



Mai i te Maunga ki te Awa

Te Hapori o Maungatautari Freshwater Case Study

“E hara a Waikato awa i a te kuini, engari no nga Maori anake”

*The Waikato River does not belong to the Queen of England, it belongs only to
Māori*

From the preamble to the Waikato-Tainui Raupatu Claims (Waikato River)
Settlement Act 2010

Ngāti Koroki Kahukura Trust 2015

Te Hapori o Maungatautari – Freshwater Case Study

An Iwi generated perspective on freshwater planning processes, managing within limits and mechanisms for rights and interests to provide for the Te Hapori o Maungatautari Iwi collective region in the Waikato.

Key Findings and Recommendations:

The strongest tools possible are needed to appropriately recognise iwi and hapū rights and interests in freshwater and to enable us to exercise rangatiratanga and kaitiakitanga in our rohe. Recognition of rights and interests must be achieved in ways that are additional to, and that complement, the co-management arrangements achieved via direct negotiations which deal primarily with the restoration and protection of the health and wellbeing of the Waikato River. Differing views about ownership were not resolved in the settlement. Certain rights that are additional to protection and restoration rights as kaitiaki were explicitly preserved.¹

The Crown and Waikato-Tainui have conflicting views about ownership of water. In the context of current discussions between the Crown and Iwi Leaders this report proposes the following significant mechanisms for giving effect to iwi and hapū rights and interests in Te Hapori o Maungatautari:

1. Vesting of title to riverbeds and lakebeds in the case study rohe in iwi and hapū without the need for a Treaty settlement process. Vesting could occur through a mechanism such as a Pōtatau Te Wherowhero Title – inalienable title under iwi and hapū control; and
2. Vesting of the ‘water column’ in iwi and hapū. This would provide iwi and hapū with the strongest possible leverage in our communities and enable our respective rights and interests to be recognised in ways that align with our values and responsibilities as rangatira and kaitiaki and that also allow us to once again commercialise our rights and interests if we so desire,² and
3. A guaranteed allocation of water from existing sources and/or guaranteed allocation from new sources (such as new water storage mechanisms) to enable iwi and hapū cultural and economic aspirations, created in collaboration with local and central government, and in alignment with kaitiaki responsibilities.

Each of these mechanisms will be elaborated on further in the body of this report.

¹ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, sections 64 and 90. By section 64 the Crown and Waikato-Tainui acknowledge that they have different concepts and views regarding relationships with the Waikato River which the Crown would seek to describe as including “ownership”, and that the river settlement was not intended to resolve those differences. Section 90 preserves aboriginal and customary rights.

² A precedent for this is the negotiated agreement between the Crown and Ngāti Tūwharetoa in respect of the bed and waters of Lake Taupō.

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Introduction and Background

This introduction and background provides context to the case study.

'Rights and Interests'

The Waitangi Tribunal has recently found that Māori had 'rights and interests' in their water bodies for which the closest English equivalent in 1840 was ownership and that those rights were then confirmed, guaranteed, and protected by the Treaty of Waitangi, save to the extent that the Treaty bargain provided for some sharing of the waters with incoming settlers (Waitangi Tribunal, 2012).³

In a Supreme Court decision that followed soon after, the Court noted the Crown's acceptance that 'some hapū will have interests in particular waters and their interests are protected by Article 2 of the Treaty'. The wider implications of these 'rights and interests', and other Māori issues and concerns in freshwater remain unaddressed in important respects.⁴

In the current discussions between the Crown and Iwi Leaders about rights and interests in freshwater, the Government's stated position is that 'no one owns water', and that on 'a case by case basis certain Māori may have rights and interests...but the Government does not believe water is a nationalised issue'. The Crown seeks detailed information on iwi and hapū perspectives on and mechanisms to appropriately recognise such rights and interests in this context.

Case Study Rohe

The purpose of this case study is to provide an Iwi generated perspective on freshwater planning processes, managing within limits and mechanisms for rights and interests to provide for the Te Hapori o Maungatautari Iwi collective region (Waikato). The case study is project managed by Ngāti Koroki Kahukura Trust and is conducted in conjunction, to varying degrees, with those groups who have interests in 'Te Hapori o Maungatautari' (the community of Maungatautari) which includes Ngāti Hauā, Waikato-Tainui and Raukawa, as well as councils who represent other members of the community (specifically, Waipā District Council and Waikato Regional Council). Efforts have also been made to liaise with Ngāti Maniapoto as well as Te Arawa River Iwi, and Tūwharetoa who are party to co-management arrangements in respect of the Waikato River and whose representatives on the IAG have supported this case study. The case study rohe spans the Upper and the Central Waikato River areas.

This rohe provides an excellent case study as it centres on Maungatautari, from which mountain freshwater is sourced for marae, for farming (both Māori and non-Māori), and

³ Wai 2358. In terms of balancing the Wai 262 and Wai 2359 Reports, in Wai 262, the Tribunal found that kaitiaki rights can be reflected on a sliding scale – from full kaitiaki control of the taonga, to partnership (i.e. joint control with the Crown or another party), to kaitiaki exercising influence over decisions but not sole or joint decision-makers. In Wai 2358, the Tribunal found that the Wai 262 approach 'is not incompatible with Māori having residual property interests in – or, indeed, full ownership of – water bodies that are taonga'.

⁴ *New Zealand Māori Council v Attorney General* [2013] NZSC 6.

for town supply (Cambridge). The rohe has been subject to overlapping iwi claims and its waterways are the subject of landmark negotiated agreements.

Co-Management Framework

The co-management framework established under the Waikato River settlement provides some recognition of iwi and hapū rights and interests in our rohe, particularly in regard to restoration and protection. There have been some flow on effects, such as the two seats on the Waikato Regional Council now reserved for Māori. The current CEO and chair of the regional council consistently express a willingness to explore pathways to improve relationships with tangata whenua. Excellent platforms exist in planning documents (including iwi environmental plans) in our rohe for recognising Māori values in resource management. Our case study demonstrates (see in particular the planning framework review set out in Appendix One) that even within this positive framework, stronger tools are needed than those that currently exist to give effect to and protect iwi and hapū rights and interests, and to enable the exercise of rangatiratanga and kaitiakitanga. The dominant legal system in New Zealand prioritises proprietary rights. This case study concludes that iwi and hapū in the rohe must make a case for the strongest possible tools to give effect to iwi and hapū proprietary rights. For these reasons our key recommendations focus upon vesting mechanisms and guaranteed access to freshwater.

Case Study Research⁵

The case study required us to fully discuss with whānau, hapū and iwi issues and concerns about freshwater and to draw from those discussions some potential mechanisms for recognising and providing for iwi and hapū rights and interests in freshwater both at local government level and at central government level. In terms of local government, we were also required to engage in discussions with the Waikato Regional Council to test our ideas with an aim to coming up with ideas for a collaborative way forward. Our research also draws from iwi and hapū experiences in dealing with the Waipā District Council.

Summary of Hui

We draw upon a number of hui, including those organised by the Freshwater Iwi Leaders Group (ILG), to discuss ways in which iwi/hapū rights and interests might be appropriately recognised held in our rohe. It also draws upon hui organised by the case study project team within the case study rohe to discuss rights and interests in our specific context.

- As part of a wider engagement process, eight (8) ILG regional hui were held at Hopuhopu, Te Kuiti, Karāpiro and Taupō
- A case study hui was held with iwi representatives on the Maungatautari Ecological Island Trust
- Three case study hui were held with Ngāti Hauā and Ngāti Koroki Kahukura at Karāpiro and Morrinsville
- An interview was conducted with an iwi member who works as kaitiaki on Maungatautari
- A report was produced by Poto Davies on her kaitiaki work with Waikato Regional Council and Waipā District Council
- Two hui/workshops were conducted with Waikato Regional Council – councillors and staff – at Hamilton and at Karāpiro
- A hui was held with Waipā District Council at Te Awamutu
- A matauranga Māori report was produced by Wiki Papa on the health status of springs and tributaries in and around Maungatautari based on a literature review, site visits and a series of interviews
- A Ngāti Huri (Raukawa) Case Study report was produced by Naomi Simmonds.
- An overview of the planning framework by Naomi Simmonds is attached as Appendix One to this report.

The reports, powerpoint presentations, and minutes from these hui were attached as appendices to the milestone reports submitted as part of the case study.

We also drew upon references such as the following (both attached as appendices to the Milestone II Report): Sir Eddie Taihakurei Durie: *Law, Responsibility and Maori Proprietary Interests in Water*, (Unpublished Paper, 2014); L Te Aho ‘Indigenous Laws and Aspirations for a Sustainable World’ in Westra L, and Vilela, M *The Earth Charter Ecological Integrity and Social Movements*, 2014.

⁵ Project Manager: Linda Te Aho; Research Team: Wiki Papa, Poto Davies, Naomi Simmonds; Peer Review: Willie Te Aho.

