



**Review of Waikato
Regional Plan
Against the Vision
and Strategy for the
Waikato River**



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Date: 5 July 2013
Reference: 3-TC213.00
Status: Final

Contents

Executive Summary	1
1 Introduction.....	2
2 Vision and Strategy for the Waikato River.....	3
2.1 Waikato-Tainui River Settlement - (Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010)	4
2.2 General Observations of the Vision and Strategy	4
3 Waikato Regional Plan	6
4 Defining “Giving Effect To” for this Review	7
5 Methodology	8
5.1 Background to Developing the Methodology	8
5.2 Methodology for the Review.....	8
6 Analysis.....	11
6.1 Observation of the Comparative Assessment.....	11
7 Module Analysis	19
7.1 Module 2 - Matters of Significance to Maori.....	19
7.2 Module 3 - Water.....	20
7.3 Module 4 – River and Lake Bed	28
7.4 Module 5 – Land and Soil.....	29
7.5 Module 6 - Air.....	30
7.6 Module 7 - Geothermal	30
7.7 Monitoring Provisions	31
8 Challenges.....	32
9 Conclusion	33

Executive Summary

The Vision and Strategy - Te Ture Whaimana o Te Awa o Waikato (Vision and Strategy) is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River¹. The Waikato Regional Council commissioned Opus International Consultants Limited to review the operative Waikato Regional Plan (regional plan) against the objectives and strategies contained in The Vision and Strategy.

Opus International Consultants as commissioned by the Waikato Regional Council undertook an independent review and considered the wording of the two documents to determine where gaps or correlations exist. As certain parts of the regional plan and the Vision and Strategy are qualitative and/or broad based concepts it is inevitable that a degree of subjectivity will creep in.

A methodology was developed and applied to the objectives and policies of each Module, and specific rules, of the regional plan for assessment against the Vision and Strategy (Appendix 1). The purpose being to determine whether the regional plan provision **gives, does not give, or gives limited** effect to the Vision and Strategy.

Defining the 'level of effect given' as used in this report reflects on the legislative direction and relevant Environment Court decisions on Variation 6 now contained in sections 3.3 and 3.4 of the regional plan. There are distinct differences in the management framework between sections 3.3 and 3.4 and the rest of the regional plan in giving effect to the Vision and Strategy.

In reviewing the regional plan it was important to acknowledge it is a fully integrated document and whilst it was important to undertake a Module by Module review, it was an imperative to review the findings across the whole regional plan. So while a module by module analysis may appear deficient when assessed holistically the Vision and Strategy Management Principles may be sufficiently covered elsewhere.

The review has determined that the regional plan will require amendments to give effect to the Vision and Strategy. Amendments are largely required to those sections that have not been the subject of Variation 6. Amendments are needed to address concepts such as maatauranga Maori, cumulative effects, the precautionary approach as well as a very clear directive on the status of the Waikato River and the approach to "degradation".

It is anticipated that over time amendments will be needed to Variation 6 provisions to further improve the effect given to the Vision and Strategy. For those parts of the Plan not influenced by Variation 6, amendments are needed around specific identified principles while some may be encapsulated in an overarching principles section.

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

1 Introduction

The Waikato Regional Council commissioned Opus International Consultants Limited (Opus) to review the operative Waikato Regional Plan (regional plan) to meet the requirements of Section 13(4) of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Section 14(4) of the Ngati Tuwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 and Section 8(2) of the Nga Wai o Maniapoto (Waipa River) Act 2012. The above Acts require:

“Every local authority must—

- (a) review its regional or district plan to see whether it gives effect to the vision and strategy; and*
- (b) if the regional or district plan does not give effect to the vision and strategy, initiate an amendment to it to ensure that it does so, using the process in Schedule 1 of the Resource Management Act 1991.”*

The review commenced on 7 June 2012 with the following guidance given from the Waikato Regional Council to Opus:

- Develop a methodology for review and apply this to a Module of the regional plan to test the appropriateness of the methodology. Discussions will then be had with Council staff prior to embarking on the full review;
- Review the objectives and policies of the entire regional plan, including the recently operative sections 3.3 and 3.4 objectives policies and rules (noting the Environment Court decision in relation to giving effect to the Vision and Strategy) and provide advice as to whether it gives, or does not give, effect to the Vision and Strategy;
- Identifying the provisions in the regional plan that need to be addressed to give effect to the Vision and Strategy;
- Provide rationale on the advice given for the provisions that need to be addressed;
- Facilitate a workshop, with the Waikato River Authority to summarise the findings of the review and to seek feedback on the findings, and
- Provide a final written report that incorporates any relevant feedback from the workshop (this report).

