

**Co-Management Arrangements for the
Waikato River**

Report of the Independent Review Panel

27 April 2009

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Summary of Findings on the Review of Waikato River Co-Management Arrangements

Currently Negotiated	Commentary	Recommendations	Proposed
<p>Vision and Strategy for the Waikato River</p> <p>Given status of a National Policy Statement for RMA purposes.</p> <p>Given status of a Statement of General Policy for conservation legislation.</p> <p>Must be had particular regard to under relevant statutes, including Fisheries Act.</p>	<p>Clear aspirational vision supported by broad objectives and a high-level set of strategies.</p> <p>Absence of standards threatens effectiveness and creates uncertainty.</p> <p>Does not currently apply to the whole of the Waipa River.</p>	<p>The Vision and Strategy should:</p> <ol style="list-style-type: none"> 1 be the primary co-management instrument; 2 be refined to be made more definitive; 3 continue to require public consultation as part of the amending process; 4 remain a National Policy Statement for RMA purposes; 5 remain a Statement of General Policy for conservation purposes; 6 continue to be an instrument to be had particular regard to under relevant Acts, including the Fisheries Act; 7 take a whole-of-river and whole-of-catchment approach and include the entire Waipa River and its catchment; 8 be accompanied by standards relating to the health and wellbeing of the River including water quality and the impact of land use management on water within the catchment, to be developed by the Guardians with public consultation and to have the status of National Environmental Standards; 9 be informed by Iwi Environmental Plans. 	<p>Vision and Strategy for the Waikato River</p> <p>Primary co-management instrument.</p> <p>Status of a National Policy Statement for RMA purposes.</p> <p>Status of a Statement of General Policy for conservation legislation.</p> <p>Had particular regard to under relevant statutes, including Fisheries Act.</p> <p>More definitive, including standards with the status of National Environmental Standards.</p>
<p>Guardians of the Waikato River</p> <p>One of 5 new co-management entities.</p> <p>Periodically amends the Vision and Strategy and promotes its implementation.</p> <p>5 River iwi appoint half the membership – Crown appoints the other half (including an Environment Waikato nominee).</p>	<p>Lacks clarity of purpose.</p> <p>Not enough 'teeth'.</p> <p>Duplicated functions with other entities.</p> <p>Uncertain resourcing.</p> <p>Unclear accountability.</p>	<p>The Guardians of the Waikato River should:</p> <ol style="list-style-type: none"> 1 be the sole co-management entity; 2 be the lead agency for River issues in the region; 3 be responsible for the content of the Vision and Strategy; 4 have an amalgam of the functions currently identified for itself and the statutory boards, plus responsibility for the clean-up fund, for promulgating standards, for compliance and enforcement, for effecting or recommending call-ins (including input into terms of reference and appointments for boards of inquiry), and for building internal resources and skill to provide leadership on all River related issues; 5 be given the statutory powers necessary to carry out its functions (including "public authority" status); 6 be resourced fully (based on a business plan prepared by the Guardians) to be the intellectual, technical, social and cultural leader of progress on River and catchment issues (this recommendation is fundamental – there is an offset as a result of our recommendation not to proceed with statutory boards); 7 reflect the Crown-Maori relationship on which co-management is based; 8 bring together those with the greatest potential to influence outcomes; 9 recognise fully the individual and differing interests of each iwi within their respective rohe; 10 have 10 members (5 appointed by iwi; 5 appointed by the Crown including at least one recommended by EW and at least one recommended by TLA's); 11 make decisions by consensus (with escalation to Minister and iwi representative who must decide if no consensus reached); 12 be accountable through a requirement to furnish annual reports to Parliament (allowing for Select Committee scrutiny) and to iwi governance entities (allowing for iwi scrutiny). 	<p>Guardians of the Waikato River</p> <p>Sole co-management entity.</p> <p>Resourced to be the lead agency for River and catchment issues in the region.</p> <p>Responsible for the content of the Vision and Strategy, including standards.</p> <p>Administers the clean-up fund.</p> <p>5 River iwi appoint half the membership – Crown appoints the other half (including an Environment Waikato recommendation and a recommendation from TLA's).</p> <p>Accountable to Parliament and Iwi.</p>

Currently Negotiated	Commentary	Recommendations	Proposed
<p>Waikato River Clean-Up Fund</p> <p>New fund to support rehabilitation of the River, available to any organisation on a contestable basis, informed by an independent scoping study.</p> <p>Crown contribution of \$210 million over 30 years.</p> <p>Administered by a separate trust.</p>	<p>Does not currently apply to the whole of the Waipa River. Independent scoping study has not yet commenced.</p> <p>Administering trust not yet established.</p> <p>Risk that it will substitute for funding which should be the responsibility of local/regional government or landowners instead of funding the identified legacy and restoration priorities.</p>	<p>The Waikato River Clean-Up Fund should:</p> <ol style="list-style-type: none"> 1 be administered by the Guardians, but kept separate from the Guardians operational funding; 2 be kept to the identified legacy and restoration priorities. <p>The scoping study should:</p> <ol style="list-style-type: none"> 3 be completed as a matter of priority; 4 have its recommendations implemented immediately they are received. <p>The Guardians Establishment Committee should:</p> <ol style="list-style-type: none"> 5 implement a programme of interim action on not less than 5 projects on which there is general scientific and matauranga Maori recognition (funded by bringing forward elements of the clean-up fund). 	<p>Waikato River Clean-Up Fund</p> <p>New fund to support rehabilitation of the River, available to any organisation on a contestable basis, informed by an independent scoping study.</p> <p>Crown contribution of \$210 million over 30 years.</p> <p>Administered by the Guardians.</p> <p>Used to fund a programme of interim action until the scoping study is completed (as a matter of priority).</p>
<p>Waikato River Clean-Up Trust</p> <p>Established by trust deed on terms to be agreed between Crown and iwi.</p> <p>Trustees appointed by Guardians.</p> <p>Administers the clean-up fund.</p>		<p>The Waikato River Clean-Up Trust should:</p> <ol style="list-style-type: none"> 1 not be formed (the clean-up fund should be administered by the Guardians). 	
<p>Waikato River Statutory Board</p> <p>New statutory entity to operate in the lower catchment area (Karapiro/Puniu to the sea).</p> <p>Membership drawn from local authorities and Waikato-Tainui (with provision for Maniapoto on Waipa River matters).</p> <p>Promotes implementation of the Vision and Strategy.</p> <p>Monitors and audits local authority performance and makes recommendations.</p> <p>Exercises transferred functions (if any) and enters into joint agreements with local authorities.</p>	<p>Attempt to promote mana whakahaere of Waikato-Tainui in own rohe detracts from whole-of-river, whole-of-catchment approach.</p> <p>Lacks clarity of purpose.</p> <p>Duplicated functions with other entities.</p> <p>Uncertain resourcing.</p> <p>Unclear accountability.</p>	<p>The Waikato River Statutory Board should:</p> <ol style="list-style-type: none"> 1 not be formed (its functions can be incorporated under the Guardians, with a requirement to respect the mana whakahaere of each iwi within their respective rohe). 	
<p>Waikato River Co-Management Authority</p> <ul style="list-style-type: none"> • New statutory entity to operate in the upper Waikato River catchment area (Huka Falls to Karapiro). • Membership yet to be agreed but to be drawn from iwi (Raukawa/Te Arawa/Ngati Tuwharetoa), the Crown, local authorities and community stakeholders. • Promotes implementation of the Vision and Strategy. • Monitors and audits local authority performance and makes recommendations. • Exercises transferred functions (if any) and enters into joint agreements with local authorities. 	<p>Attempt to promote mana whakahaere of individual iwi in their rohe detracts from whole-of-river, whole-of-catchment approach.</p> <p>Lacks clarity of purpose.</p> <p>Duplicated functions with other entities.</p> <p>Uncertain resourcing.</p> <p>Unclear accountability.</p>	<p>The Waikato River Co-Management Authority should:</p> <ol style="list-style-type: none"> 1 not be formed (its functions can be incorporated under the Guardians, with a requirement to respect the mana whakahaere of each iwi within their respective rohe). 	

Currently Negotiated	Commentary	Recommendations	Proposed
<p>Waipa River Statutory Framework</p> <ul style="list-style-type: none"> • New statutory entity to operate in the upper Waipa River catchment area (source to Puniu). • Membership yet to be agreed but to be drawn from iwi (Maniapoto), the Crown, local authorities. • Promotes implementation of the Vision and Strategy. • Monitors and audits local authority performance and makes recommendations. • Exercises transferred functions (if any) and enters into joint agreements with local authorities. 	<p>Attempt to promote mana whakahaere of Maniapoto in own rohe detracts from whole-of-river, whole-of-catchment approach.</p> <p>Lacks clarity of purpose.</p> <p>Duplicated functions with other entities.</p> <p>Uncertain resourcing.</p> <p>Unclear accountability.</p>	<p>The Waipa River Statutory Framework should:</p> <ol style="list-style-type: none"> 1 not be formed (its functions can be incorporated under the Guardians, with a requirement to respect the mana whakahaere of each iwi within their respective rohe). 	
<p>Iwi Management Committees</p> <ul style="list-style-type: none"> • Would operate in the upper Waikato River catchment area (Huka Falls to Karapiro). • Formed by Raukawa and Affiliate Te Arawa Iwi and Hapu. • Reference groups for other co-management entities on cultural matters such as matauranga Maori. • Provide liaison between co-management entities and the hapu, whanau and marae of Raukawa and Te Arawa. 	<p>Adds a further layer of co-management.</p> <p>Iwi members of the Guardians will have their own processes to reflect the views and aspirations of the respective iwi.</p> <p>Accords between the Crown and iwi governance entities provide a form to address matters of particular interest to individual iwi.</p>	<p>Iwi Management Committees should:</p> <ol style="list-style-type: none"> 1 not be part of the co-management framework. 	
<p>Integrated River Management Plans (3)</p> <ul style="list-style-type: none"> • Intended to provide an integrated approach, involving iwi, to the management of aquatic life, habitats and natural resources within the River. • Three separate plans for lower Waikato, upper Waikato and upper Waipa. • Deemed conservation management plans and freshwater fisheries management plans under Conservation Act. • Deemed fisheries plans under Fisheries Act. • Must be had regard to in RMA planning. 	<p>Adds a further layer of complexity and duplication to the co-management framework.</p> <p>Detract from whole-of-river, whole-of-catchment approach.</p> <p>Integration issue capable of being addressed by providing for specific, co-ordinated work programmes in Accords with relevant agencies.</p>	<p>Integrated River Management Plans should:</p> <ol style="list-style-type: none"> 1 not be part of the co-management frameworks (integration can be addressed through Accords). 	
<p>Iwi Environmental Plans (up to 5)</p> <ul style="list-style-type: none"> • Optional planning documents recognised by iwi authorities. • Reflect iwi perspectives on environmental management. • Must be taken into account in RMA planning. 	<p>Already provided for under RMA.</p>	<p>Iwi Environmental Plans should:</p> <ol style="list-style-type: none"> 1 continue as already provided for under the RMA; 2 inform the Vision and Strategy and, accordingly, be referred to the Guardians. 	<p>Iwi Environmental Plans (up to 5)</p> <p>Should inform the Vision and Strategy.</p> <p>Must be recognised and provided for in RMA planning.</p>

Currently Negotiated	Commentary	Recommendations	Proposed
<p>Regulations</p> <ul style="list-style-type: none"> Power to make regulations to manage customary fishing, recommend bylaws to restrict fishing, and manage aquatic life, habitats and natural resources managed under conservation legislation. 	<p>Power to make regulations to manage customary fishing, recommend bylaws to restrict fishing already exists under Fisheries Act.</p> <p>Power to make regulations to and manage aquatic life, habitats and natural resources managed under conservation legislation is new.</p>	<p>Regulation-making powers should:</p> <ol style="list-style-type: none"> remain as currently negotiated. 	<p>Regulations</p> <p>Power to make regulations to manage customary fishing, recommend bylaws to restrict fishing, and manage aquatic life, habitats and natural resources managed under conservation legislation.</p>
<p>Accords (40)</p> <ul style="list-style-type: none"> Non-statutory relationship instruments between individual iwi and individual Ministers and office-holders such as the Commissioner of Crown Lands. Establish protocols, a framework for engagement, and commitments to agreed work programmes. 	<p>Waikato-Tainui already have Accords with the Ministers of Fisheries, Conservation, and Arts, Culture and Heritage.</p> <p>Waikato-Tainui also have an overarching Accord with the Crown, the Kiingitanga Accord, which, among other things, establishes an annual Relationship Forum at a very senior tribal and government level.</p> <p>Potential for up to 40 individual Ministerial Accords</p>	<p>Accords should:</p> <ol style="list-style-type: none"> be retained as part of the co-management arrangements and (without disturbing the arrangements already made with Waikato-Tainui) should comprise one accord between each of the iwi and the Crown (with schedules, rather than separate accords, for relevant Ministers of the Crown and their Departments). 	<p>Accords (5)</p> <p>Non-statutory relationship instruments between individual iwi and the Crown.</p> <p>Establish protocols, a framework for engagement, and commitments to agreed work programmes within Ministerial portfolios.</p> <p>Include mechanisms to provide an integrated approach, involving iwi, to the management of aquatic life, habitats and natural resources within the River.</p>
<p>Funding</p> <ul style="list-style-type: none"> Funding is to be provided to each iwi to ensure iwi capacity to participate in co-management of the River. 	<p>Adequate funding to provide iwi with capacity to participate fully and confidently in the co-management arrangements is essential.</p>	<p>Funding should:</p> <ol style="list-style-type: none"> be provided to iwi at the currently agreed level of co-management funding; be provided to iwi (with pre-agreed limits) to buy resource needed to build capacity to participate fully in the co-management arrangements. 	<p>Funding</p> <p>Funding is to be provided to each iwi to ensure iwi capacity to participate in co-management of the River.</p>

Report of the Independent Review Panel

1.0 INTRODUCTION

- 1.1 We have been appointed to review co-management arrangements for the Waikato River contained in a Deed of Settlement with Waikato-Tainui, signed on 22 August 2008, and in proposed agreements with the Raukawa Trust Board, Te Pūmautanga o Te Arawa, the Tūwharetoa Māori Trust Board and the Maniapoto Māori Trust Board.
- 1.2 The co-management arrangements are focused on restoring and protecting the health and wellbeing of the Waikato River (including its principal tributary the Waipā River) and, through co-management, securing effective Treaty-based relationships with the 'iwi of the Waikato River'¹ (**Waikato River Iwi**) now and in future that also atone for past Treaty breaches.
- 1.3 Ministers' concerns about the workability of the co-management arrangements provided for in the Deed of Settlement with Waikato-Tainui (**the Deed**) and contemplated in the proposed agreements with other Waikato River iwi led to our appointment as a panel to review those arrangements. Our Terms of Reference are set out in **Schedule 1**.
- 1.4 Our panel comprises Evan Williams (chair), Barry Harris, Guy Salmon, Gordon Blake, Jamie Ferguson and Paul Majurey.