Māori World View

*Tooku awa koiora, me oona pikonga, he kura tangihia mō te mataamuri*⁶

Our rights and responsibilities in respect of water and the wider environment are seen in the context of a wider Māori world-view based on principles such as these:⁷

- ❖ Mountains and rivers are viewed as living conscious beings each with a life force of its own. Our traditional sayings, such as *whatungarongaro te tangata, toitū te whenua*, remind us to be more respectful of the Earth's integrated systems. We oppose unnecessary exploitation of the natural world for short term human desires, especially in relation to finite resources.
- ❖ Our relationships with the natural treasures in the environment – with landforms, waterways, flora and fauna and so on – are articulated using kinship concepts, and are fundamental to our culture and identity. Papatūānuku, the Earth, is our Mother, and we have a duty in that relationship to protect and care for her. Mountains and rivers are often perceived as ancestors. This world view differs from a Western anthropocentric worldview which is ultimately concerned with human beings and human good, and legal concepts such as private property and the restriction of legal rights to human beings.
- ❖ We value future generations. We take seriously our responsibility to provide for our children's children. Other indigenous peoples speak of providing for seven generations into the future.
- ❖ We have continued to oppose the removal and relocation of peoples for the sake of economic growth agendas often driven by corporate greed. Tribal lands and waterways are vulnerable, often perceived as 'unused', or as having 'untapped potential' and are increasingly sought after for their resources for mining, ports, electricity transmission lines, pipelines and so on.

Te Tiriti o Waitangi

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangitira ki nga hapu – ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa.

Article Two of Te Tiriti o Waitangi reaffirms the importance of the relationship between Māori and the natural environment.

⁶ *My river of life, each curve more beautiful than the last.* These words are taken from a famous lament by the second Māori King, Tāwhiao, in which he recorded his adoration for this ancestral river and the significance of the river as a treasure for all generations. They were adopted as the overarching vision statement for the Waikato River Authority.

⁷This summary is adapted from a book chapter that was included as an appendix to the Milestone II report.

United Nations Declaration on the Rights of Indigenous Peoples

Notwithstanding the progress made through all the tribunal reports and court cases from the 1980s, and the consequential changes in legislation and official policy, I would still rank the day that New Zealand gave support to the declaration as the most significant day, in advancing Maori rights, since 6th February 1840.

Sir Eddie Taihākurei Durie, 2010

Māori, like other indigenous peoples around the world have sought to express and affirm our rights via international institutions, and participated in drafting the Declaration on the Rights of Indigenous Peoples (the Declaration). New Zealand endorsed the Declaration in 2010. We recommend that there be more proactive implementation of the rights articulated in the Declaration. The self-determination framework, and in particular Article 3, are at the heart of the Declaration:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

There are other powerful articles such as Article 25, relevant here, which provides that:

Indigenous Peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied or used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26 goes further to provide that States shall give legal recognition and protection to these lands, territories and resources and such recognition shall be conducted with due respect to the customs and traditions of the indigenous peoples concerned.

We support and promote the Declaration. We challenge the Crown to be more proactive in implementing the rights that indigenous peoples have spent so much time and energy articulating and expressing in the Declaration.

Waikato River Settlement

‘E hara a Waikato awa i a te kuini, engari no nga Maori anake
The Waikato River does not belong to the Queen of England, it belongs only to Maori.
(Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010)

It is important to understand the background and key features of the Waikato River Settlement. From the 1880s Kingitanga leaders have fought in political spheres and in the courts to address the deeply held grievances of raupatu (confiscation of lands and waters). Although Waikato-Tainui lodged a claim with the Waitangi Tribunal in relation to the Waikato River, they ultimately settled their claims by negotiating directly with the Crown, rather than going through a full Waitangi Tribunal process. A settlement was reached in 1995 focusing upon the return of land, but the claim in relation to the Waikato River was excluded for future consideration.

The direct negotiations process has serious shortcomings. The Crown (via the executive) unilaterally decides the conditions of negotiation and claimants are expected to negotiate within those conditions if they want their claims resolved. The Crown's stated position in relation to freshwater is that there is no ownership in flowing water. For this reason the Waikato River settlement is not about ownership. Waikato-Tainui used the direct negotiations process to seek greater roles in decision making for the overarching purpose of restoring and protecting the health and wellbeing of the Waikato River for future generations

In the Deed of Settlement the Crown accepts that it failed to respect, provide for and protect the special relationship Waikato-Tainui have with their ancestral river; and accepts responsibility for the degradation of the river that has occurred while the Crown has had authority over the river.

Key features of the Settlement

The two founding pillars of the settlement are Te Mana o Te Awa and Mana Whakahaere. Te Mana o Te Awa recognises that to Waikato-Tainui, the Waikato River is an ancestor which has mana (prestige) and mauri (life force). Mana Whakahaere embodies the authority of Waikato-Tainui and other river tribes to access and exercise control over and management of the Waikato River and its resources in accordance with tikanga (values, ethics and norms of conduct).

Resource management issues are an integral part of the Waikato River Settlement. The Resource Management Act 1991 (RMA) had provided some hope that Māori interests in the environment might be recognised. However, the reality has not been positive for Māori who have lacked political weight.⁸

⁸ Prue Kapua "Review of the Role of Māori under the Resource Management Act 1991" [2007] *Resource Management Theory and Practice* 92, 106-108.

Te Ture Whaimana (Vision and Strategy)

A core feature of the settlement is the vision and a strategy, Te Ture Whaimana o Te Awa o Waikato. Te Ture Whaimana is to be the primary direction setting document for the Waikato River and activities within its catchment affecting the Waikato River and it prevails over certain sections of the RMA, and over national policy statements. Objectives identified to achieve the vision include the integrated, holistic, and co-ordinated approach to management of the natural, physical, cultural, and historic resources of the Waikato River; and the adoption of a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River.⁹ There are twelve strategies that aim to ensure that the highest level of recognition is given to the restoration and protection of the Waikato River. One of those strategies was to establish the health status of the Waikato River by utilising matauranga Māori (traditional Māori knowledge and knowledge systems) and the latest available scientific methods. This was undertaken in the form of the Waikato River Independent Scoping Study which reported on the condition of the river and identified restoration scenarios, costs and benefits of those scenarios, and priority actions.¹⁰

Te Ture Whaimana is deemed part of the Waikato Regional Policy Statement and Conservation Management Strategy and is to be had particular regard to in other statutory frameworks.

Other Features

The Integrated River Management Plan between Iwi, local authorities and certain Crown agencies is deemed to be a conservation management plan and freshwater fisheries management plan under conservation legislation, a fisheries plan under Fisheries Act, and to be had regard to for RMA planning purposes.

The Iwi environment plan (*Tai Timu Tai Pari Tai Ao*) is to be had regard to under RMA, recognised and provided for under Fisheries Act, and had particular regard to under conservation legislation.

The Waikato River Authority established under the settlement is made up of equal numbers of members appointed by the Crown (including regional and local councils) and members appointed by some of the iwi that affiliate to the River. The WRA is responsible for monitoring and implementing the vision and strategy and administers a contestable clean-up fund for restoring and protecting the health and wellbeing of the Waikato River.

Under the settlement Iwi appointed commissioners are to participate in hearing committees and boards of inquiry in respect of applications for resource consents for activities which include taking, using, damming, or diverting water in the Waikato River, and certain discharges to the river.

⁹ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act, Schedule 2 (1) (3)(e) and (f).

¹⁰ See www.river.org.nz.

Joint management agreements are required between Waikato-Tainui and the regional council and between Waikato-Tainui and relevant territorial authorities for specified functions under the RMA insofar as those functions relate to the Waikato River and activities within its catchment. Certain customary activities such as the use of traditional whitebait stands and eel weirs, and the right to continue traditional ceremonies are explicitly recognised. Provision is made to vest certain sites of significance in Waikato-Tainui, and for Waikato-Tainui to participate in the co-management of Crown-owned river related lands.

The Waikato-Tainui River Settlement initially covered the area from Karāpiro to Te Puaha o Waikato. The later settlements of Ngāti Hauā and Ngāti Korokī Kahukura extended the co-management through their rohe, including the rohe of Te Hapori o Maungatautari. A similar set of co-management arrangements were negotiated in respect of Raukawa, Te Arawa and Tūwharetoa in respect of the ‘Upper Waikato River.’

Differing views in relation to ownership

According to the preamble of Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 when Waikato-Tainui learned of the Governor’s intentions to put an iron steamer on the River in 1862, the editor of the tribal newspaper expressed opposition and warned the gunboat not to enter the River without permission, declaring: “E hara a Waikato awa i a te kuini, engari no nga Maori anake” (The Waikato River does not belong to the Queen of England, it belongs only to Maori). The Act goes on to acknowledge that Waikato-Tainui and the Crown have different views in relation ownership, and that full rights and interests to the Waikato River and its catchment were not resolved in the Waikato River settlements (see provisions set out below). The Crown is required to engage with Waikato-Tainui in relation to the creation or disposition of any property rights or interests in the Waikato River. The Te Arawa, Tūwharetoa and Raukawa Deed of Settlement states that ‘This Deed does not address nor preclude further discussion about title or ownership’.

Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010

Dispositions

64 Creating or disposing of interests

- (1) The Crown and Waikato-Tainui acknowledge that—
 - (a) they have different concepts and views regarding relationships with the Waikato River (which the Crown would seek to describe as including “ownership”):
 - (b) the 2009 deed and this Act are not intended to resolve those differences:
 - (c) the 2009 deed and this Act are primarily concerned with management of the Waikato River to—
 - (i) achieve the overarching purpose of the settlement:
 - (ii) recognise the special relationship of Waikato-Tainui with the Waikato River.
- (2) This section applies if the Crown, a Crown entity, a state enterprise, or a mixed ownership model company proposes doing any of the following actions in relation to a property right or interest in the Waikato River:
 - (a) creating it:

- (b) disposing of it:
 - (c) starting a statutory or other process to create it:
 - (d) starting a statutory or other process to dispose of it.
- (3) The Crown, Crown entity, state enterprise, or mixed ownership model company must engage with Waikato-Tainui in accordance with the principles described in the Kiingitanga Accord before doing the action.
- (4) In subsection (2), dispose of or create a property right or interest,—
- (a) in relation to a Crown entity or state enterprise, includes only activities—
 - (i) that relate to an asset held by that entity or enterprise; and
 - (ii) the nature of which is such that the entity or enterprise would either in the ordinary course, or as a result of a statutory requirement or under a statement of intent or otherwise, consult with the responsible Minister or the shareholding Ministers, as the case may be; and
 - (aa) in relation to a mixed ownership model company, includes only activities that relate to an asset held by that company; and
 - (b) does not include—
 - (i) any decision in relation to which consideration is required to be given to the vision and strategy under [section 17](#); or
 - (ii) any decision relating to a permit under the [Crown Minerals Act 1991](#). ...

90 Certain rights, actions, and decisions not affected

- (1) Without derogating from [section 64\(1\)](#), nothing in the 2009 deed or this Act—
- (a) extinguishes or limits any aboriginal title, or any customary right, that Waikato-Tainui may have:
 - (b) is, or implies, an acknowledgement by the Crown that any aboriginal title, or any customary right, exists:
 - (c) affects a right that Waikato-Tainui or the Crown may have, including a right—
 - (i) according to tikanga or customary law:
 - (ii) arising from the Treaty of Waitangi or its principles:
 - (iii) arising under legislation:
 - (iv) arising at common law (including common law relating to aboriginal title or customary law):
 - (v) arising from a fiduciary duty:
 - (vi) arising in some other way:
 - (d) is intended to affect any action or decision under the 1992 deed.

Vesting of Beds and Water Column – Key Recommendations 1 and 2

The strongest tools possible are needed to appropriately recognise iwi and hapū rights and interests in freshwater and to enable us to exercise rangatiratanga and kaitiakitanga in our rohe. Recognition of rights and interests must be achieved in ways that are additional to, and that complement, the co-management arrangements.

In the context of current discussions between the Crown and Iwi Leaders we recommend the following significant mechanisms for giving effect to our rights and interests in Te Hapori o Maungatautari:

- ❖ Vesting of title to riverbeds and lakebeds in the case study rohe in iwi and hapū without the need for a Treaty settlement process. Vesting could occur through a mechanism such as a Pōtatau Te Wherowhero Title – inalienable title under iwi and hapū control; and
- ❖ Vesting of the ‘water column’ in iwi and hapū. This would provide iwi and hapū with the strongest possible leverage in our communities and enable our respective rights and interests to be recognised in ways that align with our values and responsibilities as rangatira and kaitiaki and that also allow us to once again commercialise our rights and interests if we so desire.

Waikato Tainui did not focus on securing title to the bed of the Waikato River via their settlement. Ngāti Koroki Kahukura secured titles to islands in the River and some riverside titles. Other claimant groups have focussed upon securing ownership to the beds of lakes and rivers given the premium that the dominant legal system places on property rights and proprietary interests. Under the Te Arawa Lakes Settlement Act 2006, the Te Arawa Lakes Trust represents the iwi of Te Arawa who have mana whenua as the owner of the lake beds and provides cultural advice on all aspects pertaining to the lakes. By the settlement the Crown declares itself the owner of the ‘Crown stratum’, which is defined as the space occupied by water and the space occupied by air above each lake bed.

The Waters of Lake Taupō

In essence we support the Lake Taupō model and seek to have it applied to Te Hapori o Maungatautari. The Lake Taupō agreement is an excellent example of how the Crown has given over real rights to iwi that has made them significantly more influential in their communities and have provided commercial opportunities. Key elements of the arrangement, relevant to the rights and interests discussion, include that title to the bed of Lake Taupō (and certain tributaries that flow into and out of Lake Taupo) including the water column and reasonable use of airspace is vested in the Tūwharetoa Māori Trust Board. The water column might be described as the space between the bed of the waterway and the surface of the waterway, which preceded the establishment, of the Crown stratum in the Te Arawa model. This mechanism has provided strong leverage for Tūwharetoa to ensure that their rights are recognised in ways that align with their values and aspirations as kaitiaki that also allow them to once again commercialise their property rights.

We understand that the Tūwharetoa Māori Trust Board can charge commercial users of their property and that a long term agreement has been negotiated between the Tūwharetoa Māori Trust Board and Mighty River Power for the storage of water in Lake Taupō.

In addition, the agreement requires the Tūwharetoa Māori Trust Board and all Crown agencies with statutory interests in Lake Taupō to formally engage annually at CEO/GM level. The annual engagement provides a platform for an ongoing positive and balanced working relationship with the Crown.

Guaranteed Access to Water – Key Recommendation 3

*Wai hopuapua e mimiti,
ko te Wai-a-Rona he manawa whenua, e kore e mimiti*

*Pools of water will evaporate, but the spring of Rona is deep in the earth
and will never run dry.*

Kīngi Tāwhiao

We recommend that iwi and hapū in our rohe have guaranteed access to water for cultural and economic reasons including drinking and general purposes for marae and papakāinga, cultivation, irrigation, and in order to achieve the overall vision of the Waikato River settlement – to restore and protect the health and wellbeing of the Waikato River. To avoid doubt the settlement provides mechanisms for restoration of traditional food sources, improving and enhancing access for harvesting food, swimming and recreation.

Drought is now common in the summer months in our rohe and this is affecting farming operations and supply to marae. Pollution of traditional water sources for marae and papakāinga is also an issue.

Allocation/Access relates both to quantity and quality. However it is achieved, we conclude that an allocation for iwi and hapū is critical for cultural and economic reasons. In addition to the reasons set out above, iwi and hapū in the case study rohe made submissions on Variation 6 for a ‘cultural allocation’ that would remain in the river to ensure the protection of the health and wellbeing of the Waikato River. We reinforce those submissions here.

An allocation from **existing sources** (eg Lake Karāpiro) may be problematic given the concerns raised by the Waikato Regional Council about upsetting the status quo in the wake of Variation 6 to the Regional Plan, but is still possible. The Sapere Reports commissioned by the ILG propose **a** pathway forward for consideration. We recommend that research be conducted to identify the extent of surplus and/or unallocated water.

An allocation could be possible from **new sources**, such as new water storage mechanisms, created in alignment with kaitiaki responsibilities and in collaboration with local and central government. New storage mechanisms could take the form of micro-generation on streams. We understand that this type of model operates at Horohoro in Ngāti Kea Tuarā (Rotorua).

Other options include diverting or tapping into active springs and currently being used by councils for town supply, particularly where those springs are on land formerly owned by iwi and hapū taken under the Public Works Act; or restoring puna which have dried up (some which had operated for over 100 years).

Strong concerns were raised during the case study that puna have dried up and iwi and hapū farmers now pay for water, sourced from lands that are no longer Māori owned due to acknowledged Treaty breaches (confiscation/operations of the Native Land Courts)

New Zealand Māori Council Proposal

The New Zealand Māori Council proposes a framework for a law which recognises ‘the Māori proprietary interest in water’, the general public interest in water and which in the interests of future generations, promotes responsible use. The model includes an independent body to allocate water resources for the benefit of all and would involve a value proposition with money used to restore and rehabilitate waterways. We support the basis for Sir Eddie Durie’s proposal for an independent commission at a national level to allocate water rights, and hosted a symposium to discuss the proposition. We recommend that more work be done on exploring this proposition further. Sir Eddie’s paper was attached as an appendix to an earlier milestone report.

