

CO-GOVERNANCE AND CO-MANAGEMENT ARRANGEMENTS FOR THE UPPER WAIPA RIVER

Regulatory Impact Statement

Disclosure statement

This regulatory impact statement has been prepared by the Office of Treaty Settlements. It provides an analysis of regulatory options to extend the coverage of the co-governance framework for the Waikato River and related co-management arrangements to include the Upper Waipa River.

The co-governance framework was established under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010. Its extension to cover the Upper Waipa River was agreed in a deed between the Crown and Maniapoto (Maniapoto Maori Trust Board) signed on 27 September 2010.

The co-governance framework was negotiated as a core element of a settlement between the Crown and Waikato-Tainui of historical claims under the Treaty of Waitangi in respect of the Waikato River (including the Lower Waipa River). As a consequence, its development reflects the dual influences of policy analysis and negotiating settings over a four year period between December 2005, when Terms of Negotiation were signed, and December 2009, when the final deed of settlement was signed.

Although the deed between the Crown and Maniapoto does not settle any of the Treaty of Waitangi claims of Maniapoto, it is part of a series of deeds between the Crown and iwi of the Waikato and Waipa Rivers (the others being Waikato-Tainui, Raukawa, Te Arawa River Iwi and Ngati Tuwharetoa) necessary to give full effect to the arrangements included in the settlement of the raupatu claims of Waikato-Tainui.

The Waipa River is the largest tributary of the Waikato River. The waters of the Upper Waipa River are a source of waters that flow into and form part of the Waikato River. A key assumption is that the quality of the waters of the Waikato River within the rohe of Waikato-Tainui is inextricably tied to the quality of the waters of the Upper Waipa River.

Other important assumptions include:

- the benefit to the community of the arrangements to improve the Waikato River would be diminished if the Upper Waipa River is not included;
- having one regime for the Lower Waipa River (as part of the Waikato River framework) and a different regime for the Upper Waipa River creates complexity for local government and the community and should be avoided; and
- the Crown has entered into the deed with Maniapoto in good faith with the full intention of carrying out its obligations to Maniapoto under the deed and under the Treaty of Waitangi.

Assumptions about the likely effectiveness of the co-governance arrangements for the Waikato River are informed by the report of an independent review panel provided to the

Minister for Treaty of Waitangi Negotiations in April 2009 but their implementation is at a very early stage so it is too early to assess outcomes.

The co-governance framework includes a vision and strategy that now forms part of the Waikato regional policy statement and will be given effect in rules in the regional and district plans. In due course there may be new requirements in Resource Management Act 1991 planning documents to comply with. This could occur regardless of the terms of the Treaty of Waitangi settlement, particularly considering the wider context of freshwater and environmental issues confronting regional councils, communities and industry groups.

The extension of the co-governance framework, and related co-management arrangements, to cover the Upper Waipa River will not impose additional costs on businesses. Nor will it impair private property rights, market competition, or the incentives on businesses to innovate or invest. Fundamental common law principles (as referenced in chapter 3 of the Legislation Advisory Committee Guidelines) are not overridden.

Status quo

Treaty of Waitangi

The Treaty of Waitangi provides the primary basis for the relationship between the Crown and Maniapoto. In the context of the Waipa River, section 8 of the Resource Management Act 1991 provides that in achieving the purpose of the Act, which is to promote the sustainable management of natural and physical resources, all persons exercising functions and powers under the Act, in relation to managing the use, development, and protection of natural and physical resources, must take into account the principles of the Treaty of Waitangi.

Section 6 of the Resource Management Act 1991 provides that, among other things, the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga must be recognised and provided for as a matter of national importance. Related to this, section 4 of the Local Government Act 2002 provides that in order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Maori to contribute to local government decision-making processes, Parts 2 and 6 of the Act provide principles and requirements for local authorities that are intended to facilitate participation by Maori in local authority decision-making processes.

Issues for iwi

The experience of Maniapoto, Waikato-Tainui and the iwi associated with the Waikato River has been that these provisions have not met their aspirations, have failed to avoid, remedy, or mitigating adverse effects of activities on the river and its environment, and are failing to sustain the potential of the river to meet the reasonably foreseeable needs of their future generations.