2.0 EXECUTIVE SUMMARY

- 2.1 We have been asked to advise Ministers how effectively the co-management arrangements meet the objectives of the Deed and intended agreements with other Waikato River Iwi and if changes are required, what they may be.
- 2.2 Section 8 of our report contains a discussion of co-management issues and principles which may be useful in other contexts.
- 2.3 Water is a critical issue for New Zealand and will be for the foreseeable future. In reviewing the co-management arrangements for the Waikato River and making choices between various entities and how to concentrate the relevant functions, the panel was heavily influenced by the importance of water as a resource critical to tangata whenua, the region and New Zealand. We believe the relevant functions should be concentrated in a body completely focused on water and its management. We see considerable advantage in aligning resource, functions and accountability as closely as possible.

¹ While the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Bill includes references to "Waikato River Iwi" (for example, at clause (4) of the Preamble), it is not a defined term. Guidance is, however, provided elsewhere, for example the composition of the Guardians of the Waikato River includes representatives from (see Schedule 3 to the Bill):

- Waikato Raupatu River Trust
- Te Pūmautanga o Te Arawa
- Tūwharetoa Māori Trust Board
- Raukawa Trust Board
- Maniapoto Māori Trust Board

Proposed Arrangements

- 2.4 We have concluded that as they stand the proposed arrangements will not be effective to achieve the objectives sought in the Deed of Settlement and other agreements with Waikato River Iwi. We believe that the present arrangements have too many entities, plans and processes and will lead to:
- a. poorly resourced, slow progress for Waikato River Iwi and the Crown;
 - b. log jams in decision-making within the co-management arrangements;
 - c. poor progress on restoring the health and well-being of the River;
 - d. sub-optimal planning, consenting, and management of land use in the catchment, having a negative impact on the productivity of one of New Zealand's most important agricultural areas;
 - e. tension and mistrust between participants as agendas are guessed at rather than revealed and uncertainty breeds fear of the worst;
 - f. lack of understanding by the local communities about how to engage in the arrangements;
 - g. funding negotiated for the clean-up of the River will be frustrated.
- 2.5 Things that work and should be retained, noting the primacy of the Treaty relationship which underpins co-management, are:
- a. the Crown's commitment to co-management and outcomes agreed with Waikato River Iwi;
 - b. the clarity and aspirational nature of the overarching objective to have a healthy river and the unifying effect of that objective;
 - c. recognising and protecting te mana o te awa and mana whakahaere;
 - d. resourcing Waikato River Iwi to build capacity for effective participation;
 - e. one primary instrument stating the overall policy statement and strategy;
 - f. statutory recognition of the primary instrument;
 - g. creation of an entity that reflects the Crown-Māori relationship;
 - h. a whole of river and whole of catchment approach;
 - i. the integrated, holistic view of the River and its resources;
 - j. a contestable, Crown-seeded clean-up fund;
 - k. joint working parties for early, meaningful, well resourced engagement.
- 2.6 We have identified a set of principles for co-management which have the features set out in para 2.5 above and which focus on:
- a. forward looking, positive objectives;
 - a. maximum clarity, simplicity and transparency;
 - b. immediate strong leadership;
 - c. high quality resourcing of a body to lead all issues (fundamental to our recommendation);
 - d. the provision of 'teeth' for reaching the objectives;
 - e. a realistic and single point of engagement with the local communities to remove uncertainty, define rules, reduce costs for that engagement and outline the clear benefits of the co-management arrangements (in this case, improvement of the health of the river, a clean up fund to do it, acceleration of the clean up fund, improvements to public consultation, improvement of decision-making for all Resource Management Act (RMA) and related processes).

We recommend for Ministers' consideration:

One Primary Instrument

- 2.7 The Vision and Strategy developed by the Guardians should become the primary instrument:
- a. the Vision and Strategy document should be refined, continue to require processes for public consultation if it is to be amended, and remain a National Policy Statement under the RMA and Statement of General Policy under the Conservation legislation;
 - b. the Vision and Strategy should take a whole of river, whole of catchment approach and include the whole of the Waipā River and its catchment;
 - c. the Guardians should be required to develop and promulgate standards that:
 - i. relate to the health and wellbeing of the River including water quality and the impact of land use management on the River within the catchment of the River;
 - ii. will be a National Environmental Standard under the RMA; and
 - iii. should be developed through a process of public consultation (including as a minimum, public notification, the ability to lodge submissions, a hearing before a body appointed by the Guardians, and issuing of a report);
 - d. Iwi Environmental Plans should inform the Vision and Strategy.

One Entity

2.8 One entity only, the Guardians should:

- a. continue to reflect the Crown-Māori relationship on which co-management is based;
- b. continue to be funded by the Crown;
- c. continue to be comprised of members appointed by the Waikato River Iwi and the Crown with 5 appointed by the iwi (one each), 5 appointed by the Crown (a minimum of 1 on the recommendation of Environment Waikato (**EW**) and a minimum of 1 on the recommendation of territorial local authorities (**TLAs**);
- d. continue to make decisions by consensus (retaining the same escalation provision as exists now in the Deed but providing that the Minister and iwi representative to whom an unresolved issue is escalated must decide);
- e. by virtue of its membership and structure, bring together those with the greatest potential to influence outcomes;
- f. be responsible for developing the Vision and Strategy and for leading the region on the River issues;
- g. recognise fully the individual and differing interests of each of the Waikato River Iwi within their own respective rohe;
- h. have a full range of research, planning, advocacy, standard setting, audit and monitoring functions, plus responsibility for the clean-up fund, with a requirement to build internal resource and skill to ensure the Guardians is the entity which provides leadership on all River-related issues.

2.9 We recommend that the Statutory Boards not be established.

Accords

- 2.10 To maintain the direct relationship between each Waikato River Iwi and the Crown, one accord between each of the iwi and the Crown (with schedules, rather than separate accords, for relevant Ministers of the Crown and their Departments) should be retained as part of the co-management arrangements.

Funding

- 2.11 We recommend the clean-up fund be kept to agreed legacy and restoration parameters and that caution be exercised to avoid having the fund substitute for funding which should be the responsibility of local/regional government or landowners.
- 2.12 The Crown, in consultation with Waikato River Iwi and EW, should speed up the clean-up programme to provide more impetus and progress. We recommend that:
- a. the clean-up scoping study be completed as a matter of priority;
 - b. the recommendations of the clean-up scoping study be implemented immediately;
 - c. in the interim, the Guardians Establishment Committee (**GEC**) be charged with the responsibility of implementing a programme of interim action on not less than 5 projects on which there is general scientific and mātauranga Māori recognition, to be funded by bringing forward elements of the clean-up fund.
- 2.13 We recommend that the clean-up fund be administered by the Guardians, rather than a separate trust, while retaining contestable tenders.
- 2.14 We recommend retaining the existing level of co-management funding to Waikato River Iwi.

Environment Waikato and Territorial Local Authorities

- 2.15 Ministers should clarify the rules of engagement and funding (if any) for EW and TLAs while:
- a. the RMA reform process is worked through;
 - b. the scoping study on the River is done;
 - c. a more definitive Vision & Strategy document is produced.
- 2.16 It will be very important to provide a stable environment, clear leadership and openness during this period. We recommend that the Crown, with the local government stakeholders, take the lead in developing and stating rules, timetables and parameters around the current status of the co-management arrangements, the Vision and Strategy and any changes to it.
- 2.17 We believe that the co-management arrangements we have recommended represent a substantial net improvement for all concerned. They will result in progress, not log jams, have 'teeth', and contain the safeguards for the health and wellbeing of the River and the catchments we believe Waikato River Iwi seek. From the perspective of the region, the goal of restoring the health and wellbeing of the River is positive for everyone, this process will improve progress to that goal, will improve public consultation, will have a tripartite, well funded,

expert, body focused on the River, will bring forward the clean-up fund and remove uncertainty on the general RMA processes more effectively than the existing model.

Future Proofing

- 2.18 The RMA reform process may produce an Environmental Protection Agency (EPA) that assumes all or part of the role of EW in this context. The structure we recommend would accommodate such a change with considerable ease, and the Treaty context and the hard questions around 'teeth' and 'who pays' would be more straightforward if an EPA emerged from the RMA reforms. The structure would also accommodate a unitary councils approach.
- 2.19 Whichever structure emerges from the RMA reforms, the broader question of maintaining confidence and providing leadership at regional and local public and council levels will remain. To the extent the Waikato River issues may inform the RMA deliberations, the question of leadership and clarity remain uppermost in our minds as the key components required, now.

Regional Boundaries

- 2.20 A whole of river approach and whole of catchment approach is the approach most conducive to achieving the Objectives.
- 2.21 Importantly, the panel notes removal of the catchment south of the Bombay Hills to the jurisdiction of the proposed unitary Auckland council will create a boundary which severs the river catchment and will lead to complexity, conflicts and duplication of the type we have been asked to identify as appropriate for removal and change.
- 2.22 Any co-management arrangements for the River will also need to be capable of review and amendment between the Crown and the Waikato River Iwi to ensure that the principles and objectives that we have identified and/or confirmed are maintained in the face of any future statutory or regulatory reforms affecting the River, particularly in the area of local and regional government.

3.0 TERMS OF REFERENCE

- 3.1 We have been asked to advise Ministers on:
- a. how effectively the co-management arrangements meet the objectives of the deed of settlement with Waikato-Tainui and intended agreements with other Waikato River Iwi; and
 - b. whether changes are required and if so what.
- 3.2 The Deed of Settlement between Waikato-Tainui and the Crown (**Waikato-Tainui Deed or Deed**) contains the most developed expression of objectives. Clause 2 of the Deed provides:
- "The overarching purpose of the settlement is to restore and protect the health and wellbeing of the Waikato River for future generations."*
- 3.3 That theme or primary objective, is repeated in each of the other signed or draft Treaty settlement agreements, with:

- a. Te Pūmautanga o Te Arawa and the Raukawa Trust Board
 - b. The Tūwharetoa Māori Trust Board
 - c. The Maniapoto Māori Trust Board
- 3.4 The primary objective is also consonant with the agreement reached between the Marutūāhu Iwi², Waikato-Tainui and the Crown in relation to the framework for addressing the shared customary interests of those tribes over a substantive area of land and waterways in the catchment area located to the east of the Waikato River.
- 3.5 We understand the agreements which have not yet progressed to signed deeds are intended to follow a similar form to the Waikato-Tainui Deed. The features referred to below, other than the explicit list of Waikato-Tainui objectives, are common to all.
- 3.6 The Waikato-Tainui Deed:
- a. acknowledges iwi history and circumstances;
 - b. recognises te mana o te awa (the mana of the River, and in turn the tribe) and the relationship of the tribe with the River;
 - c. recognises the unity of the River tribes in their commitment to respect and care for the River
 - d. recognises mana whakahaere (in customary terms exercise of control, access to and management of the River and its resources), both individual and collective (in the latter case through the Guardians and Statutory Boards;
 - e. acknowledges the need for the Crown to respect the special relationship of Waikato-Tainui (and other River Tribes) with the River, to assist that relationship and work with them to restore mana whakahaere;
 - f. provides for financial payments and other arrangements for the benefit of Waikato-Tainui;
 - g. commits to a \$210m Waikato River clean-up fund;
 - h. contains a commitment by the Crown and Waikato-Tainui to a “new era of co-management over the Waikato River to restore and protect the health and well-being of the Waikato River for future generations.”
- 3.7 Co-management is described by the Deed as requiring:
- a. more than consultation;
 - b. highest level of good faith engagement;
 - c. consensus decision making as a general rule, having regard to statutory frameworks and the mana whakahaere of the River iwi.
- 3.8 The Deed then sets out the process for creation of a vision and strategy for the River, initially through the GEC and then through the Guardians, implemented (in part) by the Waikato River Statutory Board.
- 3.9 The specific provisions of the Deed and the Vision and Strategy are set out in **Schedule 2**.
- 3.10 For the purposes of the question we have been asked in the Terms of Reference, we understand it is the Vision and Strategy objectives (**Objectives**) which are to be met by the co-management arrangements:

² The Marutūāhu Iwi comprise Ngāti Maru, Ngāti Whanaunga, Ngāti Tamaterā and Ngāti Pāoa.

- a. *The restoration and protection of the health and wellbeing of the Waikato River.*
- b. *The restoration and protection of the relationship of Waikato-Tainui, with the Waikato River, including their economic, social, cultural, and spiritual relationships.*
- c. *The restoration and protection of the relationship of Waikato River Iwi according to their tikanga and kawa, with the Waikato River, including their economic, social, cultural and spiritual relationships.*
- d. *The restoration and protection of the relationship of the Waikato Region's communities with the Waikato River, including their economic, social, cultural and spiritual relationships.*
- e. *The integrated, holistic and co-coordinated approach to management of the natural, physical, cultural and historic resources of the Waikato River.*
- f. *The adoption of a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River, and in particular those effects that threaten serious or irreversible damage to the Waikato River.*
- g. *The recognition and avoidance of adverse cumulative effects, and potential cumulative effects, of activities undertaken both on the Waikato River and within its catchments on the health and wellbeing of the Waikato River.*
- h. *The recognition that the Waikato River is degraded and should not be required to absorb further degradation as a result of human activities.*
- i. *The protection and enhancement of significant sites, fisheries, flora and fauna.*
- j. *The recognition that the strategic importance of the Waikato River to New Zealand's social, cultural, environmental and economic wellbeing, requires the restoration and protection of the health and wellbeing of the Waikato River.*
- k. *The restoration of water quality within the Waikato River so that it is safe for people to swim in and take food from over its entire length.*
- l. *The promotion of improved access to the Waikato River to better enable sporting, recreational, and cultural opportunities.*
- m. *The application to the above of both maatauranga Maori and latest available scientific methods.*

3.11 There is a clear intention to achieve those objectives through the framework of co-management.

3.12 The Objectives reflect the complexity and holistic nature of the resource – the River and the catchment; and reflect many of the competing interests attached to a complex, large piece of New Zealand's economy.