Accordingly we recommend:

- ❖ Further work to explore guaranteed access to water via mechanisms that ensure access to clean, drinkable water for marae and papakāinga, and access to water for other cultural and commercial goals.
- ❖ Crown funding for sustainable marae and papakāinga models including design, technology and funding (including micro-generation options and revival and restoration of puna).
- ❖ Specific research and analysis on proposals for independent allocation boards, at either national level, or at catchment level, Te Hapori o Maungatautari being established as an independent water allocation body for the Maungatautari catchment that has equal representation for iwi and guaranteed allocation for iwi and hapū. The strength of Te Hapori o Maungatautari is that it is community based and new, enabling it to be moulded to fit this particular purpose. More work is needed to flesh out the positives and negatives of this structure in terms of outcomes and processes.

Summary of other Key Issues

Further to the key issues that drive our three key recommendations, other issues relevant to our rohe that arose from these reports and from these hui can be summarised as follows:

- *Ownership:* There was much debate and discussion about the terms ‘ownership’ mana motuhake and sovereignty and what these terms mean in the context of the position stated by Kīngi Tūheitia ‘we own the water’. In Maniapoto and Waikato there is strong support for the assertion of rights and interests that are in the nature of ownership, supporting the position of Kīngi Tūheitia. Raukawa maintain their point of view that they do not own the water. They would express their rights in other ways. At Karāpiro Ngāti Koroki Kahukura discussed ownership as the strongest tool possible for the purpose of protecting the water.
- *Water Quality:* Whilst the focus of the regional hui was upon rights and interests, it was clear that water quality continues to be a matter of deep concern. Water should be drinkable and swimmable. Stories of the special relationships that whānau and hapū have enjoyed with their waterways were shared, as were numerous examples of the need for restoration and rehabilitation of those waterways and life within.
- *Who speaks?* There is support for a strong unified voice of the ILG when dealing with the Crown subject to each iwi and hapū reserving the right to speak directly with the Crown on their own behalf as determined by them, and with a very strong proviso that rights and interests in water are seen as whānau and hapū rights, rather than iwi rights. Whilst this may be seen as largely an internal issue for iwi organisations to ensure that they are continuing conversations with their peoples, it is important for the Crown to be aware that this is an issue.
- *Resourcing:* There is inequity in the negotiated agreements (River settlements) in that not all ‘River Iwi’ received co-management funding. Accordingly there is a need for resourcing for those iwi who did not receive co-management funding to build capability and capacity and to be involved in decision-making and co-management.
- *Puna:* The importance of puna and streams for drinking, food sources and healing and the need for support in assessing, monitoring and restoring the health and wellbeing of puna and streams.
- *Councils:* Frustrations in dealing with Councils at local government level. More information sharing between councils and iwi and hapū is required. Whilst political relationships are generally more positive in the co-management regime at a high level, relationships need to be stronger and more meaningful at operational level.
- *Water bottling:* Concerns were raised about the extraction and sale of water by overseas corporates, and whether this affects supply for local users.

Identification of Mechanisms

The identification of mechanisms and potential solutions to the key issues is a critical aspect of the case study. We have identified three key recommendations which are set out above. There are a number of other mechanisms that we have identified through the case study process and are summarised below, ranging from Central Government to Local Government:

Crown/Central Government

- More proactive implementation of the rights articulated in the United Nations Declaration on the Rights of Indigenous Peoples (see above).
- More proactive implementation of the recommendations in the Waitangi Tribunal's report on the Wai 262 claim for a Treaty compliant resource management system.
- Te Mana o Te Wai being compulsory in the NPS, and being a management tool across other regimes. This is an area of focus of the ILG and the people in our rohe wanted it noted that they strongly support this.
- Strengthen provisions in the RMA for relationships between local government and iwi and hapū on the basis that tangata whenua are Treaty partners with rights and responsibilities as kaitiaki (rather than stakeholders) to avoid risks of watering down the voice of iwi and hapū in collaborative processes. For example, enhancing the status of Iwi Management Plans in the RMA. This issue arose in the area of the NPS-FW, which is a policy tool supporting the RMA and which provides direction in terms of collaborative planning.
- Providing resourcing to iwi and hapū, particularly those who did not receive co-management funding, to enabling iwi and hapū to:
 - provide guidance to local government on how to be more proactive in implementing iwi management plans and to build iwi and hapū capacity;
 - provide guidance on how to engage with tangata whenua - don't limit 'partnership' to iwi authorities;
 - build and strengthen relationships in Te Hapori o Maungatautari community and assist their preparation to be established as the allocation body for our catchment via a transfer of powers
- Meet with other iwi and hapū to create strategies for improved recognition of rights and interests, including participation in RMA processes.
- Mechanisms to include more equitable representation of tangata whenua on ministerially appointed boards of State Owned Entities such as Mighty River Power and council owned entities such as Watercare, primarily in terms of more Māori who have expertise in the particular field and in tikanga on these boards who can then lead influence the values, culture and behaviour of these organisations.
- Crown resourcing for education in the community, including councillors and council staff, to promote better understanding of tangata whenua rights and interests.
- Crown resourcing for education and training for iwi and hapū to increase knowledge about the RMA and the relevant processes for iwi and hapū in freshwater management.

- Assessing how the Making Good Decisions training programme, and other similar programmes, can be more accessible and effective for iwi and hapū, particularly in terms of tangata whenua issues in resource management and freshwater planning.

Local Government

(Note: whilst these mechanisms are aimed at Local Government, there is a role for Central Government in terms of national direction, guidance and resourcing)

- Continue conversations on improving freshwater management from an iwi and hapū perspective with regular meetings.
- Workshop/wānanga on prominent issues, solutions and mechanisms.
- Work with iwi and hapū to identify collaborative opportunities for joint projects.
- Commit to going beyond minimum requirements and truly commit to involving tangata whenua in decision-making
- Proactive implementation of existing RMA tools:
 - Joint Management Agreements
 - Iwi management plans
 - Transfer of powers; Joint consenting authorities.
- Councils contracting suitably qualified tangata whenua, as identified by iwi and hapū, to advise and provide guidance on certain projects. There is a potential role here for Central Government to provide funding to enable councils to second or contract iwi members with kaitiakitanga/matauranga Māori expertise that are regional or iwi specific.
- Engaging prior to public release of notifications of consents, policies, discussion documents etc.
- Correct legacies of past via consent reviews – reduce term of resource consents.
- Review of effectiveness of catchment sub-committees – need for mana whenua hui.
- More iwi and hapū commissioners placed on more hearings/consents.

Conclusions and Next Steps

This case study provided an opportunity for our community to fully engage in research and discussions about what ‘rights and interests’ mean in the context of our unique rohe.

Based on our discussions, past experience, current proposals for Resource Management Act reforms, and the approach of councils and corporates in our rohe, even in the context of co-management arrangements and governance positions reserved for Māori on the regional council, we conclude that iwi and hapū in the rohe of Te Hapori o Maungatautari must make a case for the strongest tools available in order to recognise our rights and interests in freshwater.

The strongest tools available within the current context of Crown-Iwi Leaders discussions is via the mechanisms sought in our three key recommendations: vesting of the beds of our water bodies together with the ‘water column’ (an application of the Lake Taupō model), and guaranteed access to water.

We seek that the recommendations in this case study report be explored further, either via an extension to the case study, and/or as part of the merged priority work stream on Recognition and Governance being conducted by the IAG.

Appendix One

Planning Framework review

By Naomi Simmonds

This is a brief overview of the freshwater management context for the Waikato Region highlighting the opportunities at a regional level to provide for iwi and hapū interests in freshwater. It is informed by existing and proposed national and regional policy and plans relevant to freshwater in the Waikato Region. It is also informed by iwi aspirations as contained in various iwi management plans, submissions made by iwi on national and regional policy and plans and discussions with some iwi practitioners.

It is not intended to repeat verbatim the existing legislation or policy documents of the Waikato Regional Council, but rather to contextualise the existing management regime, including its limitations and opportunities, with respect to iwi and hapū rights and interests to freshwater. It should be read within the context of discussions being held with iwi and hapū within Te Hapori o Maungatautari and hopefully provide some context for those discussions moving forward.

As set out in the preamble to the National Policy Statement for Freshwater Management (NPS-FW) 2014 “the Treaty of Waitangi (Te Tiriti o Waitangi) is the underlying foundation of the Crown-iwi/hapū relationship with regard to the freshwater resources. Addressing tangata whenua values and interests across all of the well-beings, and including the involvement of iwi and hapū in the overall management of freshwater, are key to meeting obligations under the Treaty of Waitangi” (NPS-FW, 2014, p.3). It is from this base, as Treaty partners, that discussions at the regional and local level should occur and it on this basis that this report is written.