It is also important to outline that the guidance of the contract did not require Opus to:

- Provide recommendations on the process, structure and changes to be made to the regional plan;
- The identification of the immediate priorities from the review; and/or

An indication of the extent of work required by the Waikato Regional Council to make necessary changes to the regional plan.

2 Vision and Strategy for the Waikato River

The Vision and Strategy is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River² and formalised in the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (the Settlement Act). The area that the Vision and Strategy applies to is the Waikato River from Huka Falls to Te Puuaha o Waikato and the Waipa River from its junction with the Puniu River to its junction with the Waikato River.

The Vision and Strategy (Appendix 1) was developed through a number of consultative meetings, public open days, and small group meetings with various stakeholders, communities and local iwi and tangata whenua, with the process for development being administered by the Guardian Establishment Committee.

The Guardians Establishment Committee (GEC) was formed in response to the Waikato-Tainui treaty settlement negotiations for the Waikato River. The GEC comprised of 12 members (two appointees from Waikato-Tainui, four appointees from River iwi along the River and in the catchment, and six appointees of the Crown) and identified four fundamental issues that the Vision and Strategy is aimed to respond to:

1. The degradation of the Waikato River and its catchment has severely compromised Waikato River Iwi in their ability to exercise kaitiakitanga or conduct their tikanga and kawa;
2. Over time, human activities along the Waikato River and land uses through its catchments have degraded the Waikato River and reduced the relationships and aspirations of communities with the Waikato River;
3. The natural processes of the Waikato River have been altered over time by physical intervention, land use and subsurface hydrological changes. The cumulative effects of these uses have degraded the Waikato River; and
4. It will take commitment and time to restore and protect the health and wellbeing of the Waikato River.

The Vision for the Waikato River focuses on sustaining abundant life and prosperous communities who, in turn, are responsible for restoring and protecting the health and wellbeing of the Waikato River for future generations. Section 12(1) of the Settlement Act also outlines that the Vision and Strategy prevails over any inconsistent provisions in any national policy statement and the New Zealand Coastal Policy Statement.

Vision

Tooku awa koiora me oon pikonga he kura tangihia o te maataamuri.

The river of life, each curve , more beautiful than the last

² Section 5(1) Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

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

The Waikato River claim arose from the Crown's raupatu (confiscation) in the 1860s which denied the rights and interests of Waikato-Tainui in the Waikato River. The river claim was excluded from the 1995 land settlement with Waikato-Tainui and was set aside for future negotiation.

The Waikato river settlement was intended to enhance the relationship between the Crown and Waikato-Tainui to:

- *recognise and sustain the special relationship Waikato-Tainui have with the Waikato River;*
- *to enter a new era of co-management over the Waikato River across a range of agencies; and*
- *reflect a unity of commitment to respect and care for the Waikato River.*

The focus of the settlement is the health and wellbeing of the Waikato-River and centred on a Vision for the Waikato River and a Strategy to achieve this Vision.

2.2 General Observations of the Vision and Strategy

The Vision and Strategy gives rise to a number of provisions that:

- previously have not been entrenched in legislation;
- elevates the significance and status of the Waikato River to a new and more specific level;
- introduce new objectives that set a direction that may not superficially appear to sit comfortably within conventional Resource Management Act 1991 (RMA) understanding;
- are relatively new and evolving principles;
- introduce a more culturally appropriate view of "science";
- give direction on co-management and how that may be interpreted and applied particularly with respect to relationships between people and the environment;
- takes existing understood concepts and provides a more explicit mandate for implementation.

With the introduction of new concepts (with the partial exception of Variation 6) it is logical to expect that there will be parts of the regional plan that will not give effect to the objectives and strategies of the Vision and Strategy. However this does not mean the regional plan is lacking but rather the legislative environment has evolved necessitating consequential change.

Also, it is recognised that there are other measures (both external and internal to the Waikato Regional Council), that can be applied and utilised to give effect to the Vision and Strategy. The regional plan is one of many other measures, both regulatory and non-regulatory, that is available.

3 Waikato Regional Plan

The Waikato Regional Plan notified in September 1998 and became operative in part in September 2007. Variation 6 was notified in October 2006 and operative in April 2012, with all variations now operative the regional plan is fully operative. The regional plan is divided into 7 Modules. In accordance with section 79 of the RMA the regional council must review the contents of its regional plan if it hasn't done so during the previous 10 years.