The Crown acknowledged that the deterioration of the health of the Waikato River, while the Crown had authority over the river, has been a source of distress for the Waikato-Tainui people and the pollution, degradation and development of the Waikato River, its lakes, streams and wetlands have resulted in the decline of its once rich fisheries, which had for generations sustained the people's way of life and their ability to meet their obligations of manakitanga has been a further source of distress to Waikato-Tainui. The Crown has given

the same acknowledgement to Maniapoto and to the iwi associated with the Upper Waikato River.

The Maniapoto experience

The Maniapoto experience of the status quo prior to the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 is summarised in *Te Purongo: Maniapoto: State of the Environment Report: A Tribal Perspective* published in 2002:

“Looking at the Waipa River today it is hard to believe that our tupuna spoke of a time not so long ago when the waters of the Waipa were clear, deep and blue. Within the clear, clean waters of the Waipa were fat eels, large crayfish, and a variety of fish, a plentiful source of food. Children in the vicinity of the Waipa made regular trips to the river for swimming, eeling and fishing.

For most of us today this is a dim memory, a legend of times past.

The waters of the Waipa now run muddy brown, polluted with farm runoff, industry discharges, sewerage spills and stormwater drainage. Many food species have disappeared from the river and the remaining tuna/eels in the river may not be safe for eating.

Swimming in the river is a health risk and along the lower reaches there is no longer any reason for our children to visit it. Few of today’s generation will learn the techniques of eeling or enjoy the experience of fresh water swimming, and these too may one day be a distant memory of a bygone age.”

For Maniapoto, the pre-existing status quo failed to prevent:

- the bulldozing (to make way for pine planting) of Tumutumumu – chief Maniapoto’s pa site in the Mangaokewa reserve (destroying trenches that had existed for some 400 years);
- the bulldozing (for farming) of Te Waiwhakata – a stone altar in the shape of a pillar and basin, with a natural spring that kept the basin full with clear spring water, used over hundreds of years for divination, prayer and cleansing, said to be the washbowl of Patupaiarehe;
- the extensive excavation (for quarrying) of Pukerimu, Whiti te Marama, and Tokanui Pa (known as ‘the three sisters’) – favourite places of many Maniapoto tupuna;
- the bulldozing of Whakapirimata Pa – built by Whaita and later occupied by Hori, father of Peehi Tukorehu;
- the destruction (for housing purposes) of Kakamutu Pa;
- the destruction (for town development) of Otawhao Pa;
- the excavation (for quarrying) of Te Ana Uriuri o Maniapoto – Maniapoto’s cave (protests saved it from complete destruction); and
- the bulldozing of Orongokoekoea – birthplace of King Tawhiao.

The Maniapoto Iwi Environmental Plan published in 2007 also outlined problems with the status quo as follows:

- processes and timeframes that do not take account of iwi/hapu consultation processes;

- actions by local authorities that impinge on iwi/hapu rights, e.g. lands subject to Treaty claims, developments that desecrate wahi tapu, loss of access to Maori sites and under resourcing of Maori facilities;
- disproportionately high contributions by iwi/hapu to the public good (Maniapoto has contributed thousands of acres of the tribal estate to the public good for roads, reserves, schools etc. whilst being levied for the use of water taken from streams and the upkeep of the roads);
- disproportionately low benefits from local government (local government fund the upkeep and upgrades of general community facilities such as halls, parks, reserves and cemeteries but not Maori community facilities such as marae, reserves, wahi tapu and urupa);
- a lack of knowledge of Maniapoto issues at all levels of local government;
- poor Maori representation at all levels of local government;
- a lack of knowledge of tangata whenua resulting in inadequate consultation or consultation with the wrong parties;
- urban/rural policies that do not take account of Maori ways of living (e.g Maori living in urban areas are paying urban rates but their facilities – marae facilities – are in rural areas and are not serviced);
- Maniapoto representatives are discussing the same issues over and over with successive councils but their views are not being taken account of;
- offensive pollution practices have been and continue to be approved by local authorities with little or no regard for tangata whenua concerns.

Complex regulatory environment

The economic and social structures around the Waipa River and the Waikato River and within their catchments are complex, long established and important to New Zealand.