Te Ture Whaimana o Te Awa o Waikato - Vision and Strategy for the Waikato River

Co-management legislation within the Waikato and Waipā catchments has shifted the legislative and operational context for freshwater management in the Waikato Region. The purpose across the three co-management bills (for Waikato-Tainui, Te Arawa River Iwi, Raukawa, Ngāti Tūwharetoa and Ngāti Maniapoto) is to protect and restore the health and wellbeing of the Waikato and Waipā Rivers. This means a fundamental change to the ways in which decisions are made, and by whom, concerning all aspects of freshwater management within the catchments. River Iwi are recognised as co-managers and must

be engaged in the preparation, variations to and reviews of policy and plans concerning the Waikato and Waipā Rivers and catchments.

The Vision and Strategy for the Waikato River is a primary direction-setting document for the management of the Waikato River, the Waipā River and their respective catchments. It is under the mana of this document that the objectives for freshwater management within the region should operate. All of the proposed reforms, reviews and proposals developed by the Crown and by the Waikato Regional Council must not inhibit the ability of iwi to achieve the objectives and strategies for the restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers.

The co-management arrangements provide a new era of freshwater management that must be achieved at the highest level. The Vision and Strategy, therefore, is effectively afforded a higher status over and above National and Regional Policy Statements and is deemed in its entirety to be part of the Regional Policy Statement. Respective River Iwi have also entered into Joint Management Agreements with the Regional Council and have developed, or are in the process of developing, their iwi environmental management plans. Under the co-management legislation it is restated clearly the considerations that territorial authorities must give to these documents under the RMA.

Presently, iwi and territorial authorities are grappling with the implementation of the Vision and Strategy and the various co-management requirements. In a post-settlement co-management era there remain a number of challenges for iwi and councils alike and there are a number of opportunities, which we believe, have yet to be fully realised.

From the perspective of this report, there are opportunities for regional councils to provide for iwi and hapū rights and interests to freshwater in the effective and meaningful implementation of co-management arrangements. Further, we believe that there should be a commitment by local authorities to take up the Vision and Strategy, not simply as a matter of compliance, but as a bold commitment to the restoration and protection of freshwater within the catchment and also as ongoing and meaningful recognition of tangata whenua rights as kaitiaki and as Treaty partners.

National Policy Statement Freshwater Management 2014 (NPS-FW)

Given the significance of freshwater resources the Crown has recognised the need to set a national direction in relation to freshwater and has developed a National Policy Statement

on Freshwater Management. The NPS-FM was published in 2011 with a number of amendments published in 2014.

The NPS-FW 2014 sets out objectives and policies that direct local government to manage water in an integrated and sustainable way whilst still providing for economic growth within the setting of limits relating to water quantity and quality. The NPS-FM requires each regional council to actively manage water quality and water quantity through the establishment of freshwater objectives and setting limits for bodies of freshwater in the region. It is through the Waikato Regional Plan that this will be implemented.

NPS-FM 2014 Objective D1 states that in the implementation of the NPS-FM councils should:

“Provide for the involvement of iwi and hapū, and to ensure that tāngata whenua values and interests are identified and reflected in the management of freshwater including associated ecosystems, and decision-making regarding freshwater planning, including on how all other objectives of this national policy statement are given effect to.”

The policy framework for this objective requires local authorities to ‘take reasonable steps to’:

- a) Involve iwi and hapū in the management of freshwater and freshwater ecosystems in the region;
- b) Work with iwi and hapū to identify tangata whenua values and interests in freshwater and freshwater ecosystems in the region; and
- c) Reflect tangata whenua values and interest in the management of, and decision-making regarding, freshwater and freshwater ecosystems in the region.

Discretion is given to local authorities in the interpretation of this specific objective. There is, however, opportunity within this framework for councils to develop a proactive and meaningful program of work in the implementation of the NPS-FM that goes beyond the ‘minimum requirements’ described above.

The 2014 amendments to the NPS introduced the National Objectives Framework (NOF).

The use of the NOF is intended to provide greater consistency and understanding of key values, including tangata whenua values. The NOF falls short, according to all of the submissions by iwi within the Te Hapori o Maungatautari region, in that it does not give adequate weight to the value Te Mana o te Wai. In the submissions it was considered that Te Mana o Te Wai should be made a compulsory national value alongside two other

existing compulsory values. Instead discretion is left to regional authorities in determining regional values. While the NPS provides flexibility to determine regional priorities for freshwater management it is not directive in terms of the weight and priority that should be afforded tangata whenua values.

By its own admission, in relation to the Healthy Rivers Plan for Change, the WRC acknowledge that “nothing in the RMA prevents a council from choosing to go beyond the minimum requirements for whom to consult with or how long to allow in developing a proposed document for public notification” (WRC, Stakeholder Engagement Strategy, 2013, p.6). It is our contention that while discussions continue at the national level, with regards to iwi rights and interests, there are numerous opportunities for the Regional Council to take leadership in the recognition of iwi and hapū values, rights and interests in relation to wai Māori. Ensuring that the Council iwi and hapū, are adequately resourced to do this is one way that Central Government could demonstrate support of local authorities taking the lead at a local level on a nationally significant issue.

Waikato Regional Policy Statement (PRS)

The purpose of a RPS is to achieve the purpose of the RMA by outlining the key resource management issues, policies and methods to address them, within the region. The operative Waikato RPS document has been reviewed and the Proposed Waikato RPS is currently undergoing appeals. An appeals version of the RPS document is available and this was the version used in the development of this report.

There are a number provisions within the proposed RPS that refer to the relationship of tāngata whenua with the environment. One of the key provisions of the proposed RPS, as in the current appeals version, recommends that tāngata whenua and stakeholder involvement be a central feature of the freshwater management regime in the Waikato Region. To that effect the RPS sets out in **Issue 1.5** that the ability for tangata whenua to access, use and enjoy resources and places and the ability of tangata whenua to provide for kaitiakitanga has been diminished. Further, the involvement of tangata whenua in decision making has been limited and it is acknowledged that the effects of certain activities within the region are degrading the mauri of the environment. **Issue 1.6** goes on to recognise the impact on iwi relationships to wai Māori as a result of the degradation of the Waikato and Waipā Rivers and their catchments.

Of particular note is **Policy 4.3** which sets out that “Tangata Whenua are provided appropriate opportunities to express, maintain and enhance the relationships within their rohe through resource management and other local authority processes”. Implementation methods include developing strategic relationships with iwi authorities and facilitating tangata whenua involvement.

Chapter 8 of the proposed RPS addresses management of freshwater bodies and under **method 8.1.4** sets out that Waikato Regional Council will work with tāngata whenua to develop systems and processes to effectively implement the NPS-FM objective concerning tāngata whenua involvement. Including to:

- a) Adequately involve tangata whenua in management and decision making regarding freshwater bodies and associated ecosystems;
- b) Identify values and interest in freshwater bodies and associated ecosystems; and
- c) Develop monitoring programmes (including mātauranga Māori) to monitor the achievement of identified values of freshwater bodies. (Proposed Waikato RPS appeals version, 8-1).

The language of the proposed RPS has shifted to more appropriately recognise the role of iwi and hapū as co-managers and acknowledge the key function of iwi and hapū in decision making in the rohe. Submissions by iwi on the RPS sought to remind the Council of the unique and enduring role of tangata whenua as kaitiaki, as acknowledged in the RMA and in co-management legislation. Therefore it is important that tangata whenua are not and do not simply become another voice amongst many other stakeholders.

It is acknowledged specifically, in the proposed RPS, that the “inability to influence decision making has been a long-standing and common concern of tangata whenua within the region. One of the impacts of this is on the ability of tangata whenua to effectively carry out their kaitiaki duties. While there has been improvement in recent years, including through the settlement of Treaty of Waitangi claims, this remains an issue for tangata whenua” (Proposed RPS appeals version, 1-6).

This point was reinforced by all of the iwi submissions received on the proposed RPS and there was an obvious and clear call for action on this issue by iwi. Further, submissions note that while the proposed RPS recognised the relationships with tangata whenua and the environment it does not go far enough in terms of strengthening the provisions in the RPS in relation to that relationship. Iwi also noted that the RPS did not adequately address

the contemporary nature of those relationships in terms of iwi development and specifically rights to allocable supply of water for iwi development.

While iwi submissions on the proposed RPS commended the approach taken by the Regional Council in relation to the Waikato River and its catchment it was strongly noted that other water bodies outside of the Waikato Catchment should be afforded priority in the same way as the Waikato River and as Lake Taupō.

References within the proposed RPS to mātauranga Māori and other cultural indicators and concepts were also commended. There is a tendency, however, by the Crown and councils alike to weigh up the validity of mātauranga against western science, stakeholder and community values or other policy considerations. While we recognise the importance of providing robust evidence for things like setting limits and targets the consideration of mātauranga Māori and cultural assessments should not be limited by these quantitative measures. Mātauranga Māori is an expert body of knowledge that stands of its own accord and that should inform decision making at all levels and across all stages of freshwater management in the rohe.

