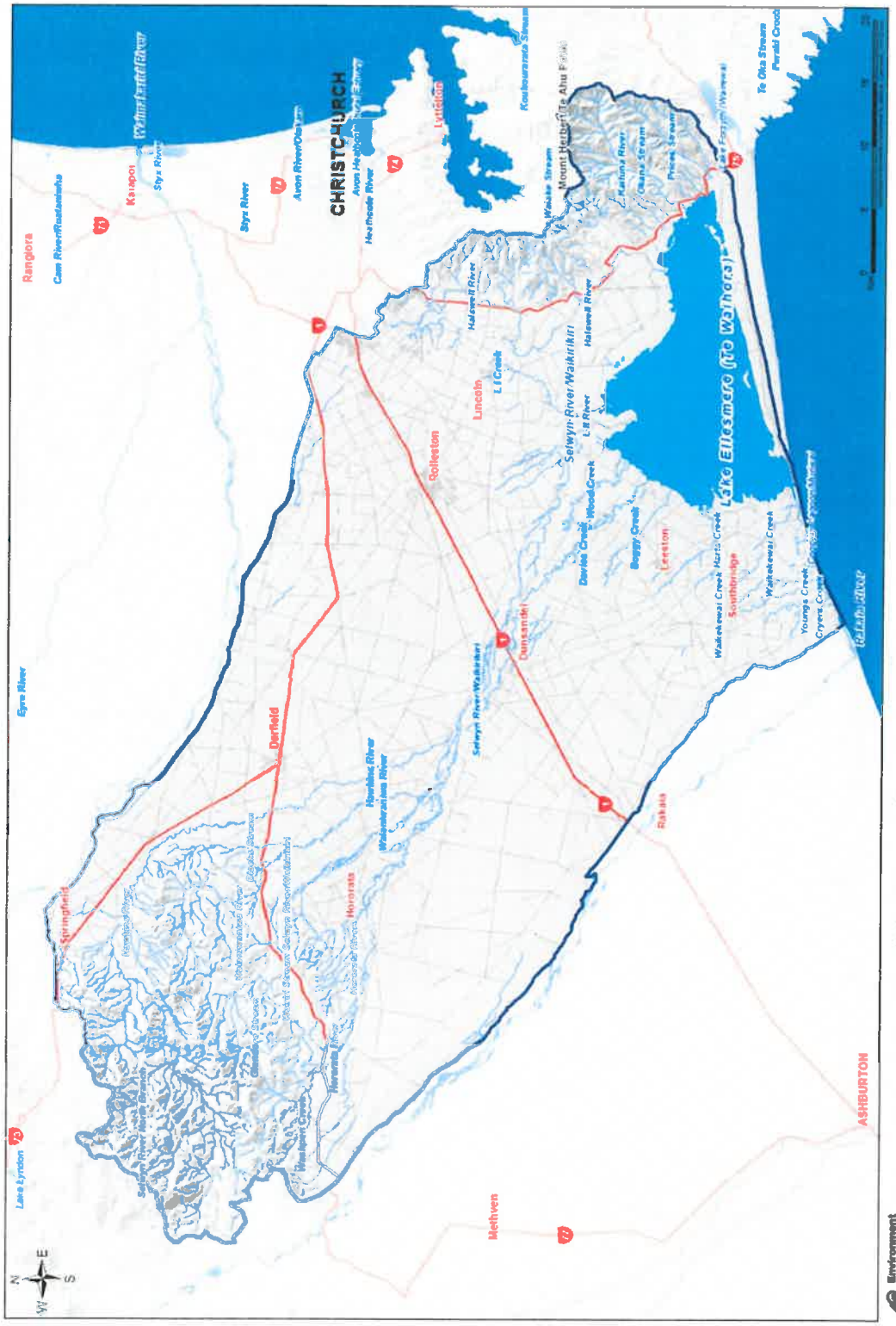
Signed by: Dame Margaret Bazley
On behalf of Canterbury Regional Council