The review of the regional plan provisions is as follows:

Regional Plan provisions	Operative	To be reviewed by
Variation 7 – Minor changes and Geothermal Maps	December 2010	2021
Variation 6 - Sections 3.3: Water takes and 3.4: Efficient Use of Water	April 2012	2022
Variation 5 - Lake Taupo Catchment	June 2011	2021
Variation 4 – Minor variations and peat lakes	September 2005	2015
Variation 2 - Geothermal	November 2008	2018
Rest of the Regional Plan	September 2007	2017

The timelines defined above and the statutory process has resulted in a time lag where there are distinct differences in policy approach between the various Modules of the regional plan. In addition Sections 3.3: Water takes and 3.4: Efficient Use of Water in Module 3 (Variation 6) were reviewed and amended for consistency with the Vision and Strategy through the variation, submission and appeal process. In an endeavour to meet many of the valid concerns of the appellants numerous amendments were made to the variation with the outstanding issues determined by the Environment Court (Decision No. [2011] NZEnvC 380). The decision states:

“[430] The extent of the references required to the Vision and Strategy are, as Mr Milne said, a matter of evaluative judgement rather than a matter of law. We find that the Council has struck an appropriate balance between competing positions. Appropriate acknowledgement is given to the statutory direction that the Vision and Strategy is intended by Parliament to be the primary direction-setting document for the Waikato River.”

However it was considered that the provisions in Module 3 have the greatest bearing on giving effect to the Vision and Strategy therefore the rules as well as policies and objectives in Module 3 have been evaluated in the same manner as the objectives and policies in all other Modules.

4 Defining “Giving Effect To” for this Review

Section 67(3) of the RMA requires Regional Plans to give effect to national policy statements, New Zealand coastal policy statement and any regional policy statement.

Section 11(1) of the Settlement Act requires that the Vision and Strategy in its entirety is deemed to be part of the Waikato Regional Policy Statement and the Vision and Strategy was included in the Proposed Regional Policy Statement 2010.

Because of the unique nature in the origin, creation and legal enactment of the Vision and Strategy, its subsequent legal weighting, and the proactive term of “giving effect”, the Review applied “giving effect to” in a manner where the plan provision is considered to best achieve the aspiration directed in the each objective and strategy of the Vision and Strategy.

In doing so respect will be given to the determination from the Environment Court on Variation 6, which is the holistic application of the Vision and Strategy to Module 3.3 and 3.4 of the regional plan. The judgement of the Environment Court stated

“repeating large parts of the Vision and Strategy in various parts of Variation 6 is repetitive and unnecessary. Nor is it appropriate to pick out certain parts of the Vision and Strategy and repeat them in parts of the variation. This runs the risk of detracting from the holistic nature of the Vision and Strategy and inappropriately implies that the quoted parts are more important than others.”

There is no doubt as Judge Whiting has stated that Variation 6 gives effect to the Vision and Strategy but it is a matter of judgement as to the extent and the limitations of this as it applies to the objectives and strategies of the Vision and Strategy. The scope of this project was to determine whether the regional plan gives effect to the Vision and Strategy. It has therefore been necessary to look critically at Variation 6.

Areas of deficiency, particularly in some areas, are obvious and certain parts of these may be able to be rectified outside of the plan process though day to day operational best practice. The reader should therefore not be surprised to see that large components of the Variation 6 sections are coded **Effect Given** (Green) but equally there are also sections coded **No Effect Given** (Red) or **Limited Effect Given** (Blue).

In the future however, as the regional plan evolves and the Vision and Strategy beds in and is implemented, amendments to more comprehensively give effect to the Vision and Strategy could, and should be undertaken.

There is now however a substantial gulf between the Variation 6 sections and the rest of the Operative Plan. This will need to be addressed to achieve consistency.

5 Methodology

5.1 Background to Developing the Methodology

Opus undertook an initial review of Module 2 (objectives, policies, rules and methods) of the regional plan to test the appropriateness of the methodology, and whether it met the satisfaction of the Waikato Regional Council as commissioned.

This methodology looked at creating a grouping of objectives and strategies into themes that are expressed in the Vision and Strategy. These themes were:

- Management Principles
- Current State of the Waikato River
- Prevent Adverse Effects on the Waikato River
- Restore and Protect the Health of the Waikato River
- Relationships with the Waikato River
- Significant Sites
- Access, and
- Information Development and Promotion

Concurrent to these themes, the methodology assessed two questions against each provision of Module 2:

- Is it specific to the Waikato River?
- Is it specific to Waikato-Tainui?