3.13 However, the Objectives have a clear overarching purpose - restoration of the health and well-being of the River. They clearly intend a high level of recognition of the relationship of Waikato River Iwi to the River and a high level of involvement by them in core aspects of the process of planning for and managing the River and its resources. They recognise other interests including those of the communities of the Waikato River.

3.14 The Waikato River and the catchment contain layers of competing claims (access, ownership, use, extraction) and types of interests (private, public, tangata whenua, central government, local government). The Waikato River:

- a. is 425 kilometres long
- b. has a catchment area of 14,258 sq kms

- c. drains nearly one-eighth of the area of the North Island
 - d. has approximately 300 tributaries
 - e. is deeply significant to tangata whenua
 - f. flows through some of the most intensively used and modified rural areas in New Zealand
 - g. provides approximately 13% of New Zealand's electricity generation
 - h. has a catchment area from which 20% of New Zealand's exports and 9% of GDP are produced
 - i. has 80 point source discharges to the River and 1,600 discharges to tributaries
 - j. is degraded and badly polluted.
- 3.15 The economic and social structure built around the River and within its catchment is complex, longstanding and significant to New Zealand's economy. Eleven TLAs possess discretion over plans and consent processes that affect the River and catchment. About 20 Acts of Parliament are described in the Deed as immediately relevant to the settlement and the River.
- 3.16 Our reason for dwelling on the complexity surrounding these Objectives and the underlying complexity of issues arising in relation to the River and region is to make that very point. This resource, the Waikato River, gives rise to a host of issues that are connected to a host of other issues. The problem is like a spider's web – pull one section and the whole web changes.
- 3.17 In order to make progress towards the Objectives, within an environment that is this complex, a process which provides leadership, clarity and movement has very high value. Those values form an important part of our assessment of the likelihood of the Objectives being met.

4.0 THE RIVER

- 4.1 We have included within our review the whole of the catchment of and the entire lengths of the Waikato River and Waipā River because the Waipā River and its catchment feed into the Waikato River. It does not make sense to make part of the Waipā River subject to a different scheme. Equally, the Waipā River, the catchment and the people give rise to a distinct set of issues.
- 4.2 When we acknowledge the connection between a part of the River and the catchment, we do not exclude the individual issues that arise within the rohe of each iwi and deal with this below. We follow the Deed's holistic approach to the River which embraces all its tributaries, lakes, wetlands, banks and beds.
- 4.3 We have chosen to adopt a whole of river approach and whole of catchment approach as being the approach most conducive to achieving the Objectives. Removal of the catchment south of the Bombay Hills to the jurisdiction of the new Auckland council will create a boundary that is artificial, and will lead to complexity, conflicts and duplication of the type we have been asked to remove.
- 4.4 The state of the River and its catchment has been described in a series of publicly available documents prepared over more than a decade by or on behalf of Environment Waikato.³ Key points are that:

³ The first State of the Environment report for Waikato was published in 1978. For an overview of current information, see Environment Waikato 2008: The condition of rural water and soil in the Waikato Region – risks and opportunities. For detailed underlying data see Environment Waikato 2008A, Trends in River Water Quality in the Waikato Region 1987-2007 Environment Waikato Technical Report 2008/33. For a useful compilation of technical data specific to the Waikato catchment see Environment Waikato 2008B, The health of the Waikato River and Catchment - Information for the Guardians Establishment Committee EW DOC 12888444 March 2008.

- a. 78% of monitoring sites on the lowland tributaries of the Waikato fail to meet guidelines for satisfactory water quality for contact recreation because of faecal contamination, turbidity or both; and the lower Waikato fails to meet contact recreation standards because of turbidity;⁴
- b. recorded whitebait catches have fallen from an average of 46 tonnes a year during 1931-1950 to 3 tonnes in 2000;⁵
- c. the Fish Index of Biological Integrity rated three-quarters of small-medium sized river length in the Waikato catchment as being in poor condition;⁶
- d. total phosphorus and nitrogen contamination in the main Waikato River is growing exponentially since 1998 at rates of between 3% and 4% per year;⁷
- e. almost all of the shallow lakes in Waikato are seriously degraded with high levels of blue-green algae;⁸
- f. wildlife habitats in wetlands, lakes and river margins, including whitebait spawning habitat, have been extensively degraded by removal of natural vegetation, stock trampling and the introduction of weeds and pest fish such as koi carp.⁹

4.5 Pollution sources discharging into the river are of two distinct types, requiring different management approaches:

- Point sources – these discharges flow from a pipe, and can be managed by requiring treatment before discharge;
- Non-point sources – these discharges comprise run-off from the land surface, including subsurface seepage and flows, and can only be controlled through changing land management practices.

4.6 The pollution load from point sources has been regulated for many decades by Environment Waikato and its predecessors (the Waikato Valley Authority and Waikato Catchment Board) and has generally been improving as a result of controls imposed on point sources including Taupō and Hamilton sewage discharges, the Horotiu meatworks, the Kinleith mill and the Wairakei power station. The result can be seen in reduced levels of such contaminants as arsenic, boron, ammonia, and dissolved colour.

4.7 Non-point source pollution, on the other hand, is not directly regulated in the Waikato (except for nitrate in the immediate catchment of Lake Taupō) and is steadily increasing, with observed increases in concentrations of total nitrogen, nitrate, total phosphorus, *E. coli* and enterococci, and an associated decrease in dissolved oxygen. This represents a disturbing pattern of insidious water quality degradation.¹⁰ These discharges arise mainly from agricultural non-point sources and constitute the main challenge for the future improvement of the river.

⁴ Environment Waikato 2008B, op cit table 6.

⁵ Speirs D. 2001. The diversity and distribution of freshwater fish and their habitat in major rivers of the Waikato Region. Environment Waikato Technical report 2001/11.

⁶ Joy, M. 2007. A New Fish Index of Biotic Integrity using Quantile Regressions: the Fish QIBI for the Waikato Region. Technical report 2007/23.

⁷ Environment Waikato 2008B page 36.

⁸ Environment Waikato 2008B pages 36-7; see also Environment Waikato 2007B, The Condition of 41 Lakes in the Waikato Region Using LakeSPI Environment Waikato Technical Report 2007/35.

⁹ Environment Waikato 2008B sections 6 and 7.

¹⁰ Environment Waikato 2008A page v

- 4.8 The main specific drivers of water quality deterioration are sediment, faecal matter and nutrients (in the form of soluble nitrogen and phosphorus). We discuss these in turn, highlighting needed actions for each.¹¹
- 4.9 Sediment contributes to turbidity in many of the lowland streams, and in the main river below Ngāruawāhia. Fencing and revegetation of streamsides is needed if sedimentation is to be curbed; while soil conservation planting programmes would also be needed on hill country, especially in the Waipā and Whangamarino catchments, to reduce sediment inflow into the lower Waikato River. Erosion-prone hill country, likely to regularly contribute sediment to streams, occupies 270,000 ha of the Waikato catchment, while Environment Waikato's soil conservation programmes cover only 12,700 ha. A 2002 survey estimated there were over 14,000 kilometres of unfenced streams in the Waikato catchment; despite recent progress, staff believe that most of this remains to be fenced; a further report is due later this year. Environment Waikato has just announced it is terminating its stream fencing subsidy programme in June.
- 4.10 Faecal contamination contributes to the poor state of many lowland tributaries and of the main river below Ngāruawāhia. Controlling this will also require streamside fencing. However, studies elsewhere indicate that much faecal contamination enters waterways through the smallest streams and farm drains. This suggests that fencing only streams covered by the Clean Streams Accord definition ('deeper than a redband, wider than a stride') will not be sufficient to achieve contact recreation standards in streams in some intensively farmed areas.
- 4.11 Nutrients (nitrogen and phosphorus) stimulate the growth of both nuisance and harmful algae, and increase turbidity. They present the most intractable challenges for pollution control. Nitrate in particular is highly mobile and cannot be controlled simply by stream fencing; overseas experience indicates that achieving significant reductions in nitrate leakage from farm systems requires restricting imports of nitrogen into the farm system, with potential effects on stocking rates. In Waikato, nutrient contamination of streams is closely correlated with stocking rates. Capping and then reducing flows of nutrients into the Waikato catchment above Karapiro is a key priority for restoring river health, and such controls also need to be extended to the lower Waikato over time. Environment Waikato has resisted pressure since 1998 to extend nutrient regulation beyond the Taupō catchment. There is a need for policy development and community engagement, but Environment Waikato staff advised the GEC in 2008 that there is no funding for significant expansion in scope within this work area. Since then EW has proposed in its LTCCP a modest increase in funding, notably for development of a new regional plan over 2011-2013.
- 4.12 The overall picture is that achieving the overarching purpose of the Deed, of restoring and protecting the health and wellbeing of the River, will be a major undertaking. Even if achieved over an extended period of time, it will require tough decisions to be taken which balance the concerns of those with an interest in the River with those who have an interest in the land. It will also require sustained and committed implementation of decisions once taken. The pre-existing governance arrangements have made only limited progress with these challenges.

¹¹ The needed actions set out in sections 4.9 to 4.11 are not the opinions of the Panel but are the recommendations of Environment Waikato staff set out in their report to the Guardians Establishment Committee: Environment Waikato 2008, Report to Guardians Establishment Committee on Proposed Visions and Strategies for factors affecting the health of the Waikato River. Environment Waikato Internal Report Series 2008/04

5.0 THE RMA REFORMS

- 5.1 The Government has embarked on a two-phase reform of the RMA and associated governance institutions. Issues highlighted as background for the reforms, and relevant to this report, include that RMA processes are too slow and costly; that governance responsibilities are excessively devolved; that water allocation mechanisms are deficient; and that councils' stated water quality objectives are not being achieved. Initiatives taken during phase one of the reform process include the introduction of a Bill to streamline the Act's processes and to establish an EPA to provide the national leadership seen as missing from the Act's implementation.
- 5.2 The work programme for phase two of the reform is under consideration by the government and is expected to be publicly announced shortly. It is expected to include further definition of the role and functions of the EPA, including whether it should assume some of the water-related functions currently undertaken by regional councils.
- 5.3 The Technical Advisory Group on the RMA Reforms has produced a report which includes a chapter on governance issues and focuses particularly on governance of water. The majority view of the Technical Advisory Group favours a review of regional councils in the context of the forthcoming review of the role and functions of the EPA. The report queries the need for a three-tiered resource management system in New Zealand. It says that a two-tier system comprising a nationally accountable EPA working directly with territorial authorities should be considered as an alternative, as it could offer a more promising configuration for effective, efficient and equitable use of the financial and technical resources available for regional planning and resource management. Another option is to adopt the unitary approach already in existence in several parts of the country and planned for the Auckland region.
- 5.4 Water allocation is another major issue expected to be considered in phase two of the RMA reform. The current system allocates permits to use water on a first come, first served basis, but the majority of economically important catchments are expected to be fully allocated by 2012. The Waikato River and its tributaries are already fully allocated.
- 5.5 From the perspective of improving efficiency of water use and removing unnecessary barriers to development in rural areas, it is considered desirable by some to establish a system for transferability of water permits, including clarifying the property right in water. As water ceases to be a free good readily available on application to regional councils and instead becomes both scarce and tradable, its value will continue to rapidly rise. This raises questions about the underlying ownership of water, the capturing of the associated rents, and matters of equity of the associated governance arrangements. While the RMA is silent on who owns water, the allocation of water via resource consents or regional plans is considered by tangata whenua as effectively conferring ownership in the water. Also, tangata whenua point to the Treaty of Waitangi and its explicit protections of water and the water related Treaty claims already lodged with the Waitangi Tribunal. It is widely accepted that if the Crown is to establish a framework for trading in water it will need to engage with and address the position of its Treaty partner. Such matters are explicitly subject to the co-management arrangements of the Waikato-Tainui Deed.

6.0 ENVIRONMENT WAIKATO

- 6.1 We met informally with the Chairman and CEO of EW and were grateful to them for their willingness to do so. They have a clear concern as to how the co-management model being built will work and a number of those concerns are clearly valid. They advised that they are working with some urgency with Waikato River Iwi and offered, for our consideration, a view of a possible structure.
- 6.2 The core of the proposal from EW is that the Guardians would remain, and that a new Waikato River Joint Committee (**the Committee**) with similar functions to the proposed Statutory Boards would be created as a committee within EW, to imbed mana whakahaere within EW's decision-making processes. EW have indicated they would be prepared to have objectives from the Deed incorporated into the objectives of the Committee and would appoint independent commissioners from an agreed pool to sit alongside councillors on plan hearings with River related aspects.
- 6.3 The Committee and its resource would be funded by the Crown, be an EW committee, have 5 members from Waikato River Iwi, and 5 members from EW, acting on a majority, protected by statute in the same way some existing EW committees are, with a provision that EW could not issue a plan that does not comply with a recommendation on a River issue from the Committee. The system works on negative control – plans would be submitted until the Committee and EW find common ground. Neither central government nor the TLAs would have representation on the Committee. EW would have negative control on positive actions by the Committee by virtue of the 5:5 split (as would the Waikato River Iwi).
- 6.4 While we concur in EW's goals to simplify and to work more closely with Waikato River Iwi, we think that the Crown and the Iwi would struggle with a model with the framework suggested: holding the power of action within EW at both levels of decision, separating the costs from the decisions, not including the TLAs except by invitation and not including the Crown at what seems to be designed to be the key operating body.
- 6.5 While we do not agree with the EW model as a way of reconciling the balances at work for co-management in this instance, we are conscious of the fact that EW wished Ministers to have their view and asked us to include it in our report. We do concur with EW's views on simplification and the need to identify clear rules that will define what EW and the TLAs are to do and how and whether they are required to fund additional processes or not.

7.0 CO-MANAGEMENT – THE TREATY POSITION

- 7.1 In our review of the co-management agreements, we understand the Waikato River Iwi and the Crown have an expectation that this co-management arrangement should be consistent with:
- a. the substance of the constitutional arrangements agreed between the Crown, on behalf of the people of New Zealand, and tangata whenua;
 - b. approaches to other Treaty claims and policy work associated with that;
 - c. other policy issues (such as the role and place of tangata whenua in relation to water).