The Waipa River and its catchment is characterised by a multiplicity of interests – private, public, iwi, central government and local government – with the need to recognise a wide range of community needs related to things like access, ownership, use, and extraction.

The Waikato Regional Council, Waitomo District Council, Otorohanga District Council, Waipa District Council and Waikato District Council have discretion over plans and consent processes that affect the Waipa River and its catchment.

Acts of Parliament of relevance to the Waipa River include the Biosecurity Act 1993, Conservation Act 1987, Crown Minerals Act 1991, Fisheries Act 1996, Forests Act 1949, Health Act 1956, Historic Places Act 1993, Land Act 1948, Land Drainage Act 1908, Local Government Act 1974, Local Government Act 2002, National Parks Act 1980, Native Plants Protection Act 1934, New Zealand Geographic Board (Nga Pou Taunaha o Aotearoa) Act 2008, Public Works Act 1981, Queen Elizabeth the Second National Trust Act 1977, Reserves Act 1977, Resource Management Act 1991, River Boards Act 1908, Soil Conservation and Rivers Control Act 1941, Walking Access Act 2008, Wild Animal Control Act 1977, and Wildlife Act 1953.

Community wellbeing

Balanced against these concerns is the need for policies and practices that benefit, and meet the needs of, the whole community. Section 10 of the Local Government Act 2002 describes the purpose of local government as:

- enabling democratic local decision-making and action by, and on behalf of, communities; and
- promoting the social, economic, environmental, and cultural well-being of communities, in the present and for the future.

For the most part, the communities associated with the Upper Waipa River are relatively small and remote with Maori communities likely to be impacted by regulatory intervention. Maori make up a significant portion of the community around the Upper Waipa River. For example, in the 2006 census Maori made up 39% of the population of the Waitomo district. The economy is largely rural based, with a number of large Maori farming trusts and incorporations playing a significant role. There is also some electricity generation using mainly renewable energy sources with potential for some hydro development in the Upper Waipa River.

Sustainable management of resources

For the purposes of the Resource Management Act 1991, sustainable management is defined as managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while:

- sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Issues impacting on sustainable management of the Waipa River include sedimentation, nutrient enrichment and flooding.

Steps taken to date – co-governance framework established

The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 addresses these issues by establishing a co-governance framework for the Waikato River, with related co-management arrangements with Waikato-Tainui in respect of the Lower Waikato River. The Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 applies the co-management arrangements to Ngati Tuwharetoa, Raukawa and Te Arawa River Iwi in relation to the Upper Waikato River.

Waikato River Authority

The co-governance framework consists of a single co-governance entity, known as the Waikato River Authority, to set the direction for improving the health and wellbeing of the Waikato and Waipa Rivers. Delivering on this direction (including the setting of rules and managing of activities) remains the responsibility of the relevant local authorities under the existing provisions of the Resource Management Act 1991.

The Waikato River Authority has 10 members appointed on a 50:50 basis by the Crown and by the Waikato River iwi. The Crown appointed members consist of at least one made on the recommendation of Environment Waikato, and at least one on the recommendation of the relevant territorial authorities. These members are appointed for their expertise, not as representatives of their respective agencies. Crown appointed members are appointed by the

Minister for the Environment. The Waikato River Authority is co-chaired by one iwi appointed member and one Crown appointed member.

The purpose of the Waikato River Authority is to:

- set the primary direction through a vision and strategy for the Waikato River to achieve the restoration and protection of the health and wellbeing of the Waikato River for future generations;
- promote an integrated holistic and co-ordinated approach to the implementation of the vision and strategy and the management of the Waikato River, including the Lower Waipa River; and
- act as trustee for the Waikato River Clean-Up Trust to fund rehabilitation initiatives for the Waikato River, including the Lower Waipa River, on a contestable basis.

To date, the empowering legislation does not confer functions, powers and duties on the Waikato River Authority in relation to the Upper Waipa River.

Vision and Strategy for the Waikato River

The vision and strategy is the direction setting document for the Waikato River and the Lower Waipa River but not, to date, for the Upper Waipa River. It is known as Te Ture Whaimana and has been incorporated directly into the Waikato regional policy statement. This ensures that it will operate at the upper level of the local planning framework. Subsequent planning documents, such as any regional and district plans, need to give effect to the regional policy statement, including the vision and strategy.