The method assessed each provision of Module 2 against each individual objective and strategy of the Vision and Strategy to determine whether it **gives, does not give, or gives limited**, effect to each objective and strategy. A summary outlining the number of objectives and strategies after each Module 2 provision was scribed. Conversely, each individual objective and strategy of the Vision and Strategy also had a summary outlining the number of provisions in Module 2 that had been given, or not given, effect to.

Feedback was sought and received from the Waikato Regional Council before Opus embarked on the full review of the regional plan.

5.2 Methodology for the Review

After feedback, the methodology to undertake the review was confirmed with the spreadsheet format approach to outline and compare the majority of the provisions in the regional plan against the objectives and strategies of the Vision and Strategy. This approach

was aimed to avoid potential confusion and duplication. A simple analysis of the Vision and Strategy objectives and strategies with the regional plan provisions was preferred with the initial concept of grouping the objectives and strategies into themes removed.

Also, the two questions that applied specific reference to the Waikato River and to Waikato-Tainui were removed from the review assessment. Although there is specific reference in the Vision and Strategy to the Waikato River and to Waikato-Tainui, it was considered that in light of co-management legislation, the questions did not enable the acknowledgement of the river's relationship to the other River Iwi, nor did it acknowledge the status and importance of the Waipa River.

In order to provide a consistent and systematic approach to the assessment of a large quantity of data the assessment was undertaken on a **Module by Module** basis. Each and every objective and policy across the regional plan (excluding Module 6 – Air, but including the rules in sections 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9 and 3.10) are assessed against the Vision and Strategy. A colour coding system was developed as the assessment being qualitative rather than quantitative was not conducive to a numeric type rating. The colour coding used in Appendix 2 (Comparative assessment) is:

Given Effect (GE- Green) – The regional plan provision gives effect to the objective or strategy of the Vision and Strategy. For example regional plan Objective 3.3.2a) states: “*Giving effect to the overarching purpose of the Vision and Strategy to restore and protect the health and wellbeing of the Waikato River for present and future generations.*”

When assessed against the Vision and Strategy Objective A which states: “*The restoration and protection of the Waikato River*” is then colour coded **green** as it clearly fulfils the aspiration directed in the objective of the Vision and Strategy, and it is **unlikely that further amendment is required**.

Limited Effect Given (LEG - Blue) – The regional plan provision applies to the objective or the strategy of the Vision and Strategy; however the regional plan provision partly fulfils the aspiration directed in the objective or strategy of the Vision and Strategy.

For example regional plan section 3.3.3 Policy 11 states: “*When assessing resource consent applications for surface water takes...the Council shall have particular regard to the following matters: a) Whether the proposed take would adversely affect the restoration and protection of the health and wellbeing of the Waikato river...*” When assessed against the Vision and Strategy Objective A which states: “*The restoration and protection of the Waikato River*” is colour coded **Blue** as **some degree of amendment** may be required to give full effect to the Vision and Strategy.

No Effect Given (NEG- Red) - The regional plan provision applies to the objective or the strategy of the Vision and Strategy; however the regional plan provision does not fulfil the aspiration directed in the objective or strategy of the Vision and Strategy.

For example regional plan section 3.3.3 Policy 2 states: “*When implementing Policy 1, the Waikato Regional Council shall: a) Except as provided for in clause (e)*

below, determine minimum flows having particular regard to Policy 1 above following detailed habitat and river studies. When such studies have not been undertaken, the minimum flow shall be set at 90% of the one in five year 7 day low flow....” When assessed against the Vision and Strategy Objective A which states: “*The restoration and protection of the Waikato River*” is colour coded **red** as it is likely that an **amendment may be required** to give full effect to the Vision and Strategy.

Not Applicable (N/A- Yellow) – The regional plan provision does not apply to the aspiration directed in the objective and strategy of the Vision and Strategy.

For example regional plan section 3.3.3 Policy 4 states: *Establish, set and review sustainable yields.... while having particular regard to the following matters: a) Giving effect to the overarching purpose of the Vision and Strategy to restore and protect the health and wellbeing of the Waikato River for present and future generations...*” When assessed against the Vision and Strategy Objective A which states: “*The restoration and protection of the Waikato River*” is colour coded **yellow** as it is considered that it does not apply to the Vision and Strategy.