Signed by: Mayor Kelvin Coe
On behalf of Selwyn District Council

Signed by: Mayor Lianne Dalziel
On behalf of Christchurch City Council

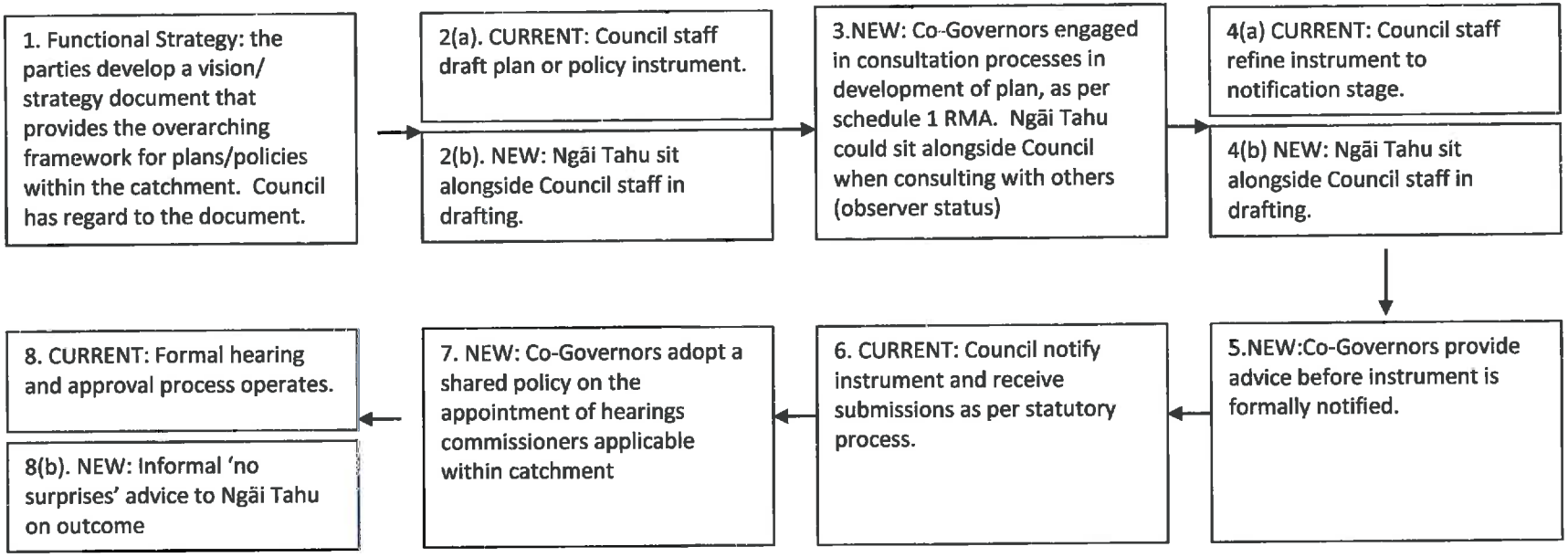
Schedule One—Definition of Te Waihora Catchment

The area of land where water drains into Te Waihora (Lake Ellesmere) and the adjacent spring-fed streams between the south of the lake and the Rakaia River