The vision and strategy is a statement of general policy for the purposes of conservation legislation and there is a statutory obligation to have particular regard to it in relation to 20 different Acts of Parliament, including the Fisheries Act 1996.

To achieve certainty and clear direction, the vision and strategy prevails over inconsistent provisions in a national policy statement or a New Zealand coastal policy statement issued under the Resource Management Act 1991. Rules included by local authorities in regional and district plans to give effect to the vision and strategy prevail over less stringent provisions in a national environmental standard or a water conservation order.

There is to be an early review of the vision and strategy so that targets and methods can be adopted. The review process will be informed by an independent scoping study for the clean-up of the Waikato River and the Waipa River and will include:

- consideration of the alternatives, benefits and costs equivalent to that provided in section 32 of the Resource Management Act 1991 (including consideration of economic and scientific impact assessments); and
- adequate time and opportunity for the public to make submissions on the proposed changes and to be heard in support of their submissions.

These measures are backed by a substantial contestable clean-up fund.

Co-management arrangements

Under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 there are co-

management arrangements for Waikato-Tainui, Raukawa, Te Arawa River Iwi and Ngati Tuwharetoa in respect of the Waikato River and the Lower Waipa River.

Joint management agreements

The co-management arrangements include joint management agreements between each of these iwi and relevant local authorities, including the Waikato regional council, in respect of the following duties, functions and powers under the Resource Management Act 1991:

- monitoring of matters set out in section 35(2)(a) to (e) and enforcement;
- preparation, review, change, or variation of a planning documents;
- duties, functions, or powers under Part 6 relating to the processing of specified resource consent applications related to the rivers.

Resource consent decision-making

For resource consent decision-making with respect to call-ins and for notified applications for resource consents relating to the take, use, damming or diversion of water from the Waikato River or the Lower Waipa River and any point source discharges to those rivers, hearing panels will be made up of members appointed by the Minister for the Environment (for call-ins) or the Waikato regional council (for notified hearings), an equal number of iwi commissioners and an independent chair.

Other co-management instruments

The co-management arrangements for the Waikato River and the Lower Waipa River also include the development and recognition of integrated management plans, recognition of iwi environmental plans, regulations under the Fisheries Act 1996 for iwi to issue customary fishing authorisations and recommend bylaws restricting or prohibiting fishing on the Waikato River and the Lower Waipa River (subject to a test of undue adverse effect on fishing determined by the Minister of Fisheries), and a regulation making power in respect of the management of aquatic life, habitats, and natural resources managed under conservation legislation.

Exempted customary activities

In respect of Waikato-Tainui, but no other iwi, provision is made for specified customary activities on the Waikato River and the Lower Waipa River, including exemptions from requirements to obtain a resource consent, permit or other authorisation.

Problem definition

The issue for which a solution is required is how best to:

- provide more effective legal mechanisms for Maniapoto to participate in the governance and management of the Waipa River given the acknowledged significance of the Waipa River to Maniapoto and the Crown's responsibility, in terms of the principles of the Treaty of Waitangi, to provide for the relationship of Maniapoto and their culture and traditions with the Waipa River; and
- streamline, improve and co-ordinate governance and management arrangements for the Waipa River and the Waikato River to support their strategic importance to New Zealand's social, cultural, environmental and economic wellbeing (given that the status quo has not prevented the ongoing deterioration of the river and the Upper Waipa River is not included in the steps taken to date);

while:

- sustaining the potential of the Waipa River, including its natural and physical resources, to meet the reasonably foreseeable needs of future generations;
- safeguarding the life-supporting capacity of the waters and ecosystems of the Waipa River;
- avoiding, remedying, or mitigating any adverse effects of activities on the environment;
- promoting the social, economic, environmental, and cultural well-being of the communities associated with the Waipa River and beyond, in the present and for the future; and
- enabling democratic local decision-making and action by, and on behalf of, the communities associated with the Waipa River.

The regulatory issue from an economic perspective comes down to maximising the value obtainable from sustainably managing the Waipa River and its waters (and aquatic life), which are a limited resource, and minimising loss of value due to ongoing pollution issues, while meeting the Crown's obligations to Maniapoto under the Treaty of Waitangi.