Iwi and hapū management plans are important in this regard and should be appropriately recognised and implemented within regional policy and planning frameworks. For example, the *Waikato Tainui Iwi Management Plan: Tai Tumu, Tai Pari, Tai Ao* sets out the aspirations for Waikato-Tainui in relation to freshwater. Their aspiration is to have “waters that are drinkable, swimmable, and fishable with the water quality at least at the level it was when Kīngi Taawhiao composed his maimai aroha” (Waikato Tainui EMP, p.152). In this plan Waikato-Tainui recognise, that they should engage and participate at the highest level of decision-making on matters affecting waters in their rohe. They set out the following as methods to achieve this:

- 19.4.1.1
- (a) National, Regional, and Local Authorities engage Waikato-Tainui on any matters that may have an effect on the management, quality, and quantity of waters within the Waikato region, including involving Waikato-Tainui in any associated decision making functions.
 - (b) Waikato-Tainui are engaged by relevant local authorities when determining allocable flows for waters within the Waikato region.
 - (c) Engagement occurs prior to the public release or notification of consents, policies, discussion documents, protocols, plans, and/or regulations

consistent with Chapter 6, 'Te koorero tahi me Waikato-Tainui – consultation and engagement with Waikato-Tainui.'

(d) Authorities and water users (including water take, direct and indirect discharges) provide for, and are consistent with relevant sections of this Plan.

(e) If determined by the Authority and Waikato-Tainui, a joint statement with recommendations, should be submitted to the respective decision-making Board, Local Authority.

Waikato-Tainui also discuss in detail the key issues with regards to water allocation in their rohe including the problems of the current 'first in first served' management regime, compliance and monitoring of consent holders and importantly, the fact that "the issue of Waikato-Tainui rights and interests in water has not been resolved between the Treaty Partners, in this case, Waikato-Tainui and the Crown." (Waikato Tainui EMP, p. 154). The EMP then goes on to suggest a raft of mechanisms to address these issues including the following:

- i. Recognition that Waikato-Tainui has rights and interests in water;
- ii. Unauthorised water takes are subject to immediate enforcement action to ensure a level playing field for all water users;
- iii. Water is a common pool resource and should be managed in a way that supports social, cultural, spiritual, environmental, and economic wellbeing;
- iv. Access to water for reasonable drinking and sanitation needs is a basic human right; v. Some commercial investments have been made on the basis of access to water that have been and will continue to be strategically significant for New Zealand's long-term economic welfare;
- v. All water takes (excluding those required for civil or general emergency) should be accounted for within the allocable limit;
- vi. In discussion with Waikato-Tainui, water within the allocable quantum needs to be easily transferable between users where there is a more effective and efficient use of the transferred allocation;
- vii. The framework for allocating water to users should focus primarily on ensuring the health and well-being of waterways and secondly on contributing to the long-term economic, cultural, spiritual, environmental, and social wellbeing of the Waikato-Tainui rohe;
- viii. There is an equitable and efficient allocation and use of water;

ix. That the equitable and efficient allocation and use of water may lead to the creation of ‘new’ water for allocation (‘New’ allocable water can come about through mechanisms such as people not renewing or taking up a water allocation consent; efficient water use creating spare capacity in allocated water). (Waikato Tainui EMP, p.162)

Other iwi and hapū have, or are in the process of developing, their own environmental management plans and strategies which will set out their objectives and policies in relation to freshwater management.

These documents are significant resource management documents in the region and should be given due recognition and consideration in freshwater management decision making. This can be done currently without any legislative reform as there are already provisions within the RMA and co-management legislation that provide for iwi and hapū planning documents to be considered by local authorities. Investing sufficient resources and time to understanding these planning documents and their practical application across all levels of council operations would contribute to the meaningful recognition of tāngata whenua relationships and values relating to freshwater.

Regional Plan

The Waikato Regional Plan, made operative in 2007, has been subject to a number of variations. This Plan provides direction regarding the use of natural and physical resources in the region and provides another policy framework as well as methods of implementation within the region pertaining to freshwater. The WRP is to give effect to the RPS and NPS and to the Vision and Strategy. The Operative WRP sets out in Chapter 2 Matters of Significance to Māori. The focus of this chapter, however, tends to be on the identification of iwi groups, and establishment of processes for ‘consultation’. Implementation relies more on recognition and development of processes than it does on sharing decision making power with tāngata whenua.

While the role of tāngata whenua as kaitiaki in the region is acknowledged the objective, policies and methods in this chapter only go a small way to practically recognising the role of iwi as Treaty partners and providing for iwi to use, access and enjoy their lands and resources. **Section 2.3.4.20** does provide for the use of iwi commissioners for hearings and **Section 2.3.4.24** allows for investigating opportunities to implement a transfer of powers to tāngata whenua as per Section 33 of the RMA. **Section 2.3.4.25** sets out opportunities for tāngata whenua participation in resource monitoring. These specific provisions have

potential with regards to recognising the rights and interests of iwi and hapū to freshwater. For example, Council and iwi (with support and resourcing from the Crown) could implement a clear programme of work to build capabilities to facilitate a transfer of powers as per Section 33 of the RMA on matters pertaining to freshwater management (for example issuing of consents on Māori owned land or water take consent reviews).

Variation 6

Chapter 3 of the Waikato Regional Plan is the water module which has varying levels of recognition and opportunities for tāngata whenua. On the 10 April 2012 Variation 6 (also known as the allocation variation) introduced a set of rules into the WRP governing the way that ground and surface water is taken and used within the region. This variation was in response to increasing pressure on the resource and the demand for water from different and sometimes competing users. Variation 6 sets allocation limits for all rivers and streams, and their minimum flows.

The demand for water in the region has reached a point where there is very real potential for the demand to exceed sustainable supply. It was identified in this variation that in some catchments the consents to take water already exceed the allocation limits, giving rise to growing competition over the freshwater resources in the region.

Iwi played an important role in submissions and appeals on Variation 6. The issues as outlined in iwi submissions were broadly centred on three key points:

1. The nature and extent of amendments to Variation 6 required to give effect to the Vision and Strategy;
2. The potential access to water for iwi development; and
3. The transfer provisions in light of the co-management deeds.

Iwi sought greater recognition and integration of the Vision and Strategy into Variation 6. In the Environment Court decision on the Variation it was stated that the Council has struck an appropriate balance between competing positions with respect to the inclusion of the Vision and Strategy. As previously stated iwi are Treaty partners and therefore it is more than appropriate that in council plans and policies this is given due recognition.

Iwi also sought the inclusion of a rule that provided preferential access to water for iwi development this was proposed as a controlled activity rule and applied to development undertaken by Waikato River Iwi within their rohe in respect of Maori land held under Te Ture Whenua Maori Act 1993 and/or land owned or leased by an iwi authority representing

any of the Waikato River Iwi for the benefits of its members. It was the Environment Court ruling that allocation is to be controlled by the “status of the activity and not the status of the applicant” (Environment Court Decision Variation 6, 127). It was their position that rules in the Variation create favourable activity status over favourable applicants.

Iwi also submitted opposing the transfer of water permits in Variation 6. It was considered that the transfer of water permits (effectively water rights) between commercial operations is likely to have detrimental impacts on the Waikato River. The potential was that parties would view water as a tradable commodity as opposed to a resource to be restored and protected as required under the co-management legislation.

Variation 6 is another example whereby iwi rights and interests are watered down and weighted equally against other stakeholders interests when they should be given due consideration as Treaty partners. Iwi also gave evidence reasserting that the issue of ‘ownership’ of water had deliberately been left out of the co-management legislation and that iwi have never ceded traditional ownership of their waterways under Article 2 of the Treaty.

Healthy Rivers Plan for change

The most recent review of the Waikato Regional Plan is currently being undertaken, in collaboration with iwi, the community and other stakeholders. The Healthy Rivers Plan for Change will review the WRP to focus on the effects of point and non-point source discharges to land and water in the Waikato and Waipā River catchments. This is a requirement of the Vision and Strategy within those respective catchments and is to address the issue of declining water quality within the region.

There are multiple areas where tāngata whenua issues are addressed throughout the Waikato Regional Plan. One of the issues with the WRP is that it still relies on an outdated language of consultation which does not adequately reflect the role of iwi and hapū as Treaty Partners and co-managers in the region. There is potential through the Healthy Rivers Plan for Change for this to be remedied and we commend the Council on the partnership approach taken on this plan change.

Local Government Act 2002

Under the Local Government Act 2002 Waikato Regional Council has duties and responsibilities both in its obligations to tāngata whenua and to the community and in setting the long term strategic direction for the Council and annual reporting against this.

Under the 2012-2022 Long Term Plan the Waikato Regional Council has set its strategic vision as “Competing Globally, Caring Locally” with three goals, including:

- The values of land and water resources are sustained across the Waikato region;
- The Waikato Regional Council meets its legislative requirements by working together with iwi in good faith and a spirit of co-operation;
- The people of the region collaborate to achieve a shared vision of the Waikato competing globally, caring locally (WRC, Long Term Plan 2012-2022).