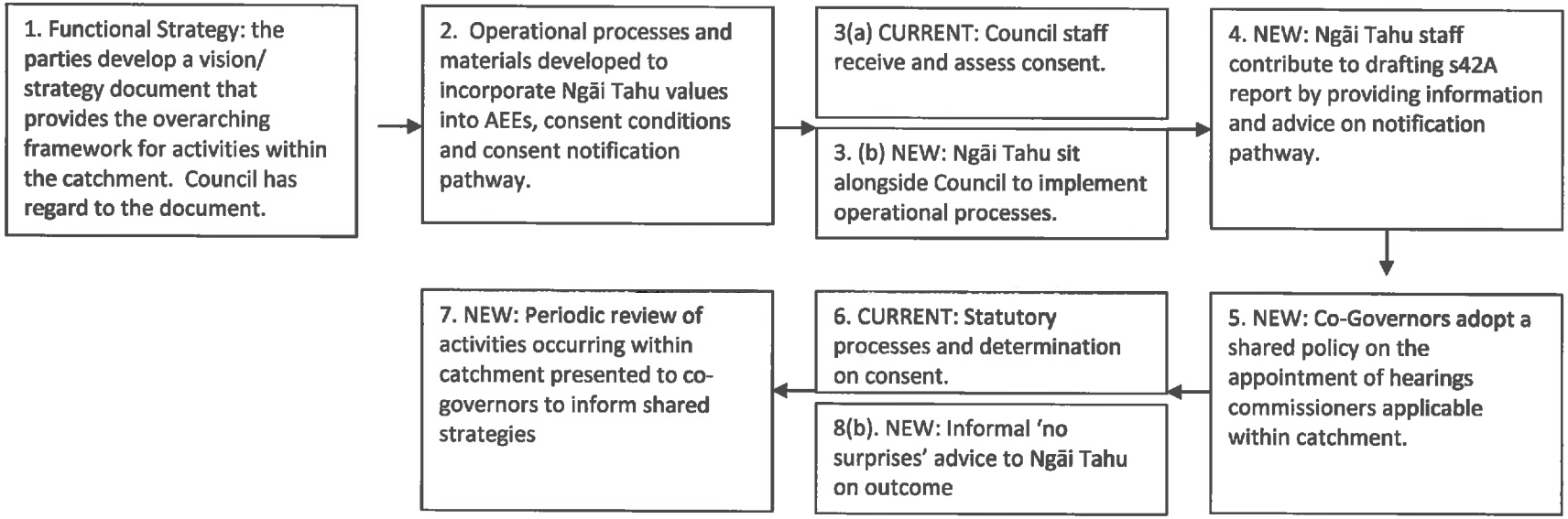


Schedule Two—Diagrammatic Representation of Collaboration Processes

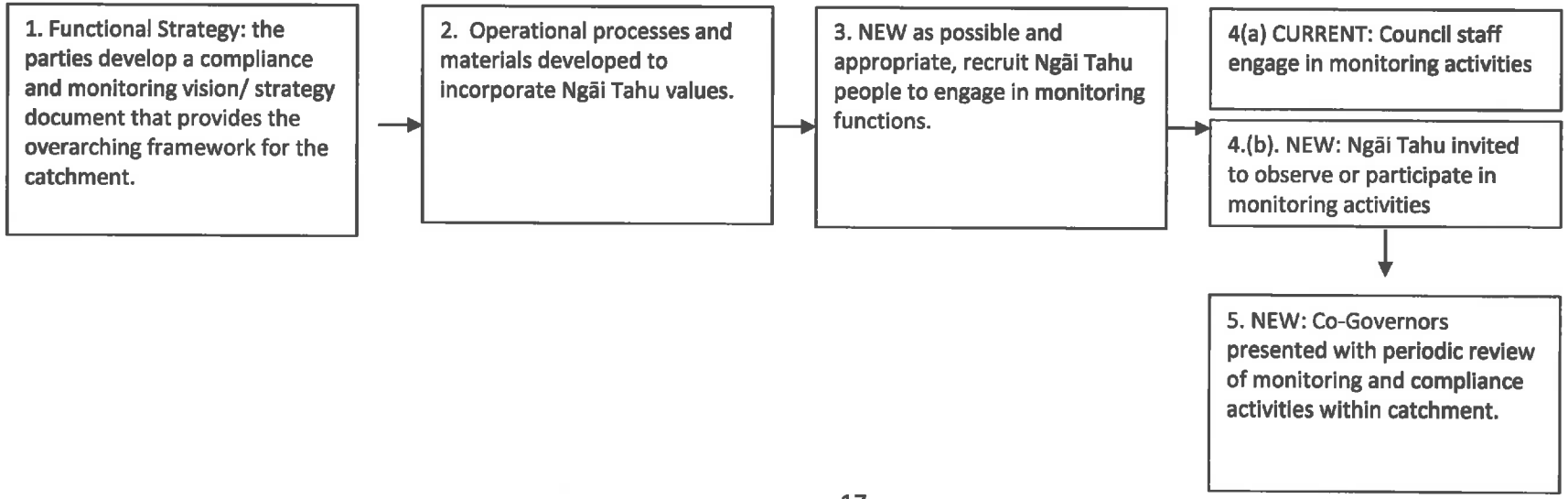