A summary assessment was then undertaken for each Module of the regional plan evaluating how the objectives, policies and rules in sections 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9 and 3.10 sits in relation to the Vision and Strategy.

6 Analysis

In support of the comparative assessment, this section will provide the analysis across each Module, and the Module by Module analysis, to highlight certain gaps of the regional plan and identify whether the gaps are addressed in another Module of the regional plan.

As the regional plan is a holistic document with strong and clear linkages across the Modules, a Module by Module review provided a baseline for assessment but did not give clear direction on the regional plan as a whole, as to whether it gives effect to the Vision and Strategy. A complementary assessment was then undertaken across all Modules against each objective and strategy of the Vision and Strategy to ensure that provisions do not already exist elsewhere in the regional plan that address the objective(s) and strategy(s) identified as NEG (red) or N/A (yellow).

6.1 Observation of the Comparative Assessment

It was expressed earlier in this report that a colour coding system was developed for each and every objective and policy across the regional plan, including the rules in sections 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9 and 3.10 (shown in Appendix 2). The following are the observations of those identified colours.

6.1.1 The GE (Green) Coding Observation

It was observed that where objectives and strategies of the Vision and Strategy were coded “green”, were:

- ***Variation 6 (Water Takes and Efficient Use of Water provisions)***

In observing the assessment, large components of provisions in the regional plan coded green are within section 3.3 and section 3.4. This is in recognition of the Environment Court decision of November 2011 on Variation 6 which to a considerable extent shaped sections 3.3 and 3.4 of the regional plan.

6.1.2 The PEG (Blue) Coding Observation

It was observed that where objectives and strategies of the Vision and Strategy were coded “blue”, the provisions of the regional plan were mainly the following:

- ***Activities in the Catchment Area of the Waikato River***

A large component of provisions in the regional plan that are coded blue, are located within provisions that seek to manage activities that will have an environmental effect in the Waikato region, which is an area greater than the Waikato River and the catchment area. The provisions are purposefully written to have a greater influence than the area defined for the Vision and Strategy; however it is considered there is an opportunity to amend some, if not all, the provisions identified as giving limited effect to the Vision and Strategy. An example is the provisions to manage activities that accelerate erosion on land in the region.

- ***Tangata Whenua Relationships with Natural and Physical Resources***

Provisions in the regional plan, specifically the provisions in Module 2, express and outline the matters of significance to Maori in the region. A matter of significance identified in the regional plan is the relationship of tangata whenua with natural and physical resources. Objectives of the Vision and Strategy expressed focus on the relationship of tangata whenua with the Waikato River.

6.1.3 The NEG (Red) Coding Observation

It was observed that where objectives and strategies of the Vision and Strategy were coded “red”, the provisions of the regional plan that do not give effect to the Vision and Strategy were largely on:

- a) Status of the Waikato River
- b) Maaturanga Maori
- c) Monitoring and Target for Action
- d) Relationships and Understanding
- e) Cumulative Effects and Precautionary Approach

The areas that have the greatest “red” coding are found in the **Strategies** of the Vision and Strategy. Whilst some red was expected, it identifies a particular area of attention to be addressed when amendments are made to the regional plan policies and rules.

The Vision and Strategy themes outlined above as not “giving effect to” are discussed in greater detail below.

6.1.3(a) Status of the Waikato River and Waahi Tapu

Objectives

- A. *The restoration and protection of the health and wellbeing of 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.*

Strategies

1. *Ensure that the highest level of recognition is given to the restoration and protection of the Waikato River.*
6. *Recognise and protect waahi tapu and sites of significance to Waikato-Tainui and other Waikato River Iwi (where they so decide) to promote their cultural, spiritual and historic relationship with the Waikato River.*
7. *Recognise and protect appropriate sites associated with the Waikato River that are of significance to the Waikato regional community.*

11. *Ensure that cumulative adverse effects on the Waikato River of activities are appropriately managed in statutory planning documents at the time of their review.*

The Vision and Strategy has elevated the status of the Waikato River. The regional plan's purpose is to meet the requirements of the RMA and fulfil Regional Council functions set out in Section 30 of RMA. The approach taken to date is to fulfil these statutory functions without specifically elevating the status of the Waikato River over other rivers and catchments. Consideration to a regional plan wide approach will need to be given as to how regional plan amendments will give effect to:

"...give the highest level of recognition to the restoration and protection of the Waikato River" as required by Strategy 1. This level of protection is likely to require the writing of a specific objective(s) and policies accompanied by a rule regime.