- 7.2 All parties require a solution that is credible to Waikato River Iwi and the Crown in the Treaty context, and to the wider community in the context of the lives, communities and economy that have been built within the catchment.
- 7.3 For Waikato River Iwi, the Deed and agreements recognise and address a restoration of te mana o te awa (the mana of the River and tribes), and mana whakahaere (exercise of control, access to and management of the River). Critically, those goals can be achieved within a co-management structure without excluding notions of public access, proper process, economic prosperity, property rights and development.
- 7.4 There is a notion in some quarters that Treaty settlements are somehow negative as they devolve power or assets to Māori. This settlement demonstrates that a Treaty settlement involving a natural resource can be a catalyst for substantial gains for tangata whenua and for a region. The positive aspects of these settlements and agreements deserve public acclamation and the Waikato River Iwi should be given credit for the manner in which they have approached these negotiations and produced a clear approach to the River.
- 7.5 It is a fundamental foundation of the co-management arrangements that have been agreed between the Crown and Waikato-Tainui for the Waikato River (and agreed in principle¹² with the other Waikato River iwi) that they are part of a Treaty settlement¹³ and are based on an ongoing Treaty relationship between the Crown and the Waikato River Iwi. This Treaty context is all important in the nature, extent and implementation of any proposed changes to the co-management arrangements considered and recommended by the Panel.
- 7.6 While there are financial aspects to the Treaty settlement with Waikato-Tainui and the proposed settlements with the other Waikato River Iwi (including the agreed Clean-Up Fund of at least \$210 million), the focus of the Waikato-Tainui settlement is not directed to payments of a compensatory nature, but is instead directed to the future health and wellbeing of the Waikato River and the active involvement of Waikato-Tainui in the various planning and decision-making processes affecting the management of the River. This is represented in the twin, but nonetheless distinct, tenets of the Waikato-Tainui Settlement, namely:
- Te Mana o te Awa – reflected in the overarching purpose of the settlement of restoring and protecting the health and wellbeing of the Waikato River for future generations; and
 - Mana Whakahaere – in essence, the exercise of authority and control over the management of the River and its resources.

¹² Unlike Waikato-Tainui, the agreements entered into to date with Te Pūmāutanga o Te Arawa, the Raukawa Trust Board and the Maniapoto Māori Trust Board are non-binding agreements in principle, not binding deeds of settlement. The Te Pūmāutanga/Raukawa deed that has been provided to the Panel was not concluded at the time of the 2008 election and has not been substantially progressed since that date. No documents relating to the Waikato River have been entered into between the Crown and the Tūwharetoa Māori Trust Board and the deed that has been provided to Panel was also not concluded at the time of the 2008 election and has not been substantially progressed since that date.

¹³ The exception to this is the proposed deed with Ngāti Tūwharetoa which does not represent settlement of a Treaty claim, but rather sees Ngāti Tūwharetoa, as an iwi with interest in the upper Waikato River, being recognised in the proposed co-management arrangements for the Waikato River. Any "redress" issues arising in connection with Ngāti Tūwharetoa's Treaty grievances concerning the Waikato River or otherwise will be separately negotiated as part of a comprehensive settlement of Ngāti Tūwharetoa's Treaty claims. Nevertheless, the proposed Deed between the Crown and Ngāti Tūwharetoa is consistent with, and represents an important aspect of, the Crown's ongoing Treaty partnership with Ngāti Tūwharetoa and is consistent with already existing relationships between Ngāti Tūwharetoa and the Crown such as those relating to the ownership and management of Lake Taupō.

7.7 At the broadest level, it might be said that these dual principles are to be achieved in a co-management context through the various instruments proposed in the settlement, albeit that:

- a. certain of the instruments are more particularly directed towards Te Mana o Te Awa and others to the exercise of Mana Whakahaere; and
- b. not all of the instruments proposed under the settlement might be described as “co-management arrangements” in the orthodox sense.¹⁴

7.8 While attention is not expressly drawn to it in the Panel’s terms of reference, we also note that there are 7 underlying principles contained in section 2 of the Kiingitanga Accord between Waikato-Tainui and the Crown.¹⁵ These principles, which are appended in full at **Schedule 3**, are acknowledged by the Crown to underlie:

- a. The relationship of Waikato-Tainui with the Waikato River;
- b. The agreements expressed in the Waikato-Tainui Deed; and
- c. The Kiingitanga Accord.

7.9 These 7 principles, which are also repeated in Schedule 1 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Bill, are:

- (i) Te Mana o te Awa (the spiritual authority, protective power and prestige of the River);
- (ii) Mana Whakahaere (authority and rights of control);
- (iii) Health and wellbeing;
- (iv) Co-management;
- (v) Integration;
- (vi) The Treaty of Waitangi; and
- (vii) Honour and integrity.

7.10 Clause 19.5 of the Waikato-Tainui Deed provides that the Deed shall be interpreted “in a manner that best furthers the overarching purpose of the Settlement and is consistent with the principles set out in the Kingitanga Accord”.

7.11 Having regard to the nature and context of the Panel’s task, it would seem that these 7 principles usefully capture the context in which the Panel must carefully navigate its course.

7.12 The Treaty context of the arrangements under review by the Panel raises three other important matters which we have borne in mind:

¹⁴ In fact, in both the Waikato-Tainui Deed of Settlement and in the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Bill, the term “co-management arrangements” is only used to describe the Integrated Management Plan, the Waikato-Tainui Environmental Plan, RMA Processes, and the Transfer of Powers (see section 8 of the Deed and clauses 24-33 of the Bill respectively). While the Vision and Strategy, Guardians and Statutory Board are not within the term “co-management arrangements” as used in the Deed and Bill, the Panel has proceeded on the basis that they are within the scope of the our review.

¹⁵ The Kiingitanga Accord is a unique aspect of the Waikato-Tainui Settlement, which is not reflected in the proposed settlements for the other Waikato River iwi. The Kiingitanga Accord is in effect a collateral Deed between the Crown and Waikato-Tainui which addresses a number of ongoing processes where, due to exigencies of time and the pending election, a number of processes were unable to be completed in time to be incorporated in the Deed of Settlement itself. Accordingly, the Kiingitanga Accord provided Waikato-Tainui with various Crown commitments regarding ongoing processes that remained to be completed post-settlement, but which nonetheless form a fundamental part of the Waikato-Tainui settlement package.

- a. The Waikato-Tainui Settlement is a binding contract between Waikato-Tainui and the Crown (on behalf of the people of New Zealand) and, as such, any changes to the arrangements contained in that Deed of Settlement (or the related Bill) will require the consent of Waikato-Tainui. To do otherwise, even if implemented by legislation, would be both a breach of contract and a Treaty breach and therefore beyond the reasonable contemplation of the Crown;
- b. The parties to the Treaty are the Crown and tangata whenua, as are the parties to the various settlement documents. As such, the primary interests that the Panel is considering are the interests of each of the Waikato River Iwi, not some generic or homogenous notion of "Waikato River Maori";¹⁶
- c. The settlements relating to the Waikato River are to be implemented through legislation. Thus, notwithstanding the previous administration's concern with existing statutory frameworks, there is broad scope for innovative solutions and arrangements to be explored, consistent of course with the principles previously noted.

7.13 An important factor in undertaking our review is recognising that while each of the Treaty settlements with the respective representative iwi entities contain much common ground, they are distinct tribal polities each with their own unique history, tikanga and 'visions' for the resources of their rohe, including the Waikato River and its catchments.

7.14 Importantly, the Waikato-Tainui Settlement reflects an express commitment by the Crown to enter into a "new era of co-management". This appears consistent with a desire to develop new initiatives rather than being confined to existing precedents where co-management has been entertained on a much reduced scale in the context of Treaty settlements (eg, the Lake Ellesmere/Te Waihora arrangements under the Ngāi Tahu settlement).

7.15 In view of the new government's signaled intentions in relation to both RMA and local government review and reform we have not considered ourselves to be constrained by existing statutory frameworks or by policies that were developed in an earlier era (eg, Cabinet's 1998 policy decisions regarding the treatment of natural resources in Treaty settlements). We concluded that if we are to assist the Government in developing an enhanced model for the Waikato River co-management arrangements and a model that may be able to be utilised in whole or in part in relation to other waterways (or land and resources) elsewhere in New Zealand, we should explore all relevant solutions even where legislative or policy change is required for implementation.

7.16 We have noted that the co-management arrangements reflected in the final form of the Waikato-Tainui Deed necessarily reflect a negotiated compromise between the Crown and Waikato-Tainui. We have not assumed that the arrangements in the Waikato-Tainui Deed represent the optimal model for Waikato-Tainui.

7.17 A number of factors, some driven by the Crown (or certain interests within the Crown) and others by concerns of Waikato-Tainui, together with the somewhat unique exigencies of the pending 2008 election, influenced the arrangements finally reflected in the Waikato-Tainui Deed and the associated Kiingitanga Accord.

¹⁶ For a broader discussion of this important distinction, which is commonly overlooked by media and others, refer the article by Professor Paul McHugh, "Treaty Principles": *Constitutional Relations inside a Conservative Jurisprudence* in (2008) 39 VUWLR 39.

7.18 While not an exhaustive list (and in no particular order), we understand the following factors played a role in the final form of the arrangements:

- a. As it was a settlement of Waikato-Tainui's claims in respect of the Waikato River only, the nature of the settlement, including the co-management arrangements, was required by the Crown to be limited to the Waikato River and tributaries, with broader catchment-wide initiatives limited in nature;
- b. Due to the desire of both parties to conclude a Deed of Settlement before the 2008 election, certain elements of the settlement were unable to be fully developed and/or were agreed under enormous time pressures;
- c. There was a reluctance on the part of the former administration to fetter the existing discretions of the local government;
- d. Despite proposals advanced by Waikato-Tainui to include specific deliverables regarding the quality of the Waikato River in the Vision and Strategy, those proposals were rejected as being too detailed by the Crown;
- e. There was opposition from certain officials within the Crown to the level of recognition to be given to certain of the plans and other documents established under the settlement, such that the current levels of recognition provided for in the Waikato-Tainui settlement do not necessarily reflect those sought by Waikato-Tainui;
- f. The development of a joint Waikato-Tainui/local government Statutory Board for the lower Waikato River was, in part at least, a reaction to Waikato-Tainui's concern regarding the broad discretions still retained by local government in relation to the decisions affecting the Waikato River and the absence of direct Waikato-Tainui representation on those local authorities;
- g. The Integrated River Management Plan was a Crown proposal in relation to conservation and fisheries management, not an initiative developed by Waikato-Tainui;
- h. the complexity and seeming multiplicity/duplication of instruments and processes is a reflection, in part at least, of the difficulty that the Crown had (and has) in coordinating and implementing integrated cross-agency engagement and solutions in a complex legislative and regulatory environment such as that applying to the Waikato River;
- i. Waikato-Tainui did not wish to negotiate co-management arrangements that impacted in any material way on the exercise of mana whakahaere by the other Waikato River Iwi and did not wish to be seen as negotiating a precedent that would be applied by the Crown to other Iwi and/or other Treaty settlements elsewhere in New Zealand;
- j. By the time the Waikato-Tainui Deed was substantially advanced, most other Waikato River Iwi were either not in Treaty settlement negotiations and/or did not have a mandate to engage in such negotiations and, given the pending 2008 election, neither party was willing to delay the negotiations such that the negotiations of the other Iwi might advance to a stage where they could be progressed in parallel with the Waikato-Tainui negotiations;
- k. While the Waikato River is of great cultural and environmental significance to all the Waikato River Iwi, it is viewed as a tūpuna awa (ancestral river) only by Waikato-Tainui; and
- l. Importantly, it was initially envisaged that the scoping study for the clean up fund would be commissioned and completed before any settlement with Waikato-Tainui was concluded, thereby informing the parties of the particular needs of the River such that the co-management arrangements and other initiatives (and the clean up fund itself) could be attuned to those needs, but for a number of political and other reasons this was deferred by the Crown and remains today at a very preliminary stage.

- 7.19 We have been mindful of all of these factors. There would appear to be considerable scope for enhancement of the arrangements if these matters can now be properly addressed and accommodated.
- 7.20 Finally, it is also important to note that the co-management arrangements under the Deed do not simply relate to local government and RMA processes, although that has been the principal focus of concerns expressed regarding the efficacy of the co-management arrangements. The management of fisheries and conservation resources by the Department of Conservation and Ministry of Fisheries respectively, and associated planning processes, are also of fundamental importance to Waikato-Tainui (and the other Waikato River Iwi) and are provided for in the settlement.
- 7.21 Those conservation and fisheries initiatives in relation to the Waikato River to the large part do not involve RMA processes or local government. Accordingly, we concluded that we need to be cautious in our approach to those aspects of the Waikato-Tainui settlement, where implementation has already begun through the signing of accords between Waikato-Tainui and the Ministries of Conservation and Fisheries and related work programmes pursuant to agreements in the Kiingitanga Accord.
- 7.22 We attended hui:
- a. on 16 April with representatives of Waikato-Tainui, the Tūwharetoa Māori Trust Board and the Maniapoto Māori Trust Board (each separately);
 - b. on 17 April with representatives of the Raukawa Trust Board and Te Pūmautanga o Te Arawa (combined) and the Marutūāhu Working Group;
 - c. on 23 April with representatives of the Hauraki Māori Trust Board.
- 7.23 We were very grateful to all iwi for their willingness to attend and to discuss their respective positions.
- 7.24 We found a number of concerns or positions that nearly all of the iwi had in common:
- a. their Treaty relationship is with the Crown, they wish to sit at the same table as equal partners in that relationship, and do not want it diluted;
 - b. the different rohe and issues unique to each iwi need to be recognised and not disappear in some amorphous main river vision or plan – a number of iwi are making this point strongly;
 - c. a whole of river, whole of catchment approach is likely to be more effective;
 - d. there is a recognition that the co-management model is looking complex – accompanied by a suggestion that the regulatory model for the region is maybe even more complex and should get just as much effort to simplify it and make it more effective;
 - e. frustration with the divide between the Crown and local government and the dilution of their interests and real participation in planning and decision-making processes;
 - f. working together with fewer entities and fewer plans is a subject that can be discussed if it will lead to more progress more quickly and there are safeguards – particularly (f) and (g) below;
 - g. the co-management arrangements have to have ‘teeth’ – a word used by every group;
 - h. each iwi must be resourced to participate effectively;

- i. there is considerable support by the Waikato River Iwi for the Guardians and the Vision & Strategy developed by the GEC, but they feel the process is slow, the Vision & Strategy needs more detail, and they are concerned about the effectiveness within a resource planning and consenting system they feel is very complex.