Policy and Planning Function



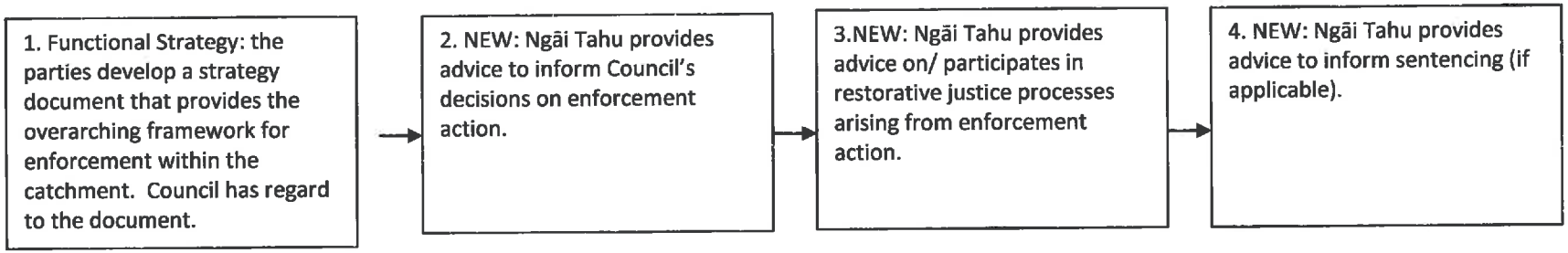
Consenting Function



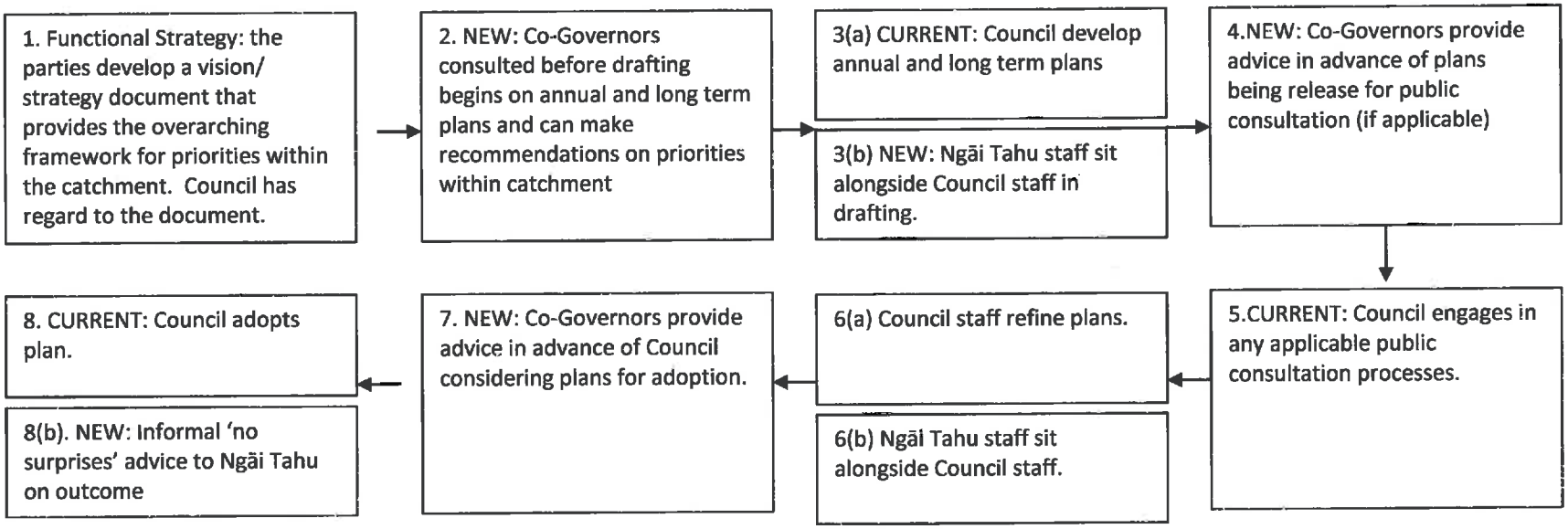
Compliance and Monitoring