Objectives

The objective of any intervention is to address the issues outlined above using options that are consistent with, and capable of operating within, existing regulatory frameworks and that can be implemented without being at the expense of economic development and progress.

Broad government objectives are summarised as follows:

- co-governance arrangements should be consistent with the principles of the Treaty of Waitangi and reflect the Crown–Māori relationship under the Treaty of Waitangi, including the Crown's right to govern on behalf of all New Zealanders;
- negotiations and co-governance arrangements should be undertaken with the utmost good faith and maintain integrity with respect to signed deeds and prior negotiations;
- co-governance arrangements should be designed to be consistent with or complement broader government policy and objectives;
- co-governance arrangements should be designed with effectiveness, durability, fiscal responsibility and administrative efficiency as their yardsticks;
- co-governance arrangements should promote integration with and between the existing regulatory frameworks within which they operate;
- co-governance arrangements should identify clear roles and responsibilities that provide certainty and simplicity for those who operate within their purview; and
- co-governance arrangements should be inclusive and involve the wider community of interest including local authorities and other affected stakeholders.

The public policy objectives are to:

- recognise and sustain the special relationship Maniapoto has with the Waipa River, especially the Upper Waipa River;
- enter into a new era of co-management over the Waipa River that is consistent with the steps taken to date with the iwi associated with the Waikato River;
- restore and maintain the quality and integrity of the waters that flow into and form part of the Waipa River for present and future generations and the care and protection of the mana tuku iho o Waiwaia in a manner that is consistent with and supports the restoration and protection of the health and wellbeing of the Waikato River; and

- meet the Crown's obligations to Maniapoto and the other river iwi under the Treaty of Waitangi.

The co-governance framework should reflect the aspirations of Maniapoto to have a meaningful role in influencing policies relating to the Waipa River not just as another group within the community but in a way that is consistent with their mana whenua status and their relationship with the Crown under the Treaty of Waitangi.

The co-management arrangements should reflect Maniapoto aspirations to share in managing the Waipa River in a way that sits well with their concepts of kaitiakitanga and mana whakahaere.

These objectives are consistent with those in the Crown's public information document entitled *Healing the past, building the future—A guide to Treaty of Waitangi claims and negotiations with the Crown*.

Regulatory impact analysis

Current practices for meeting existing rules and industry codes of practice have the potential to deliver improvements, particularly with a growing awareness of freshwater and environmental issues, but doing nothing will fail to meet the Crown's obligations to Maniapoto under the deed signed on 27 September 2010 and under the Treaty of Waitangi.

Historical trends indicate that preventing further deterioration of the health of the Waipa River and its fisheries and aquatic flora and fauna cannot be assured without changes to the way the Waipa River is managed. Options for change are as follows.

Option 1: Non-regulatory measures

Non-regulatory measures include initiatives such as the *Dairying and Clean Streams Accord* signed in 2003 and the activities of the Lake Taupo Protection Trust and the Rotorua Te Arawa Lakes Strategy Group.

From the snapshot report on the clean streams accord for the 2008/09 dairy season, the 2009 chairman's report for the Lake Taupo Protection Trust and reports from the Land Use Futures Board and the Lakes Water Quality Society delivered in 2010 to the Rotorua Te Arawa Lakes Strategy Group, the following is apparent:

- self regulation does not guarantee success (in 2008/09 the number of farms where effluent discharge complied with resource consents and regional plans had dropped to its lowest ever level since the signing of the Dairying and Clean Streams Accord);
- good practice and existing technology alone are not enough without significant use of public funds;
- land use change on a large enough scale to be effective on its own is too expensive and would lead to a significant reduction in GDP.

A report published by the Waikato Regional Council, *Improving Nutrient Efficiency Through Integrated Catchment Management in Little Waipa and Waipapa* (EW report TR 2008/39, Longhurst and Smeaton), found that strategies to reduce nitrogen input, such as lowering stocking rates, wintering off farm, reducing fertiliser application and building stand-off animal shelters, were not attractive. Any impact on profitability was relatively small. These measures were more likely to be profitable at times of high dairy payouts, but not at other

times. Wintering off farm only transferred the problem elsewhere and the capital and operating costs of stand-off animal shelters were difficult to justify.