The freshwater management regime within the region is complex. Further, the changing resource management landscape in relation to freshwater makes it such that ensuring consistent and robust reforms can be difficult. Changes that are taking place within the Regional Council must give effect to the Treaty relationship through all levels of planning and decision making pertaining to water (and other resources). For these reasons further analysis to assess the interrelationship between the various reforms, at national and regional level, which are being proposed to ensure that the right mix of measures are adopted to achieve the desired outcomes and to assess how these measures contribute to the aspirations of iwi and hapū within the region may be required.

Mechanisms for solutions – regional opportunities

Addressing iwi rights and interests in freshwater is critically important to developing a robust and durable freshwater management regime. There are a number of mechanisms identified in the review of the current regime, as well as within chosen case studies, these are grouped and summarised below and offered for further discussion.

Partnership and Prioritisation

“Tangata Whenua still are required to advocate for their recognition of their values in resource management matters. This is a waste of energy and resources for all concerned” (Maniapoto submission to the NSP-FM).

The relationship of Māori to taonga, including water, is a matter of national importance under the RMA and this must filter down through the freshwater management framework. Nearly all of the iwi led submissions, from iwi with interests in Te Hapori o Maungatautari, on the NPS-FM, the RPS and Variation 6 of the WRP commended the Crown, and Council, in their recognition of the relationships of tangata whenua to water. They did, however, repeatedly assert that tangata whenua values needed to be prioritised appropriately given

their status as Treaty partners with the Crown. For example, all of the iwi made the point in their submissions to the NPS-FM that Te Mana o Te Wai should be made a compulsory value.

As set out in the preamble to the National Policy Statement for Freshwater Management (NPS-FW) 2014 “the Treaty of Waitangi (Te Tiriti o Waitangi) is the underlying foundation of the Crown-iwi/hapū relationship with regard to the freshwater resources. Addressing tangata whenua values and interests across all of the well-beings, and including the involvement of iwi and hapū in the overall management of freshwater, are key to meeting obligations under the Treaty of Waitangi” (NPS-FW, 2014, p.3).

One of the risks of the collaborative processes being undertaken, such as Land and Water Forum and Healthy River Plan for Change is that iwi and hapū voices can become diluted when put amongst other stakeholder and community perspectives. There is a loss of iwi and hapū considerations when balanced against economic, social and other environmental considerations. At the regional level this is an enduring concern for iwi in their role as Treaty partners and co-managers. There are opportunities at both national and regional levels to effectively provide for iwi and hapū as Treaty partners and to prioritise tangata whenua values and aspirations within the freshwater management regime. These could include:

- Continued and proactive shift in policy and planning language should continue from the ‘consultative’ approach and tone of the early post RMA era to the discourses of partnership as required by the post-settlement and co-management era;
- Expand co-management and partnership arrangements to all catchments;
- Local and regional partnerships with iwi shouldn’t wait for Crown-Iwi resolution of rights and interests, Regional Council has the opportunity to show leadership at local and regional level with ongoing national level discussions and guidance;
- Maximise and strengthen current mechanisms, for example:
 - Concerted programme of work exploring opportunities for Section 33 Transfer of Powers this could include decisions pertaining to Maori owned land or decisions over water consent renewals but the scope of this should be decided collaboratively between iwi and hapū and Council;
 - Proactive implementation of JMA provisions;
 - Proactive implementation of Iwi and hapū management plans, including the identification of collaborative opportunities for projects with iwi and hapū.

- Explore new ways of working together and opportunities to strengthen iwi and hapū roles in freshwater management.
 - Prioritisation of water allocation for iwi and hapū. Waikato-Tainui, in their submission to the NPS-FM state that “iwi, hapuu and marae must be engaged at the highest level of decision making including determination of allocable, non-allocable flows and limit setting at the catchment level” (Waikato-Tainui Submission to NPS-FM).
 - Address legacy issues, recognising past decisions and clearly committing to the resolution of these issues. For example review of long term consents and the ability to correct over-allocation through consent reviews.
 - Comprehensive review of management framework to identify inconsistencies and opportunities to strengthen.
 - Implementation guidance for Council practitioners about the relationship of Māori with their taonga. Clear guidance particularly when advocating a shift from past practices.

Mātauranga, collaborative projects and resourcing

There are references across the freshwater management framework to the importance of mātauranga Māori. Mātauranga Māori, mātauranga-a-iwi, a-hapū, should be used to inform more than just monitoring regimes and should be an integral part of all levels of resource management and planning processes. More work needs to be done to understand how to practically and meaningfully give effect to this. Tangata whenua values are routinely articulated, and this can be seen in Regional planning documents, but are not always necessarily well understood or implemented. This often happens when attempts are made to ‘fuse’ mātauranga Māori or iwi values with western science and policy.

The expertise of Māori communities, of hapū and iwi, should be recognised as it stands on its own as a legitimate and valid body of knowledge that has, for generations, informed the management of our lands, waters and resources as iwi and hapū. This is not always as acknowledged as such. Iwi and hapū are asked to engage in multiple policy and planning processes and projects often on a volunteer basis. It is our contention that expertise in mātauranga Māori should stand alongside any other expert knowledge engaged by councils and the Crown.

“We are volunteers, trying to engage on a multitude of issues with no funding. Nevertheless, to reinforce our ahi kā roa, Ngāti Koroki Kahukura has led the charge against threats to our resources and culture within our homeland” (Appendix 1, NKK submission on the RPS, 2011).

Meaningful engagement at all levels is a must, from input into management and decision making through to mechanisms that provide for the equitable allocation of water and its economic benefits within the region. Improving the capacity and capability of both iwi and council is critical to meeting the objectives for freshwater within the region. Central government needs to consider how it will resource and support regional level participation and engagement relating to freshwater.

Across nearly all of the iwi led submissions to the NPS-FM, the RPS and Variation 6 to the WRP identify the issue that resourcing is a real and on-going limitation to iwi and hapū abilities to participate effectively in freshwater resource management. For example, in the NPS-FW there were a number of the questions asked of iwi that were not able to be answered in the timeframes or with the resourcing provided. An example of this can be seen in iwi submissions to the NPS-FM which iwi noted “we have not had the opportunity, nor do we have the resources available to comprehensively determine where this type of exception exists within our region” (NKK Submission to NPS-FM).

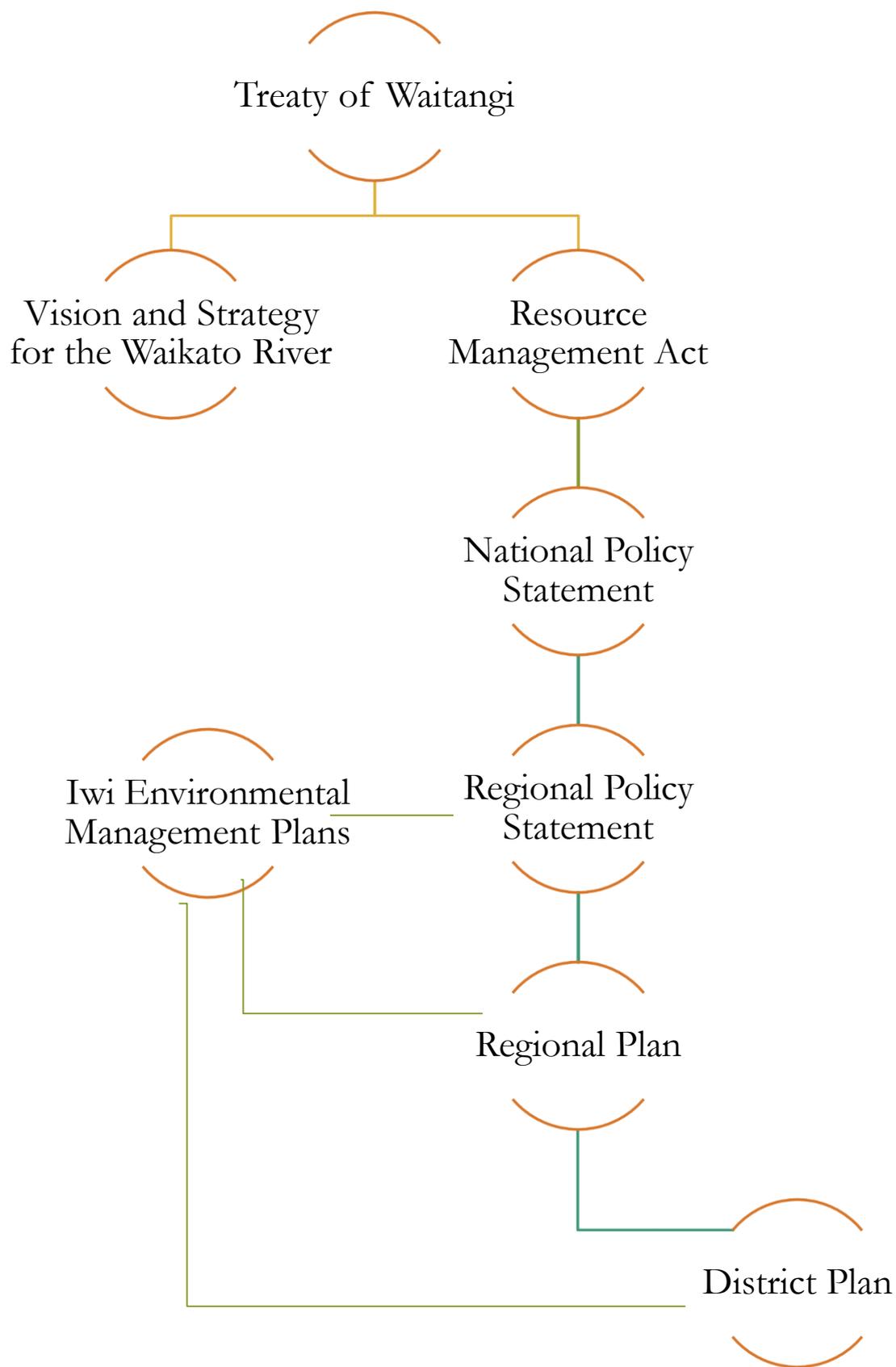
The Maniapoto submission to the NPS-FM stated “the Government must recognise and provide for the increased resourcing that will be required to achieve real collaboration during the processes to implement the NOF in each region and of the other amendments to the NPS-FM. Maniapoto do not expect to enter into collaborative processes that are not appropriately resourced when these processes are required under national legislation” (Maniapoto Māori Trust Board Submission on to the NPS-FM 2011, p1).