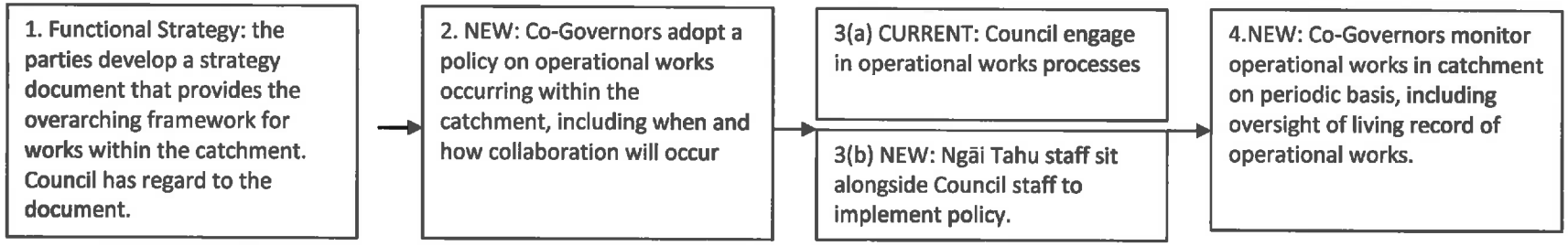
Enforcement Function



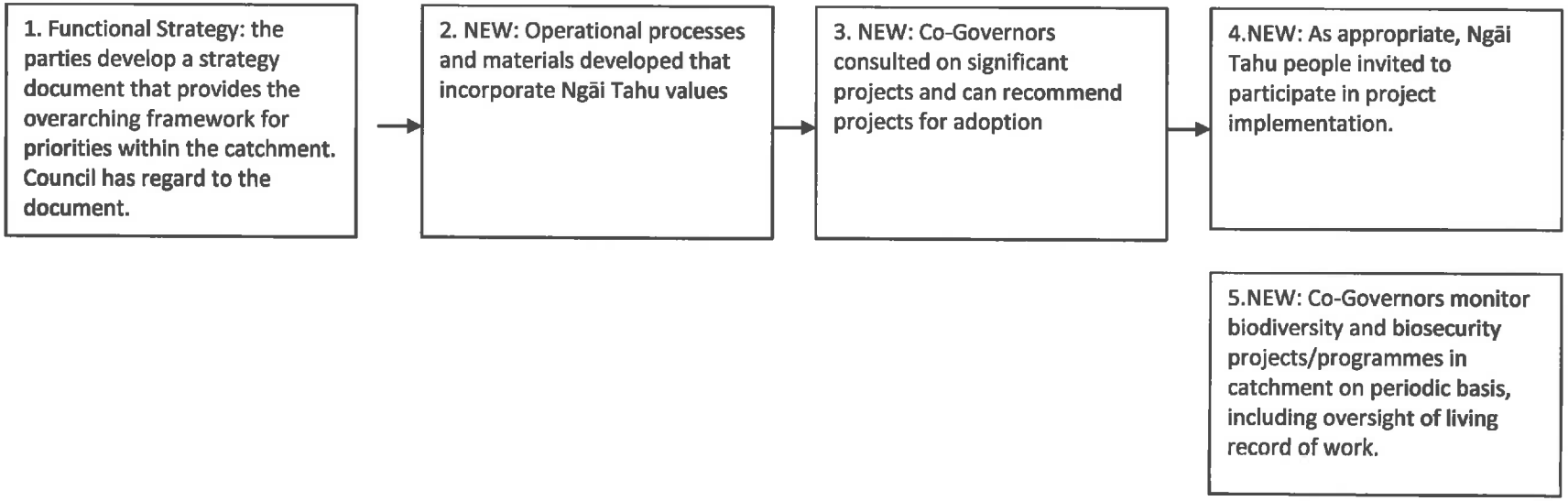
Annual and Long Term Planning Function