Non-regulatory measures will not provide more effective legal mechanisms for Maniapoto to participate in the governance and management of the Waipa River and do not meet the Crown's obligations to Maniapoto under the deed signed on 27 September 2010.

Option 2: Promote increased use of existing regulatory arrangements

The primary regulatory arrangements that could be promoted to meet the objective outlined above and in the problem definition are to be found through the Resource Management Act 1991, Local Government Act 2002, Fisheries Act 1996 and the conservation legislation.

Section 36B of the Resource Management Act 1991 enables local authorities to enter into joint management agreements with, among others, iwi authorities for carrying out powers, functions or duties under that Act and section 33 confers a power to transfer Resource Management Act powers, functions and duties to iwi authorities.

Except in one instance, namely a joint management agreement between the Taupo District Council and the Tuwharetoa Maori Trust Board for dealing with notified resource consent applications and plan changes on or affecting multiply owned Maori land within the Taupo district, local authorities have not shared or transferred Resource Management Act powers, functions or duties with iwi authorities. The transfer of such powers, functions or duties is a potentially complicated and costly process for local authorities, who are required to carry out a special consultative procedure with their communities.

These mechanisms and their potential for the Waikato River were analysed by the Waikato River Statutory Board Establishment Committee in late 2008 and early 2009. The committee's report highlights a number of shortcomings and identified the need for a new form of statutory "joint agreement" based on the joint management agreement concept under the Resource Management Act 1991.

Option 3: New regulatory regime for Upper Waipa River

Unlike the Upper Waikato River where several iwi share interests in, and associations with, the river, the Upper Waipa River is characterised by a largely distinct and significant association with one iwi, namely Maniapoto.

The Waipa River is of deep cultural significance to Maniapoto. The Waipa River is a taonga to Maniapoto and their respect for it lies at the heart of their spiritual and physical wellbeing and their tribal identity and culture. Given this, Maniapoto aspired to a separate regime based on, but distinct from, the co-governance and co-management arrangements for the Waikato River. A distinct framework for the Upper Waipa River between the Crown and Maniapoto, without involvement of other iwi, was seen by Maniapoto to be reflective of the mana of Maniapoto within their own rohe, through which the Upper Waipa River flows.

The Crown's preference is for a single, streamlined and efficient regime, without duplicated or multiple entities and instruments. The objective is to avoid unnecessary bureaucracy and focus on practical arrangements that do not add compliance complexities for the community, while respecting the mana of Maniapoto and their distinct association and relationship with the area encompassing the Upper Waipa River.

Option 4: Extend Waikato River framework to Upper Waipa River

The broader objectives for co-governance arrangements include arrangements designed to be consistent with or complement broader government policy and objectives, arrangements designed with effectiveness, durability, fiscal responsibility and administrative efficiency as their yardsticks, and arrangements that promote integration with and between the existing regulatory frameworks within which they operate.

The Waikato River framework was developed over a number of years of analysis, consultation and negotiation. An independent Ministerial review panel, the Guardians Establishment Committee and the Waikato River Statutory Board Establishment Committee all undertook important analytical work and consultation and provided advice to the Crown and iwi. Through the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 the framework is now in place for the Waikato River and the Lower Waipa River, but not the Upper Waipa River.

Given the framework is already in place, its extension to cover the Upper Waipa River is relatively straightforward to implement. The benefits of doing this are likely to outweigh any disadvantages and would deliver on the commitments made to Maniapoto under the deed signed on 27 September 2010.

Consultation

The Guardians Establishment Committee (GEC) was formed in March 2008 to develop the vision and strategy for the Waikato River. Its members included representatives from the Crown, Maniapoto and the Waikato River iwi, regional and territorial local authorities, and industry.

The GEC released the draft vision and strategy for public consultation on 7 May, and received 94 submissions from a wide range of parties, before amending and recommending the adoption of the vision and strategy.

All relevant local authorities in the Waikato region and representatives of industry were consulted in the development of the framework.

In the course of negotiating the co-governance and co-management arrangements for the Waikato River there was extensive consultation with local authorities and other stakeholders from the farming, forestry, fishing and electricity generation sectors.