7.25 The iwi have a very clear view of the variety of interests at stake in the region, how those interests are represented at local government level (where there is a strong sense of exclusion), and the dynamics of the planning and consenting systems. They are already participating in regional dynamics at many levels as in forestry, farming and the owners of potential development land.

7.26 We acknowledge that the Marutūāhu and Pare Hauraki tribes are not a part of the Guardians and have not settled their claims with the Crown. This was a factor leading to the agreement between the Marutūāhu tribes, Waikato-Tainui and the Crown (noted at paragraph 3.4 above) to address the shared customary interests in part of the lower Waikato River catchment area pending such a settlement. The issues raised reflected both the need for appropriate participation in that area of "overlap" and a desire to develop their own arrangements with the Crown in due course in the other catchments within their rohe.

7.27 The Hauraki Māori Trust Board representatives largely echoed the comments at paragraphs 7.24-7.25. They did note, however, that they do not participate in the current co-management largely because they consider its structures are not configured to appropriately represent them.

7.28 We believe that a discussion can be had on focusing on the Guardians entity and a more developed version of the Vision & Strategy as the main body and plan, with compartments for discussion and recognition of individual iwi interests and plans within it, provided that there are clear safeguards and it can be demonstrated it will be more effective.

8.0 CO-MANAGEMENT – PRINCIPLES AND ANALYSIS

8.1 Key issues emerging for co-management in the Waikato River and catchment are:

- a. the resource is complex with many interlocking layers of competing claims and interests;
- b. the overarching objective of restoration of the health of the River has strong support;
- c. the issues are more about how to restore health to the River, who pays, and who manages;
- d. information as to what is required to achieve the Objectives does not yet exist;
- e. the time lags:
 - i. between commissioning of research and receipt;
 - ii. between receipt of research and negotiation of statutory processes through to decisions;
 - iii. between decisions to take action and observance of results
 - iv. on remedial action;
 - v. will test credibility and political consensus;
- f. fear of a wrong result will create obstacles at numerous levels as various parties use the processes available to them to slow down decision-making;
- g. all stakeholders in the region and in this process will be required to exercise patience in the best scenario and great patience under adverse scenarios;

- h. many of the decisions about the resource will be made by parties other than the Crown or Waikato River Iwi at local government or statutory decision level;
- i. the poor state of the health of the River is generating considerable concern;
- j. economic development in the region will be impeded if there is not a clear pathway for resource management decision-making in the interim and a clear path for a plan for restoration of the health of the River.

8.2 There are two elements to the co-management arrangements in the Waikato context:

- a. first, the structure agreed with the Crown setting out the rules for co-management between Waikato River Iwi, the Crown and local government in the agreements in principle, agreements, and Deeds between the Crown and Waikato River Iwi (following which the Crown moves to its more regular role as central government, informed by the Deed and the Accords);
- b. second, the co-management arrangements between Waikato River Iwi, entities such as the Guardians (which Waikato River Iwi participate in) and the regional or local decision-makers who issue plans or consents.

8.3 In that environment, there is a huge premium on clear rules, clear structures, clear plans, simplicity and the minimum number of structures, processes and decision layers.

8.4 Leadership, progress, clear communication, consensus building and relative levels of certainty (at least as to direction) are critical to confidence.

8.5 Co-management arrangements should therefore:

- a. contain a very clear expression of objectives agreed;
- b. contain objectives that are aspirational (requiring forward movement to positive outcomes), consistent with broader government policy, sound in the eyes of the wider community;
- c. contain express good faith obligations and a wish to operate by consensus where possible;
- d. be pitched in a manner that has reasonable probability of managing the resource to achieve the objectives agreed upon;
- e. be built to provide leadership and certainty early;
- f. be staffed and resourced in such a manner as to be authoritative and highly competent in all respects;
- g. provide outcomes early;
- h. contain clearly articulated rules and structures, including clear rules as to what the Crown will be required to do and what it cannot do;
- i. contain an internal management architecture which is as simple as possible, and is designed to minimize the number of processes and potential for conflict within the co-management structure (to conserve resource and energy for the real battle – achieving the outcomes on the ground and persuading others);
- j. be properly integrated at all levels with the external regulatory, investment and social context, including policies, plans and consents;
- k. deliver resource to the Waikato River Iwi to participate effectively, early, with meaningful input early;
- l. deliver resource to the Crown and TLAs to participate effectively;
- m. contain structures and personnel arrangements that will deliver real consistency and deep rooted personal relationships over long periods of

years (noting that most real gains in the relationship between the Crown and Māori come from real personal relationships between leaders and the discontinuous leadership of the Crown and TLAs is problematic);

- n. advocate or mandate solutions that provide meaningful guidance to other statutory decision-makers, not vague statements or standards that are immediately read down, or sideways;
- o. be designed to achieve real runs on the board early, to build confidence and commence delivery of outcomes;
- p. clarify early the effect of the co-management agreement on third parties and affected decision-makers (especially investors and TLAs).

8.6 Co-management, by definition, will usually involve the protection or improvement of a significant natural resource.

8.7 Like most environmental issues, there will be a wide degree of public support for the objective, but sharp differences over who will pay, local economic impacts, and a perceived reduction of private rights.

8.8 A number of problems emerge when using a Treaty settlement to address a major environmental issue:

- a. the settlement issues and the environment issues tend to get mixed up in the perceptions of central government officials, local government and the public, in a manner that does not help either issue;
- b. the strength of the Treaty relationship between the Crown and tangata whenua is often seen by some as a threat, and a reason for steering control or real influence away from an entity dominated by the Crown and tangata whenua;
- c. from an environmental point of view, the willingness of tangata whenua to promote environmental issues should be encouraged;
- d. local and regional bodies, and in many cases central government agencies and departments, will often resist reduction of their control rights;
- e. the Crown's involvement in a Treaty settlement provides a temptation to say everything should be a Treaty cost, leading to a reduction in regional or local government willingness to pay or to require the user or polluter to pay (noting most regional or local government authorities are under tremendous pressure to reduce costs and rates and the temptation to avoid or shift costs is irresistible) – in which case the Treaty funding will have been a waste of money and time;
- f. a Treaty settlement can provide, as in this case, a very strong focus to an environmental goal, but that can be lost if the existing regulatory bodies and processes are either too complex to manage towards the goal effectively, or are not disposed to (due to pressures from those who elect them or historical or cultural bias). We note here that the RMA reform process acknowledges the overly complex nature of our environmental management tools and seeks to simplify them. There is a risk that the Crown (using public money), and tangata whenua, will see the money and effort dedicated to fixing the environmental issue disappear in a fog of confusion amongst existing agencies;
- g. where Treaty settlements produce part or even the bulk of the funding to address an environmental problem or issue that affects local communities, local government will often claim the right to manage the money or the regulating process that will call for more or less money, or seek the right to determine the splits between users, local public, or national public contributions. Due to the need to preserve the Treaty relationship between the Crown and tangata whenua as a primary or dominant fact, there is a risk

that both parties will back away from an arrangement that brings local government inside the tent and by doing so will allow the operational and core decision mandate to lie elsewhere.

- 8.9 There are several, clear, hard issues at the centre of the co-management arrangements for the Waikato River that deserve to be highlighted prior to addressing the solutions that we see.

First - 'Teeth' or, who decides

- 8.10 Tangata whenua, most environmental observers, and many decision-makers in the Waikato believe that:

- a. sustainable management practices employed to date have not sustained the health of the River;
- b. the RMA and its governance regime are inherently incapable of meeting the expectations of tangata whenua;
- c. while the Crown may talk about making the Treaty processes for co-management simpler, tangata whenua argue with considerable logic that there is an equal case for making the regulatory processes of the Crown and local government more simple and workable;
- d. no structures or processes will work unless they bite or have 'teeth' (which all the iwi with whom we spoke referred to), by way of requirements for approval of district and regional plans or approval of standards for activities, or consents, by an entity representing tangata whenua in an effective manner.

- 8.11 The contrary view, held by many industry, farming and local government representatives is:

- a. RMA and other processes exist for involving tangata whenua;
- b. the Local Government Act, RMA and other statutes require the Crown to preserve the power of decision of local bodies (essentially EW and the TLA's) on resource matters and land use management related to the River;
- c. it is imperative to maintain the mandate of EW and the TLA's on these subjects because only they are accountable to the local communities;
- d. there is too much GDP at stake to allow uncertainty and conflict to exist and that is what will happen if there is a clear requirement for approvals from or decisions by an entity such as the Guardians or if central government seeks to impose its will on the Waikato region.

- 8.12 Many initiatives to improve the river are already underway, and EW and the local authorities have responsibilities or plans that will cost ratepayers a considerable amount of money. There is a question as to the ambit of their responsibilities and powers to contribute, which needs to be resolved. One of the positive outcomes of co-management and the objective to address the health of the river is that local government will now be challenged by all to approach their tasks in a much more focused and co-ordinated manner. For example, it can legitimately be asked why EW and the many local authorities have not, since the RMA came into law in 1991, worked together and used existing powers under the RMA to produce a single (combined) regional and district plan for the Waikato River and its catchments in order to achieve consistency and common approach while avoiding unnecessary duplication of process and cost.

8.13 The Deed and agreements provide that the Vision and Strategy is to be a National Policy Statement. Extensive negotiations between the Crown and tangata whenua, and the agreements in place, accord it that status. Extensive public consultation has occurred and further consultation is underway as the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Bill receives public scrutiny in Select Committee. We believe it should remain a National Policy Statement as that has already been agreed.

8.14 The hard question is the extent of the role of the Crown and tangata whenua, in their Treaty relationship, in deciding or approving local or regional plans or consents.

8.15 The debate tends to focus on whether local government on the one hand, or tangata whenua or the Crown on the other, should lead, decide or have a veto (and we add that tangata whenua have not sought a higher status than that of local government). The essence of co-management requires all parties to work together. We believe that what is happening now is that:

- a. despite extensive consultation and opportunities for public input, including the Select Committee process, for various reasons people are only recently coming to grips with the arrangements between the Crown and Waikato-Tainui ;
- b. as a constitutional compact between the Crown and tangata whenua, those arrangements have naturally tended to focus on the relationship between the Crown and Waikato River Iwi as the co-management model, relying on "existing process" to implement them rather than manufacturing at the outset a co-management model along with local and regional government;
- c. local government is cautious about many aspects of the existing model, its complexity and the uncertainties created, including as to where they fit in the picture;
- d. some sectors are unclear and nervous about the new regime;
- e. the process is underway to extend the existing model to the other Waikato River Iwi, increasing concerns by some about the ability of the existing process to cope;
- f. the existing model relies heavily on relationships with an unknown shape with EW and the TLAs, and does not actively address the needs of EW and the TLAs or the exact fit with their processes and responsibilities ;
- g. EW and the TLAs are not only seeking clarification, but are also seeking to protect their perceived mandates and positions.

8.16 For co-management to work, we think there needs to be a co-management structure that has:

- a. the Treaty partners and local government at the table,
- b. a common objective, and
- c. a common plan.

It should be simple and provide leadership now.

8.17 While we believe that arrangements should include local government, the Treaty relationship between the Crown and tangata whenua is a reality to be faced by those at the table, especially the fact that the Crown, on behalf of the people of New Zealand, has, thus far, already agreed with one of the Waikato River Iwi (Waikato-Tainui) to change the constitutional arrangements in the management of the Waikato River.

- 8.18 We have elected to recommend that the arrangements for co-management have effective 'teeth'. If they are to be accepted in the region, the co-management arrangements must be balanced, reasonable and transparent. There are numerous examples in natural resource management of central government intervening in local and regional RMA processes on specific issues both as to subject matter and location.
- 8.19 We believe that central government should intervene to negotiate a structure that will bring leadership and progress to outcomes and which does not fall prey to mechanisms such as negative control and conflicting plans and drivers.

Second – 'The money' or who pays

- 8.20 The temptation for many is to accept that an amorphous public purse called central government (the Crown) should alone pay in the name of a Treaty settlement. We think that is illogical and wrong.
- 8.21 In the context of co-management of a natural resource, and the protection or enhancement of that resource, there are a number of parties who may pay:
- a. the Crown, as it may have agreed as Treaty partner with tangata whenua to contribute to clean up or similar tasks (in this case by divergence of money that tangata whenua may have argued to be due to them but chose to be spent on the River), and which may be regarded as a contribution outside of user (or polluter) responsibilities, or regular central or local responsibilities and if not what is the point of the Crown payment in a Treaty settlement?
 - b. the Crown in its role as central government on a national basis;
 - c. local authorities and regional authorities – funded by rates and dividends from investments;
 - d. users – by way of charges or regulation on activities with an economic cost to the user (noting this will include some tangata whenua interests immediately and more over time).
- 8.22 In today's world, with pressure on rates and finance, there is an irresistible urge (which we have seen) for local government and private users to see any expenditure on river clean up issues or land use regulating issues as a Crown expense as a result of a Treaty settlement. If that occurs and the Crown payment becomes a substitute for other payments, the Crown and tangata whenua will have been wasting their time.
- 8.23 Presently there is no plan to determine changes in land use management for the catchment (a national economic issue) or to determine with whom the responsibility for prevention or clean up may rest. However much local or regional government may argue that the decisions are theirs, we believe that they are unlikely to have the legal or practical capacity to meet or rate, to meet those responsibilities.
- 8.24 We recommend that the Crown be jealous in protecting the public purse against local or regional leakage and dedicate funds in a very specific way in the interim for tangata whenua initiatives. Agreement should be sought with local authorities and EW on the contributions that they will make to improving the health and wellbeing of the River. Any long term plan will include some impact on those who contribute to the run-off into the river. It is essential for the sake of New Zealand's

economy that the nature of that obligation be clarified soon, otherwise investment decisions will stall.

8.25 Specifically, we consider that Treaty settlement funds should not be used to assist landowners to meet their obligations to avoid, remedy and mitigate the adverse effects of their activities on the environment. Any diversion of settlement funds would involve treating landowners differently from all other dischargers to the river, who are obliged to pay for their own pollution control. Rather, the settlement funds should be used to address legacy issues from the past century-and-a-half of degradation of the river and its tributary resources, for which the present generation of landowners cannot reasonably be held responsible. This broad approach would mean that funds would be focused on (for example) the restoration of previously degraded lakes, wetlands and river-edge habitats; the control or eradication of invasive plants and pest fish; and research into how to implement effective ecological restoration. Responsibility for curbing existing inflows of nutrients, sediment and faecal matter into the river and its tributaries should lie with landowners.