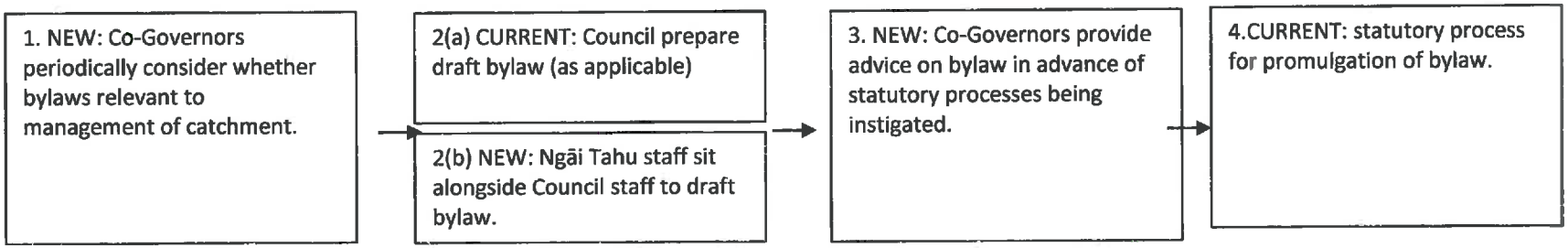
Operations—including lake opening



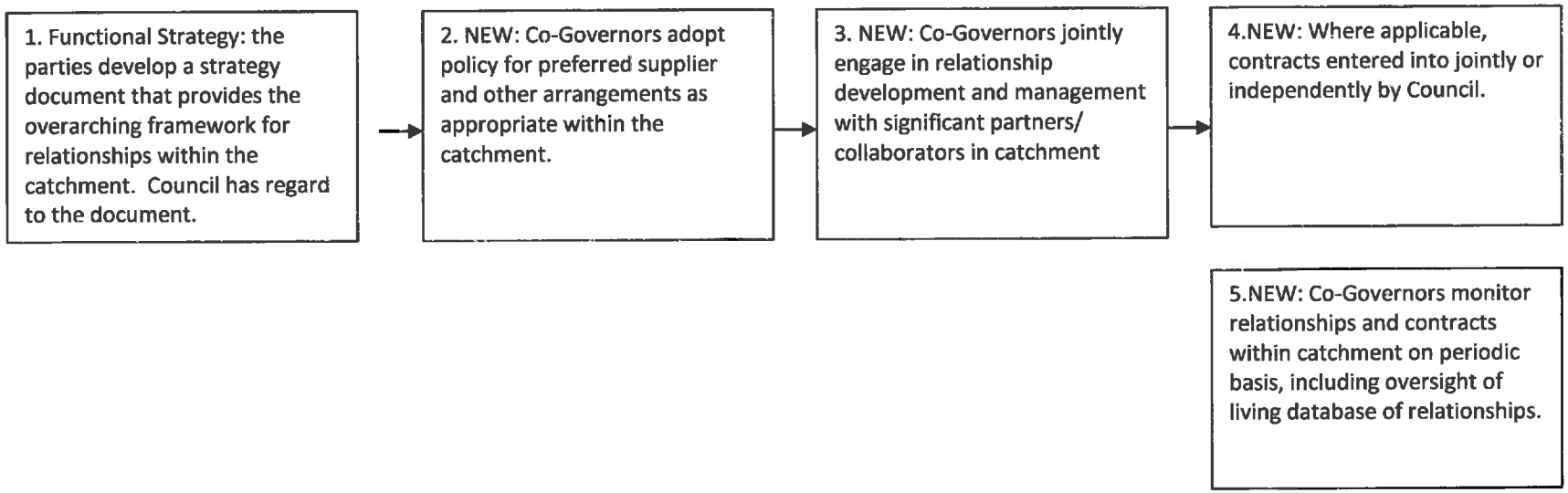
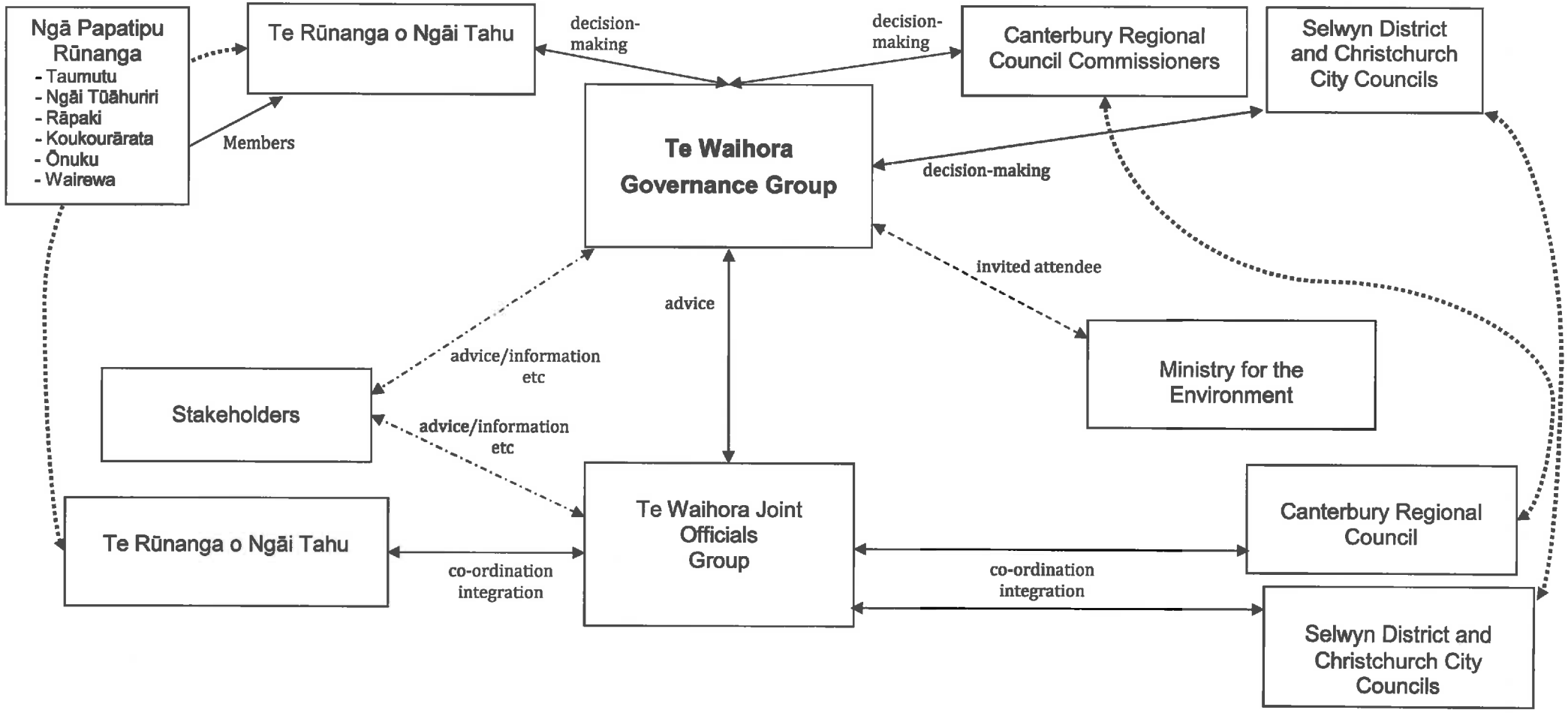
Biosecurity and Biodiversity



Bylaws



Relationship and contract management



Schedule Three—Diagrammatic Representation of Te Waihora Co-Governance Framework