In March/April 2009, an independent review panel appointed by the Minister for Treaty of Waitangi Negotiations and the Minister for the Environment undertook a review of the co-governance and co-management arrangements and the recommendations of the panel led to, and informed, a re-negotiation of those arrangements with iwi.

The following departments have been involved in the development of the co-governance framework and co-management arrangements: Department of the Prime Minister and Cabinet, The Treasury, Ministry for the Environment, Ministry of Fisheries, Ministry of Agriculture and Forestry, Department of Conservation, Department of Internal Affairs, Land

Information New Zealand, Ministry of Economic Development, and Te Puni Kokiri. The Crown Law Office was informed about the contents of the framework.

Conclusions and recommendation

The nature and hydrology of a river system determines that a set of arrangements that does not include a significant headwater, such as the Upper Waipa River, will be less effective. It can be assumed that the benefit to the community of the arrangements to improve the Waikato River would be diminished if the Upper Waipa River is not included in those arrangements. It is also reasonable to assume that having one regime for the Lower Waipa River (as part of the Waikato River framework) and a different regime for the Upper Waipa River creates complexity for local government and the community and should be avoided.

The Crown has entered into commitments with Maniapoto under the deed dated 27 September 2010 to extend the co-governance and co-management arrangements for the Waikato River to include the Upper Waipa River on terms that respect the mana of Maniapoto. The Crown has entered into the deed with Maniapoto in good faith with the full intention of carrying out its obligations to Maniapoto under the deed and under the Treaty of Waitangi.

The involvement of Maniapoto in co-governance and co-management arrangements for the Upper Waipa River is consistent with the principles of the Treaty of Waitangi, will promote the principles underpinning sections 6 and 8 of the Resource Management Act 1991 and Parts 2 and 6 of the Local Government Act 2002.

Because the co-governance and co-management arrangements operate within existing statutory and local government frameworks, they will not result in Maniapoto acquiring dominance and have the potential to improve outcomes for the community at large. In the area of the Upper Waipa River, the people of Maniapoto have a significant stake in the social, economic, environmental, and cultural well-being of the community by virtue of their numbers and the extent of Maori land based economic development.

The co-governance and co-management arrangements will go some way to addressing the imbalances outlined in the 2007 Maniapoto Iwi Environmental Plan and in the report *Te Purongo: Maniapoto: State of the Environment Report: A Tribal Perspective*.

The recommended intervention, on the basis of analytical work undertaken during the development of the Waikato River co-governance and co-management framework and on the basis of the Crown needing to meet commitments already given to Maniapoto, is to extend the co-governance and co-management arrangements for the Waikato River to include the Upper Waipa River on the terms set out in the deed between the Crown and Maniapoto dated 27 September 2010.

Implementation

By the time the co-governance and co-management arrangements are extended to the Upper Waipa River there will have been extensive engagement, particularly with local authorities and major stakeholder groups. The arrangements are implemented through three separate Acts, each of which has undergone or will undergo select committee processes, leading to raised awareness.

Importantly, the Waikato River Authority is required to commence a review of the vision and strategy within the first three months of its operation. Local authorities are not required to review their Resource Management Act planning documents until the Waikato River Authority has completed this process. The process is prescribed in detail in the relevant Acts and provides for robust public participation, calling for and hearing submissions in the same manner as a Board of Inquiry, and a requirement to assess options by considering the benefits and costs of each option in terms of the present and future social, economic, environmental and cultural wellbeing of the river communities.

These processes have the effect of ensuring a measured implementation, using transparent public processes, in which any new compliance standards by way of rules in the regional and district plans will not occur suddenly or require unplanned adjustments. There will be a relatively long lead-in period characterised by transparency and opportunity for the public and stakeholders to influence the approach taken.

Monitoring, evaluation and review

The Waikato River Authority is required to carry out effectiveness monitoring and reporting. The deeds between the Crown and each iwi provide for annual forums and five yearly reviews of the operations, outcomes and effectiveness of the Waikato River Authority and the co-governance and co-management arrangements, generally. Reports by the Waikato River Authority of its effectiveness monitoring will inform these reviews.