8.26 We also believe the Crown should resource those Waikato River Iwi who are noticeably behind in capacity building to bring the resource and capacity of each of those iwi up to speed more or less immediately. We recommend that the iwi buy resource where necessary (at the Crown's expense with pre-agreed limits) - to train and enable them to participate fully and confidently. We observe in passing that the expenses that may be paid to Waikato River Iwi in the Waikato River issues are simply insignificant relative to the contribution of the various iwi to cleaning up the River with money they might have otherwise sought by way of settlement.

9.0 OUR CONCLUSIONS AND PROPOSAL FOR CONSIDERATION BY MINISTERS

9.1 Things that work and should be retained are:

- a. the Crown's commitment to co-management and the outcomes agreed with the Waikato River Iwi;
- b. the clarity and aspirational nature of the overarching objective to have a healthy river and the unifying effect of that objective;
- c. the move to recognise and protect te mana o te awa and mana whakahaere;
- d. resourcing the iwi to build capacity for effective participation;
- e. having an overall policy statement and strategy in one primary instrument;
- f. statutory recognition of the primary instrument;
- g. creation of an entity that reflects the Crown – Māori relationship;
- h. a whole of river and whole of catchment approach;
- i. the integrated, holistic view of the River and its resources;
- j. a contestable, Crown-seeded clean-up fund;
- k. joint working parties for early, meaningful, well resourced engagement.

9.2 Things that do not work and pose risks to effectiveness are:

- a. the attempt to break down the existing entities, plans and processes of different regulatory and management regimes and different levels of decision-making has produced an overly complex solution;
- b. complexity - the inherent complexity of existing systems has led to a complex response;

- c. the nature and context of necessarily separate negotiations with Waikato River Iwi has created new entities for input or decision and new processes and issues;
- d. there are too many entities, too many plans and too many processes within the co-management structure. See **Schedule 4**];
- e. there is significant vertical and horizontal duplication. See **Schedule 5**;
- f. there is too much uncertainty around:
 - i. roles, responsibilities and relationships between entities;
 - ii. lines of accountability;
 - iii. potential planning outcomes;
 - iv. the level of standards that resource users will have to comply with and the timing of their introduction. See **Schedule 5** plus TLA/EW conflicts;
- g. there is no single existing entity with enough resource, expertise and mandate to lead the technical, policy and planning processes and provide leadership.

9.3 We have concluded that as they stand the arrangements proposed will not be effective to achieve the Objectives sought in the Deed and other agreements with Waikato River Iwi. We believe that the arrangements will lead to:

- a. poorly resourced, slow progress for Waikato River Iwi and the Crown;
- b. log jams in decision-making within the co-management arrangements;
- c. poor progress on restoring the health and well-being of the River;
- d. sub-optimal planning, consenting, and management of land use in the catchment, having a negative impact on the productivity of one of New Zealand's most important agricultural areas;
- e. tension and mistrust between participants as agendas are guessed at rather than revealed and uncertainty breeds fear of the worst;
- f. lack of understanding by the local communities about how to engage in the arrangements;
- g. funding negotiated for the clean-up of the River will be frustrated

9.4 The arrangements below are both simple and expressed simply. One of the advantages this Government may bring to the labyrinthian processes and structures that exist at all levels here is simplicity, transparency, and progress to outcomes.

One Primary Instrument

9.5 The Vision and Strategy developed by the Guardians should become the primary instrument so that it is a comprehensive document that removes uncertainty for resource users and for councils and regulatory authorities about how to give effect to it.

9.6 The Vision and Strategy document should be refined and made more definitive, as discussed below, but the arrangements relating to it should remain as negotiated and as agreed in the Deed (including the processes for public consultation if it is to be amended).

9.7 For the Vision and Strategy to have 'teeth' it is essential for it to remain a:

- a. National Policy Statement for the purposes of the RMA;
- b. Statement of General Policy for the purposes of conservation legislation; and
- c. document to which the Minister must have particular regard under the Fisheries Act and the other legislation referred to in the Deed.

- 9.8 The Vision and Strategy should take a whole of river, whole of catchment approach and include the whole of the Waipā River and its catchment (noting that over time this approach should address the issue of the impact of Lake Taupō and will have to take account of whatever decisions are made about the boundaries of Auckland). An integrated, holistic view of the River and its resources is required.
- 9.9 An essential refinement, in our view, is to empower and require the Guardians to develop and promulgate standards, with the status of a National Environmental Standard and developed through a process of public consultation which shall include as a minimum public notification, the ability to lodge submissions, a hearing before a body appointed by the Guardians and issuing of a report.
- 9.10 The standards should relate to the health and wellbeing of the River including water quality and the impact of land use management on water within the catchment of the River.
- 9.11 Iwi Environmental Plans will inform the Vision and Strategy as described below in para 9.16.

One Entity

- 9.12 One entity only, the Guardians should:
- a. continue to reflect the Crown – Māori relationship on which co-management is based;
 - b. continue to be funded by the Crown;
 - c. continue to be comprised of members appointed by the Waikato River Iwi and the Crown with 5 appointed by iwi (one each), 5 appointed by the Crown (including a minimum of one on the recommendation of EW and a minimum of one on the recommendation of TLAs);
 - d. continue to make decisions by consensus (retaining the same escalation provision as exists now in the Deed but providing that the Minister and iwi representative to whom an unresolved issue is escalated must decide);
 - e. by virtue of its membership and structure, bring together those with the greatest potential to influence outcomes;
 - f. be responsible for developing the Vision and Strategy and for leading the region on the River issues;
 - g. recognise fully the individual and differing interests of each of the iwi within their own rohe;
 - h. have all of the functions already provided in the Deed (being an amalgamation of those of the Guardians and the previously proposed Statutory Boards) plus:
 - responsibility for the clean-up fund;
 - responsibility for promulgation of national environmental standards relevant to the health and wellbeing of the River including water quality and land use impacts on water;
 - appropriate compliance and enforcement powers;
 - the ability to effect or recommend call-ins under the RMA and appropriate input into the terms of reference and appointments to any relevant board of inquiry; and
 - a requirement to build internal resource and skill to ensure the Guardians is the entity which provides leadership on all River-related issues;
 - i. be given the statutory powers required to carry out its functions including express recognition as a “public authority” for the purposes of the RMA.

- 9.13 The Guardians entity should be resourced specifically to a level where it has the resource and personnel to be the leader on the overall objective of restoring the health and well-being of the River and the land use issues surrounding it. The funding level and personnel appointed should be effective to make the Guardians the intellectual, technical, social and cultural leader of progress on the River and catchment issues. This recommendation is fundamental to our proposal for one entity and one instrument and we would recommend a different approach if the Guardians were not to be given resources to assume a position of leadership in all respects.
- 9.14 The Guardians should be accountable through a requirement to furnish annual reports to Parliament (allowing for Select Committee scrutiny) and to iwi governance entities (allowing for iwi scrutiny).
- 9.15 The proposed Statutory Boards should not be established. This will remove substantial duplication, conflict and impediments to progress. The expanded role and membership of the Guardians and the Vision and Strategy, combined with the introduction of standards will safeguard more effectively the interests sought to be protected by the proposed statutory boards.
- 9.16 Iwi Environmental Plans, if and when prepared, should be recognised and provided for under the RMA and should, in our view, be taken into account by the Guardians in further developing the Vision and Strategy. Iwi Environmental Plans should also continue to be given the status proposed in the Deed under the Fisheries Act. The provisions of the Deed relating to fisheries and conservation regulations ought also to remain.
- 9.17 We recommend the Crown continue to engage with the iwi to create mechanisms acceptable them for recognising the particular relationship each of the iwi has with the River. The co-management instruments in these settlements are not intended to replace any existing agreements between iwi and other bodies and also should not preclude the ongoing development of arrangements and relationships between individual iwi and Crown agencies and local authorities parallel with or outside of the Treaty settlement process.
- 9.18 Related to this, the retention of the express recognition of the respective iwi governance entities (such as the Waikato Raupatu River Trust) as "public authorities" for the purpose of the RMA is appropriate. The transfer of additional powers or functions under existing RMA or Local Government Act mechanisms to either the Guardians of individual iwi where appropriate in the future should continue to be explored.
- 9.19 The RMA reform process may produce an Environmental Protection Agency that assumes part of the role of EW in this context. The structure we recommend would accommodate such a change with considerable ease (eg, the Guardians could readily form a regional limb of a central EPA), and the Treaty context and the hard questions around 'teeth' and 'who pays' would be more straightforward if an EPA emerged from the RMA reforms and any future local government reforms. The structure would also accommodate a unitary approach. Whichever structure emerges from the RMA reforms, the broader question of maintaining confidence and providing leadership at regional and local public and council levels will remain. To the extent the Waikato River issues may inform the RMA or local government deliberations, the question of leadership and clarity remain uppermost in our minds as the key components required, now.

Accords

- 9.20 To maintain the direct relationship between each of the Waikato River Iwi and the Crown, and, as one representative of the iwi put it "Our parliament with the Crown", an accord between each of the iwi and the Crown should be maintained as part of the Settlement and the co-management relationship so far as it affects Waikato River Iwi and the Crown directly.
- 9.21 We believe these documents would be more effective if they were in one comprehensive Accord for each of the iwi with separate sections, as negotiated between the Crown and each Waikato River Iwi, providing a framework of actions on matters affecting the River and its health and wellbeing falling within relevant portfolio responsibilities, such as Conservation, Fisheries, Environment, Biosecurity and those set out in the Deed and the Kiingitanga Accord.¹⁷

Funding

- 9.22 We recommend the clean-up fund be kept to identified legacy and restoration parameters and that considerable caution be exercised to avoid having the fund substitute for funding which should be the responsibility of local/regional government or landowners.
- 9.23 The Crown, through engagement with the Waikato River Iwi and in consultation with EW, should speed up the clean-up programme to provide more impetus and progress. We recommend that:
- a. the clean-up scoping study be completed as a matter of priority;
 - b. the recommendations of the scoping study be implemented immediately; and
 - c. in the interim, the GEC be charged with the responsibility of implementing a programme of interim action on not less than 5 projects on which there is general scientific and mātauranga Māori recognition, to be funded by bringing forward elements of the clean-up fund.
- 9.24 With regard funding, we recommend:
- a. there not be a separate clean-up trust and the clean-up fund should be administered by the Guardians, while retaining the fully contestable nature of tenders;
 - b. the Clean-Up Fund should continue to be kept separate from the operational funding of the Guardians;
 - c. the additional cost of resourcing the Guardians to the level we recommend (which we believe to be fundamental to the recommendations we are making) should be funded direct based on the business plan developed by the Guardians, which is likely to be more than offset by the elimination of the proposed statutory boards; and
 - d. not less than the existing level of co-management funding to iwi should be provided.

¹⁷ The panel notes that the position for Waikato-Tainui is somewhat different as they already have an overarching accord in the form of the Kiingitanga Accord, have entered into three separate Ministerial accords and have several other accords substantially progressed. The panel is not suggesting that those arrangements be set aside, but for the other Waikato River Iwi it seems a that a single multi-agency accord is a more effective and cohesive mechanism.

Environment Waikato and Territorial Local Authorities

9.25 We recommend Ministers clarify both the rules of engagement and funding (if any) of EW and TLAs for the transition period while:

- a. the RMA reform process is worked through;
- b. the scoping study on the River is done;
- c. a more definitive Vision & Strategy document is produced.

9.26 We believe it will be very important to provide a stable environment and clear leadership and transparency during the transition period and we recommend the Crown take the lead in developing with the stakeholders and stating rules, timetables, and parameters around both the settlements and Vision and Strategy and ongoing consenting and development processes during the transition period.

Summary

9.27 In summary, we recommend one entity instead of five, one primary instrument replacing four, one accord per Waikato River Iwi instead of ten or more, clear accountability and greater certainty through the primary instrument.

9.28 A table summarising our findings is included at the beginning of this Report.

SCHEDULE 1

TERMS OF REFERENCE

REVIEW OF CO-MANAGEMENT ARRANGEMENTS FOR THE WAIKATO RIVER

Purpose of Review

- 1 To advise Ministers on:
 - a) how effectively the co-management arrangements meet the objectives of the deed of settlement with Waikato-Tainui and intended agreements with other Waikato River iwi; and
 - b) whether changes to the co-management arrangements are necessary to achieve the outcomes agreed and, if so, what those changes might be.

Underpinning Principles

- 2 The review is to be informed by:
 - a) the Crown's commitment to:
 - i) the overarching purpose of restoring and protecting the health and wellbeing of the Waikato River; and
 - ii) the principles of co-management and mana whakahaere;
 - b) Ministers' concerns about the workability of the co-management arrangements provided for in the deed of settlement with Waikato-Tainui and contemplated in intended agreements with other Waikato River iwi;
 - c) the purpose and principles of the Resource Management Act reform;
 - d) the principles of the Treaty of Waitangi and the relationship of each of the Waikato River iwi and their culture and traditions with the Waikato River.

Method

- 3 The panel will analyse the viability of the existing arrangements with regard to achieving the objectives of the deed of settlement with Waikato-Tainui and intended agreements with other Waikato River iwi. This could involve the assessment of the efficiency and effectiveness of the proposals in relation to:
 - the delivery of desired outcomes for the Waikato River
 - planning, consenting, strategic, and operational management of the Waikato River
 - capability and capacity issues
 - participation in decision-making by Māori and other stakeholders
 - potential overlaps with existing management regimes (and the ability of bodies to fulfil their obligations under existing laws)
 - possible streamlining of the co-management arrangements
 - likely costs of implementing the arrangements and the consideration of alternatives.
- 4 The panel must consult with each of the Waikato River iwi and may also seek advice from any other person or body the panel considers necessary to assist them to complete the review within the stipulated timeframe.

Timeframe

5 The panel is to provide its advice to the Ministers within three weeks of its establishment.

Appendix: Purpose and principles of the Resource Management Act reform

The government's reforms of the RMA are about getting good environmental outcomes without high costs, long delays, and lack of certainty under the current Act. The reform will assist the government in:

raising New Zealand's rate of productivity and economic growth

increasing the flexibility of the economy in order to facilitate adjustment and promote confidence and investment in response to the international economic crisis

providing for sound environmental policies and practices.