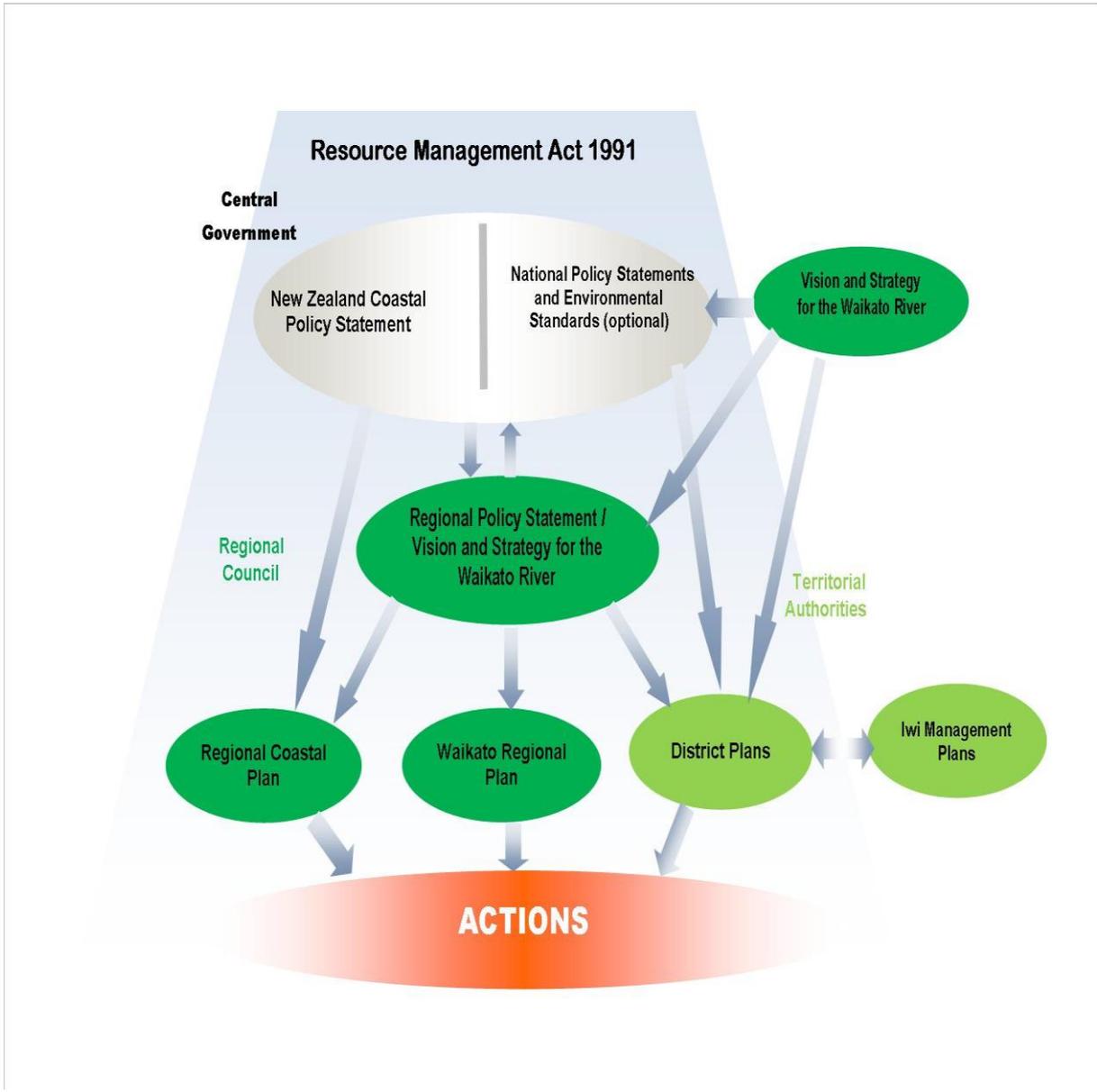
Regional mechanisms to address the above could include:

- Inclusion of mātauranga Māori as a relevant and critical strand for resource management decision making across all policy development, projects and monitoring.
- Resourcing iwi and hapū involvement in decision-making processes and specific projects related to rights and interests to water.
- Thorough analysis to assess the interrelationship between the various reforms, at national and regional level, which are being proposed to ensure that the right mix of measures are adopted to achieve the desired outcomes and to assess how these measures contribute to the aspirations of iwi and hapū within the region.

- Resource a work program that strengthens Council capacity and understanding of iwi and hapū management plans.
- Examine mutually beneficial work streams and projects which can contribute to the capacity and understanding of iwi and hapū groups whilst achieving the objectives of long term and regional plans (e.g. Waihou Catchment Willow and Poplar Removal program).
- Understand how Councils can work with tangata whenua beyond iwi organisations. Particularly, at a localised project level there are other tāngata whenua, smaller hapū groups who are interested in engaging. Discuss opportunities with iwi and hapū for engagement with hapū and marae – resource iwi to facilitate this.

Existing mechanisms for Māori participation as provided in the RMA and LGA fall short of necessitating a Treaty-based relationship between local authorities and iwi and hapū insofar as the nature and extent of that relationship is a discretionary matter for councils. That being said there is an opportunity for local authorities to take leadership in their engagement with iwi and hapū and in the provisioning of Māori rights and interests to freshwater. From a Treaty partnership perspective freshwater reforms at national and regional level must be developed in a manner which gives full effect to iwi rights and interests to freshwater. Ultimately, these rights and interests should be given appropriate weight and priority in recognition that iwi and hapū are direct Treaty partners, in contrast to stakeholders, resource users or community groups. There are clear opportunities, however, for Waikato Regional Council (supported and resourced where necessary by the Crown) to provide bold leadership at the regional level across all freshwater resources within the region and to demonstrate a meaningful and effective Treaty partnership at the local government level.





South Waikato Proposed District Plan (Appeals Version June 2014)

Reference Documents

Healthy Rivers Plan for Change - Stakeholder Engagement Strategy 2013
Maniapoto Māori Trust Board submission on the proposed RPS 2011
Maniapoto Māori Trust Board Submission on the NPS-FW 2013
National Policy Statement Freshwater 2011
Ngāti Koroki-Kahukura Submission on the NPS-FW 2013
Ngāti Koroki-Kahukura submission on the proposed RPS 2011
Ngāti Tuwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010
Ngā Wai o Maniapoto (Waipa River) Act 2012
Raukawa submission on the NPS-FW 2013
Tai Tumu, Tai Pari, Tai Ao – Waikato Tainui Iwi Environmental Management Plan
Variation 6 Environment Court Decision 2011
Waikato Regional Council Long Term Plan 2012-2022
Waikato Regional Council Summary of Submission Variation 6 February 2007
Waikato Regional Plan Operative version 2011
Waikato Regional Policy Statement 2000
Waikato Proposed Regional Policy Statement Appeals Version 2012
Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010
Waikato-Tainui submission on the proposed RPS 2011
Waikato-Tainui submission on the NPS-FW 2013