The core elements of Phase One of the reform are:

streamlining and simplifying processes

priority consenting of major projects

reducing costs and delays

speeding up plan making processes

restricting trade competition, vexatious and frivolous objections.

Cabinet has noted that Phase Two of the reform will cover:

improving infrastructure provisions

consideration of better freshwater management

exploring approaches to better urban design

sustainable and cost effective aquaculture planning and development

the establishment, role and functions of a new environmental protection authority (EPA)

SCHEDULE 2

EXTRACTS FROM THE DEED OF SETTLEMENT WITH WAIKATO-TAINUI INCLUDING THE VISION AND STRATEGY FOR THE WAIKATO RIVER

SCHEDULE TO THE WAIKATO-TAINUI DEED OF SETTLEMENT PART 1: VISION AND STRATEGY FOR THE WAIKATO RIVER VISION FOR THE WAIKATO RIVER

Tooku awa koiora me oona pikonga he kura tangihia o te maataamuri *"The River of life, each curve more beautiful than the last"*

Our vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.

OBJECTIVES FOR THE WAIKATO RIVER

1. In order to realise the vision, the following objectives will be pursued:
 - a. The restoration and protection of the health and wellbeing of the Waikato River.
 - b. The restoration and protection of the relationship of Waikato-Tainui, with the Waikato River, including their economic, social, cultural, and spiritual relationships.
 - c. The restoration and protection of the relationship of Waikato River Iwi according to their tikanga and kawa, with the Waikato River, including their economic, social, cultural and spiritual relationships.
 - d. The restoration and protection of the relationship of the Waikato Region's communities, with the Waikato River, including their economic, social, cultural and spiritual relationships.
 - e. The integrated, holistic and co-coordinated approach to management of the natural, physical, cultural and historic resources of the Waikato River.
 - f. The adoption of a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River, and in particular those effects that threaten serious or irreversible damage to the Waikato River.
 - g. The recognition and avoidance of adverse cumulative effects, and potential cumulative effects, of activities undertaken both on the Waikato River and within its catchments on the health and wellbeing of the Waikato River.
 - h. The recognition that the Waikato River is degraded and should not be required to absorb further degradation as a result of human activities.
 - i. The protection and enhancement of significant sites, fisheries, flora and fauna.
 - j. The recognition that the strategic importance of the Waikato River to New Zealand's social, cultural, environmental and economic wellbeing, requires the restoration and protection of the health and wellbeing of the Waikato River.
 - k. The restoration of water quality within the Waikato River so that it is safe for people to swim in and take food from over its entire length.
 - l. The promotion of improved access to the Waikato River to better enable sporting, recreational, and cultural opportunities.
 - m. The application to the above of both maatauranga Maori and latest available scientific methods.

STRATEGIES FOR THE WAIKATO RIVER

2. To achieve the objectives, the following strategies will be followed:
 - a. Ensure that the highest level of recognition is given to the restoration and protection of the Waikato River.
 - b. Establish what the current health status of the Waikato River is by utilising maatauranga Maaori and latest available scientific methods.
 - c. Develop targets for improving the health and wellbeing of the Waikato River by utilizing maatauranga Maaori and latest available scientific methods.
 - d. Develop and implement a programme of action to achieve the targets for improving the health and wellbeing of the Waikato River.

- e. Develop and share local, national and international expertise, including indigenous expertise, on Rivers and activities within their catchments that may be applied to the restoration and protection of the health and wellbeing of the Waikato River.
- f. Recognise and protect waahi tapu and sites of significance to Waikato-Tainui and other Waikato River iwi (where they do decide) to promote their cultural, spiritual and historic relationship with the Waikato River.
- g. Recognise and protect appropriate sites associated with the Waikato River that are of significance to the Waikato regional community.
- h. Actively promote and foster public knowledge and understanding of the health and wellbeing of the Waikato River among all sectors of the Waikato regional community.
- i. Encourage and foster a "whole of River" approach to the restoration and protection of the Waikato River, including the development, recognition and promotion of best practice methods for restoring and protecting the health and wellbeing of the Waikato River.
- j. Establish new, and enhance existing, relationships between Waikato-Tainui, other Waikato River iwi (where they so decide), and stakeholders with an interest in advancing, restoring and protecting the health and wellbeing of the Waikato River.
- k. Ensure that cumulative adverse effects on the Waikato River of activities are appropriately managed in statutory planning documents at the time of their review.
- l. Ensure appropriate public access to the Waikato River while protecting and enhancing the health and wellbeing of the Waikato River.

EXTRACTS FROM THE WAIKATO-TAINUI DEED

1.108 Co-management requires more than consultation alone. The successful implementation of co-management through the arrangements provided for in this deed requires a new approach. Accordingly, the Crown and Waikato-Tainui acknowledge that co-management includes:

- 1.108.1 the highest level of good faith engagement; and
- 1.108.2 consensus decision-making as a general rule, while having regard to statutory frameworks and the mana whakahaere of Waikato-Tainui and other Waikato River iwi.

CL 4 The Waikato-Tainui objectives for the River set out in the Deed are:

- 4.1.1 the restoration and protection of the health and wellbeing of the Waikato River;
- 4.1.2 the restoration and protection of the relationship of Waikato-Tainui with the Waikato River, including their economic, social, cultural, and spiritual relationships;
- 4.1.3 the integrated, holistic and co-coordinated approach to management of the natural, physical, cultural and historic resources of the Waikato River;
- 4.1.4 the adoption of a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River, and in particular those effects that threaten serious or irreversible damage to the River;
- 4.1.5 the recognition and avoidance of adverse cumulative effects, and potential cumulative effects, of activities undertaken both on the Waikato River and within its catchments on the health and wellbeing of the River;
- 4.1.6 the recognition that the Waikato River is degraded and should not be required to absorb further degradation as a result of human activities;
- 4.1.7 the protection and enhancement of significant sites, fisheries, flora and fauna; and
- 4.1.8 the application to the above of both maatauranga Maori and the latest available scientific methods.

SCHEDULE 3

PRINCIPLES FROM THE KIINGITANGA ACCORD

1. TE MANA O TE AWA (THE SPIRITUAL AUTHORITY, PROTECTIVE POWER AND PRESTIGE OF THE RIVER):
 - (a) To Waikato-Tainui, the Waikato River is a tupuna (ancestor) which has mana (prestige) and in turn represents the mana and mauri (life force) of the tribe. The River has its own mauri, its own spiritual energy and its own powerful identity. It is a single indivisible being.
 - (b) Respect for te mana o te awa (the spiritual authority, protective power and prestige of the Waikato River) is at the heart of the relationship between the tribe and their ancestral River. Waikato-Tainui regard their River with reverence and love. It gave them their name and is the source of their tribal identity. Over generations, Waikato-Tainui have developed tikanga (values, ethics governing conduct) which embody their profound respect for the Waikato River and all life within it. The Waikato River sustains the people physically and spiritually. It brings them peace in times of stress, relief from illness and pain, and cleanses and purifies their bodies and souls from the many problems that surround them. Spiritually, to Waikato-Tainui, the Waikato River is constant, enduring and perpetual.
2. MANA WHAKAHAERE (AUTHORITY AND RIGHTS OF CONTROL):
 - (a) Mana whakahaere refers to the authority that Waikato-Tainui and other Waikato River iwi have established in respect of the Waikato River over many generations. Mana whakahaere entails the exercise of rights and responsibilities to ensure that the balance and mauri (life force) of the Waikato River are maintained. It is based in recognition that if we care for the River, the River will continue to sustain the people.
 - (b) In customary terms mana whakahaere is the exercise of control, access to, and management of the Waikato River, including its resources in accordance with tikanga (values, ethics, governing conduct). For Waikato-Tainui, mana whakahaere has long been exercised under the mana of the Kiingitanga.
3. HEALTH AND WELLBEING:
 - (a) The principle of health and wellbeing reflects the overarching purpose of the Settlement, which is to restore and protect the health and wellbeing of the Waikato River.
 - (b) The health and wellbeing of Waikato-Tainui and its special relationship with the Waikato River is inherently connected with the health and wellbeing of the Waikato River.
4. CO-MANAGEMENT:
 - (a) The Crown and Waikato-Tainui have committed to enter into a new era of co-management in respect of the Waikato River. The principle of co-management includes:
 - (i) The highest level of good faith engagement; and
 - (ii) Consensus decision-making as a general rule;while having regard to statutory frameworks and the mana whakahaere of Waikato-Tainui and other Waikato River iwi.

(b) To be effective, co-management must:

- (i) be implemented and achieved at a number of levels and across a range of management agencies, bodies and authorities, including (but without limitation) the following:
 - The development, amendment and implementation of strategies, policy, legislation and regulations that may potentially impact on the health and wellbeing of the Waikato River; and
 - The processes for granting, transfer, variation and renewal of consents, licenses, permits and other authorisations for all activities that potentially impact on the health and wellbeing of the Waikato River; and
- (ii) include provision for effective Waikato-Tainui input and participation by engagement at an early stage in statutory and management processes, and other actions, that may affect the health and wellbeing of the Waikato River, including the planning and development of new and amended policies or management initiatives or decisions affecting or relating to the Waikato River. This is a positive obligation to provide for early and effective input from Waikato-Tainui, rather than simply an obligation to consult.

5. INTEGRATION:

Arising from the principles of te mana o te awa and mana whakahaere, and inter-related to the principle of co-management, is the principle of integration. The health and wellbeing of the Waikato River and successful co-management requires effective integration of management between the relevant government agencies, Crown entities, local authorities and non-governmental agencies who have roles and responsibilities in respect of the Waikato River.

6. TREATY OF WAITANGI:

Te Tiriti o Waitangi/the Treaty of Waitangi and its principles apply to this Accord and the relationship between the Crown and Waikato-Tainui reflected in this Accord.

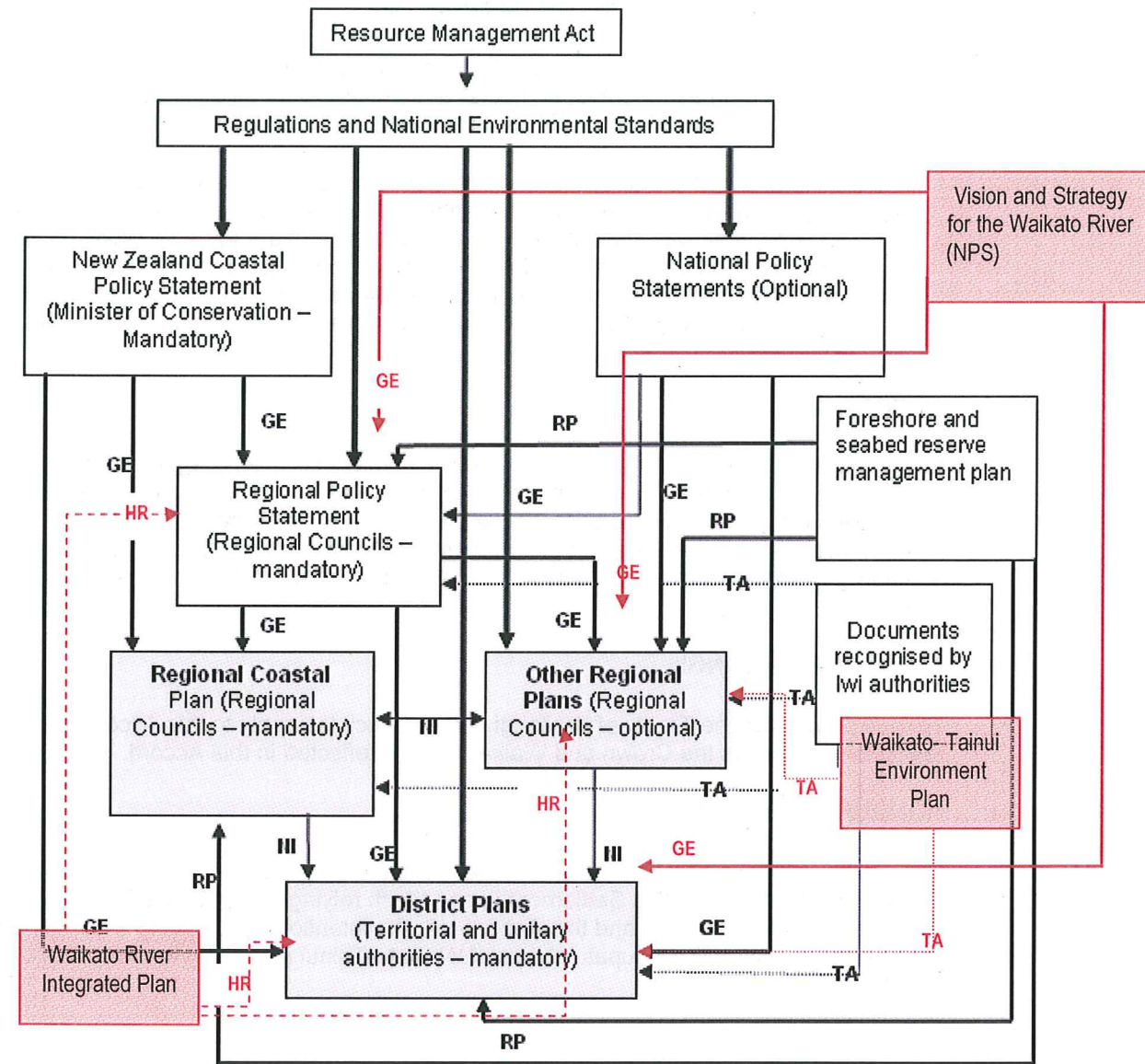
7. HONOUR AND INTEGRITY:

Underpinning this Settlement is the principle of honour and integrity. Waikato-Tainui and the Crown have entered into this Settlement in good faith relying on the commitments of each other contained in the Deed and this Accord with the intention of achieving a full, fair and durable settlement of the Raupatu claims of Waikato-Tainui in relation to the Waikato River.

SCHEDULE 4

WIRING DIAGRAM

Linkages between key RMA documents



In the diagram, the thickness of the line corresponds to the legal weighting accorded the relationship between documents. Abbreviations:

- GE = Must give effect to
- NI = Must not be inconsistent with
- RP = Must recognise and provide for
- TA = Must take into account
- HR = have regard to

A description of the relationships is as follows:

Regional Plans:

- must **give effect to** any National Policy Statement **including the Vision and Strategy for the Waikato River**
- must **give effect to** the regional policy statement
- must **recognise and provide for** any management plan for a foreshore and seabed reserve once the management plan has been lodged with the council (there are unlikely to be any in Waikato)
- **must not be inconsistent** with any water conservation order **(there are none in the Waikato at present)**
- **must not be inconsistent** with any other regional plan for the region **(Environment Waikato has one regional plan that covers all resource management issues)**
- **must take into account** any relevant planning document recognised by an iwi authority, and lodged with the council, to the extent that its content has a bearing on the resource management issues of the region **(Waikato-Tainui have not produced an iwi management plan to date. Environment Waikato has other iwi management plans within their region that they must consider. The "Environment Plan" will have the same effect as an iwi management plan)**
- a rule in a plan can not be more lenient than a national environmental standard, nor can it be stricter than the standard unless that standard provides for that
- a rule in a plan can prevail over a national environmental standard if the rule is more stringent and the standard says that the rule can be more stringent than the standard.

Regional plans must also **have regard to**:

- any proposed regional policy statement in respect of the region (the Environment Waikato regional policy statement is operative and undergoing its first review)
- the Crown's interest in land of the Crown in the coastal marine area
- any management plans and strategies prepared under other Acts to the extent that their content has a bearing on the resource management issues of the region
- relevant entries in the Historic Places Register to the extent that their content has a bearing on the resource management issues of the region
- regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources to the extent that their content has a bearing on the resource management issues of the region
- the extent to which the Regional Plan needs to be consistent with the regional policy statements and plans, or proposed regional policy statements and proposed plans of adjacent regional councils
- **the Waikato River Integrated Management Plan.**

District Plans:

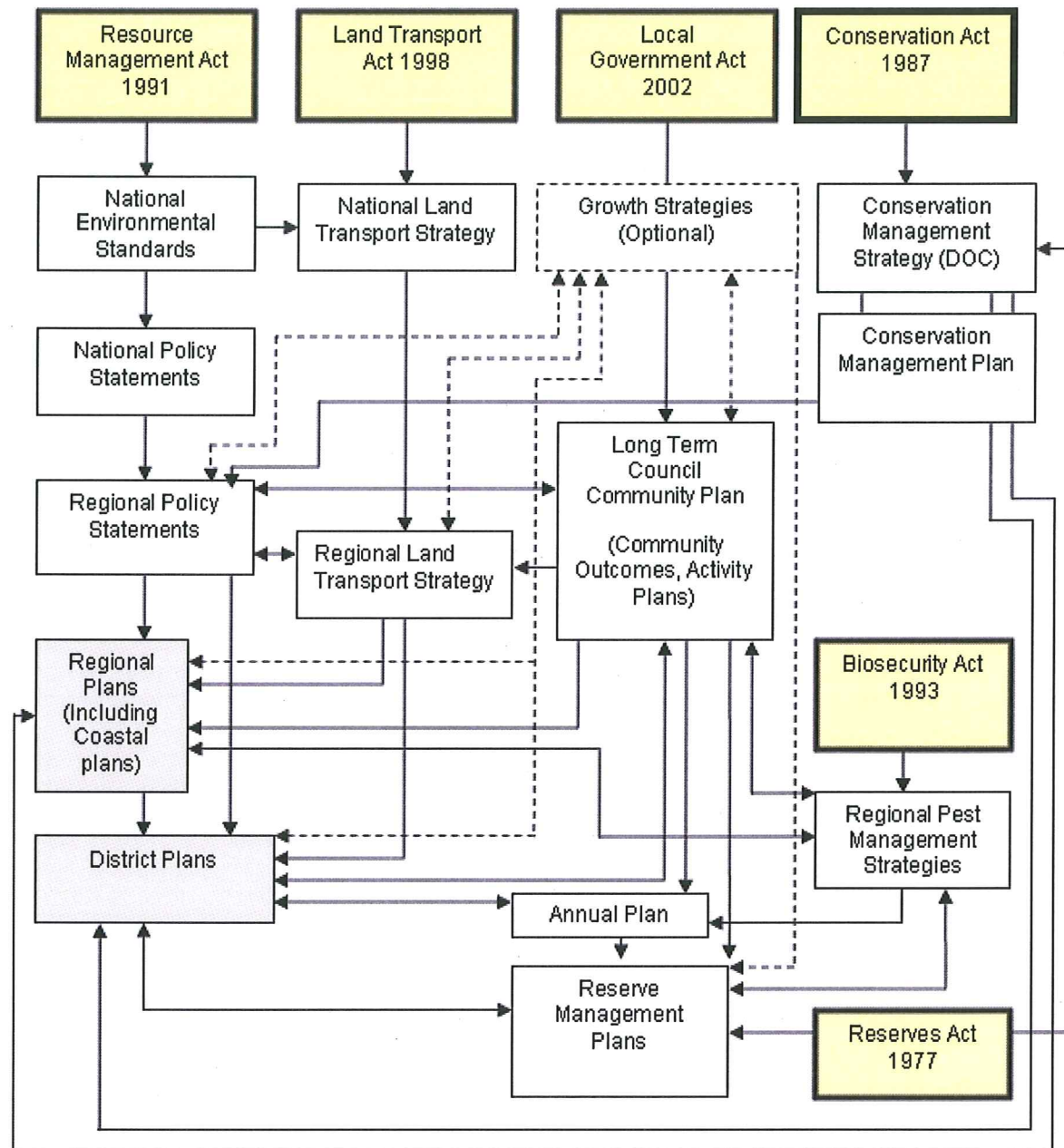
- must **recognise and provide for** the management plan for a foreshore and seabed reserve adjoining its district to the extent that its content has a bearing on the resource management issues of the district
- must **give effect to** the New Zealand Coastal Policy Statement
- must **give effect to** any National Policy Statement **including the Vision and Strategy for the Waikato River**
- must **give effect to** the regional policy statement of the region they are in
- **must not be inconsistent with** a water conservation order
- **must not be inconsistent with** a regional plan
- **take into account** any relevant planning document recognised by an iwi authority, and lodged with the council, to the extent that its content has a bearing on the resource management issues of the district
- take into account the **Waikato-Tainui Environment Plan**

- a rule in a plan can not be more lenient than a national environmental standard
- a rule in a plan can prevail over a national environmental standard if the rule is more stringent and the standard says that the rule can be more stringent than the standard.

District plans must also **have regard to**:

- any proposed regional policy statement in respect of the region; or proposed regional plan of its region in respect of any matter of regional significance
- the Crown's interest in land of the Crown in the coastal marine area
- any management plans and strategies prepared under other Acts to the extent that their content has a bearing on the resource management issues of the region
- relevant entries in the Historic Places Register to the extent that their content has a bearing on the resource management issues of the region
- regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources to the extent that their content has a bearing on the resource management issues of the region
- the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities
- **the Waikato River Integrated Management Plan.**

Key linkages with selected non-RMA plans and strategies



In the diagram above, the use of dashed lines represents documents and relationships that have no explicit legal mandate.

SCHEDULE 5

Functions of the Waikato River Co-Management Entities showing duplication

Guardians of the Waikato River – will cover the whole of the Waikato River and the Waipā River (in the order set out in the Settlement Bill)	Waikato River Statutory Board – covers the lower Waikato River and lower Waipā River (re-ordered to show alignment/misalignment between entities)	Waikato River Co-management Authority – covers the Upper Waikato River (re-ordered to show alignment/misalignment between entities)
<p>Principal function</p> <p>(a) promote, and work to achieve, the restoration and protection of the health and wellbeing of the Waikato River for future generations; and</p> <p>(b) promote, co-ordinate, facilitate and supervise the implementation of the vision and strategy to achieve an integrated, holistic, and co-ordinated approach to its implementation and to the management of the Waikato River.</p>	<p>Principal function</p> <p>(a) to assist and support Waikato-Tainui in the exercise of their mana whakahaere over the Waikato River.</p> <p>(b) to support and promote the special relationship of Waikato-Tainui with the Waikato River in order to achieve the implementation of the vision and strategy and compliance with it.</p>	<p>Principal function</p> <p>To achieve its purpose, namely:</p> <p>(a) to give effect to co-management in the Upper Waikato River.</p> <p>(b) promote the restoration and protection of the quality, health and wellbeing of the Waikato River for present and future generations.</p> <p>(c) recognise and respect the kawa, tikanga, mana whakahaere and kaitiakitanga of the iwi and hapū of the Upper Waikato River.</p> <p>(d) acknowledge the importance of relationships with the Upper Waikato River communities.</p>
<p>General functions</p> <p>(a) engage with local authorities, the Waikato River Statutory Board, Waikato-Tainui, other Waikato River iwi and other appropriate persons to achieve the principal function.</p>	<p>General functions</p> <p>(i) engage with, and co-ordinate interaction with and between, the Crown, local authorities, and other interested stakeholders on any issues relevant to the vision and strategy.</p>	<p>General functions</p> <p>(c) work in close liaison with the Crown, iwi authorities, the Guardians of the Waikato River, relevant local authorities, statutory authorities, iwi management committees and any other relevant person to achieve the purpose.</p>
<p>(b) receive, commission, review, and share information on the state of the Waikato River.</p>	<p>(m) obtain, commission, receive, share, and monitor information and reports relevant to the Waikato River and activities in the catchment that affect the Waikato River.</p>	<p>(i) commission, receive, share and monitor information, research, reports and undertake projects relevant to the Upper Waikato River.</p>
<p>(c) carry out research into, promote education programmes relating to, advocate for, and provide advice in relation to activities or changes required to achieve the overarching purposes of the settlement.</p>		
<p>(d) monitor whether appropriate recognition has been given to the vision and strategy in policies, plans, and processes related to the Waikato River and activities in the catchment that affect the Waikato River.</p>	<p>(e) evaluate, at least every 10 years, relevant policies and plans relating to the Waikato River and activities in the catchment that affect the Waikato River to determine whether they give sufficient effect to the vision and strategy.</p>	<p>(g) oversee and audit compliance with the vision and strategy of statutory policy, planning and other processes affecting the Upper Waikato River.</p>
<p>(e) promote appropriate recognition of the vision and strategy in policies, plans, and processes related to the Waikato River and activities in the catchment that affect the Waikato River.</p>	<p>(b) promote the effective implementation of the vision and strategy.</p> <p>(a) promote the highest level of recognition of the vision and strategy.</p>	<p>(b) promote the effective implementation of, and compliance with, the vision and strategy.</p> <p>(a) provide the highest level of recognition of the vision and strategy in the Upper Waikato River.</p>
<p>(f) propose how the vision and strategy could be provided for in policies, plans, and processes related to the Waikato River and activities in the catchment that affect the Waikato River.</p>		
<p>(g) monitor the implementation of the vision and strategy, including through reports received from the Waikato River Statutory Board.</p>	<p>(f) commission the independent audit of a representative sample of resource consents, permits, concessions, and similar instruments that may affect the Waikato River to assess the extent to which the granting of such instruments is consistent with the vision and strategy.</p> <p>(g) report findings and recommendations (e) and (f) to relevant authorities.</p>	<p>(j) report annually on the operations of the Authority to the Crown, the Raukawa Trust Board, Te Pumautanga Trustees, the Guardians and relevant local authorities.</p>

(h) report at least every 5 years to the Crown, Waikato-Tainui, and the other appointers [of the Guardians] on the progress being made towards achieving the vision and strategy.	(o) report annually to the appointers [of the board] and the Minister for the Environment.	(d) make recommendations to the Minister for the Environment and, if appropriate, any other Minister with regard to the restoration and protection of the Upper Waikato River and any other matters that the Authority may consider necessary.
(i) take any other action reasonably related to the functions or powers of the Guardians.	(q) take any other action reasonably related to the functions or powers of the board.	(o) take any other action reasonably necessary to give effect to the Authority's purpose and functions.
	(c) promote compliance with the vision and strategy.	
	(d) promote the integrated management of the Waikato River in a manner consistent with the vision and strategy.	(f) promote the integrated management of the Upper Waikato River, including by leading the development, implementation and review of an Upper Waikato integrated management plan.
	(h) identify, evaluate, and, if appropriate, scope and recommend implementation of non-regulatory measures that would assist achievement of the vision and strategy.	(h) make recommendations, give strategic advice, and support local authorities and other interested stakeholders on any issues relevant to the Upper Waikato River.
	(j) seek to facilitate the effective co-management of the Waikato River with persons performing functions or exercising powers under enactments that affect the Waikato River and activities in the catchment that affect the Waikato River.	(k) develop and maintain protocols with the relevant management agencies, including the relevant local authorities who have responsibility for matters relating to the Upper Waikato River.
	(k) for the purpose of the functions in (i) and (j) above, request the attendance at the board, or participation in its deliberations, of a person exercising management functions related to, or affecting, the Waikato River and activities in the catchment that affect the Waikato River.	(m) request the attendance or participation in the deliberations of the Waikato River Co-management Authority of any person exercising management functions related to, or affecting, the Upper Waikato River and activities that affects its catchment.
	(l) participate in statutory and non-statutory policy, planning, and other processes affecting the Waikato River and activities in the catchment that affect the Waikato River.	
	(n) receive and exercise any transferred or delegated functions or powers and participate in any joint management agreement.	(e) receive and exercise any transferred or delegated functions, powers or duties and participate in any joint management arrangement relating to the Upper Waikato River.
	(p) exercise any other functions or powers specified in the 2008 Deed or the Settlement Act or other act as being a function or power of the board.	(n) exercise any other function given to the Authority under the Deed or subsequent legislation, or that the Authority may exercise under any other legislation.
		(l) work collaboratively with the Raukawa Trust Board and Te Pumautanga Trustees to assist with and support the implementation of mana whakahaere.

Note – transfer of powers of delegated functions and joint management agreements

Clause (n) for the Waikato River Statutory Board and clause (e) for the Waikato River Co-management Authority provide for both organisations to receive transferred functions, duties, or powers of local authorities under the Resource Management Act 1991 and the Local Government Act 2002 and/or to enter into joint management agreements under the Resource Management Act. The process for identifying which functions should be transferred or made subject to a joint management agreement is set out in the *Deed of Settlement in Relation to the Waikato River* (Waikato-Tainui) and the *Deed in Relation to a Co-management Framework for the Waikato River* (Te Arawa River Iwi and Trustees of Te Pumautanga O Te Arawa Trust). The decision on whether such transfers or joint agreements will be entered into rests with the respective local authorities.

This process provides that transfers and joint agreements could also be made to the Waikato Raupatu River Trust for Waikato-Tainui, and in the case of the Upper River, to Te Pumautanga Trustees or the Raukawa Trust Board.