There is also no specific policy direction to recognise that the Waikato River (Objective H) is in a "degraded state" nor any specific objectives, policies or rules to direct that the Waikato River "does not have to absorb further degradation as a result of human activities". The specific recognition of the status of the Waikato River, the condition of the Waikato River alongside imperatives to not absorb further degradation will require amendments to the regional plan.

Also, there may be some tension between the Vision and Strategy objectives to "restore and protect" verses the Section 5 purpose of the RMA:

"managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

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

Although the RMA has a clear mandate of "protection", restoration may present some greater interpretation challenges. Avoid, remedy or mitigate adverse effects may not necessarily translate easily into "restore".

RMA section 5 requires that adverse effects be "avoided, remedied or mitigated" and a position will need to be established in the regional plan review process as to how this sits with a mandate "to not have to absorb further degradation".

The specific recognition of the status of the Waikato River, the condition of the Waikato River alongside imperatives to not absorb further degradation will require amendments to the regional plan.

6.1.3(b) Maatauranga Maori

Objectives

M. The application to the above of both maatauranga Maaori and latest available scientific methods.

Strategies

- 2. Establish what the current health status of the Waikato River is by utilising maatauranga Maaori and latest available scientific methods.*
- 3. Develop targets for improving the health and wellbeing of the Waikato River by utilising maatauranga Maaori and latest available scientific methods.*
- 4. Develop and implement a programme of action to achieve the targets for improving the health and wellbeing of the Waikato River.*
- 5. 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.*

The most obvious gaps in the regional plan are provisions around Strategies 2 and 3. An argument can be put forward that in many cases the science that sits behind the regional plan utilises the latest available scientific methods and thus gives effect to part of the strategy. Maatauranga Maori is an entrenched concept within Maoridom and is often reflected in RMA consultation. Iwi often have a clear understanding of the state of land and water in previous generations and how cultural practices have endeavoured to maintain or improve that state. It is not a principle that is entrenched, or until recently valued and accepted within an RMA context. It is also a concept that nationally is becoming the focus of funded research projects.

The approach to apply these principles, specifically the implementation of maatauranga Maori need to be considered and given effect to in the regional plan review process. This may be able to be included in the regional plan as an issue and suitable objectives and policies derived that sit as an overarching principle across the regional plan. As maatauranga Maori principles are still evolving, a separate process and research programme may need to sit outside the regional plan process.

6.1.3(c) Monitoring and Targets for Action

Strategies

- 2. Establish what the current health status of the Waikato River is by utilising maatauranga Maaori and latest available scientific methods.*
- 3. Develop targets for improving the health and wellbeing of the Waikato River by utilising maatauranga Maaori and latest available scientific methods.*
- 4. Develop and implement a programme of action to achieve the targets for improving the health and wellbeing of the Waikato River.*

5. *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.*
6. *Recognise and protect waahi tapu and sites of significance to Waikato-Tainui and other Waikato River Iwi (where they so decide) to promote their cultural, spiritual and historic relationship with the Waikato River.*
7. *Recognise and protect appropriate sites associated with the Waikato River that are of significance to the Waikato regional community.*
8. *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.*
9. *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.*

The regional plan has monitoring measures to monitor the effectiveness of the objectives in each Module of the regional plan. These monitoring measures have not been reviewed in any detail as it is beyond the scope of the contract brief to Opus. However the objectives, policies and methods of the regional plan that refer to undertaking monitoring or setting targets for action, fall short of the aspirations directed in the strategies listed above of the Vision and Strategy.

6.1.3(d) Relationships and Understanding

Objectives

- 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.*
- 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 is subject to the restoration and protection of the health and wellbeing of the Waikato River.*
- M. *The application to the above of both maatauranga Maaori and latest available scientific methods.*

Strategies

1. *Ensure that the highest level of recognition is given to the restoration and protection of the Waikato River.*
2. *Establish what the current health status of the Waikato River is by utilising maatauranga Maaori and latest available scientific methods.*
3. *Develop targets for improving the health and wellbeing of the Waikato River by utilising maatauranga Maaori and latest available scientific methods.*
5. *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.*
6. *Recognise and protect waahi tapu and sites of significance to Waikato-Tainui and other Waikato River Iwi (where they so decide) to promote their cultural, spiritual and historic relationship with the Waikato River.*
7. *Recognise and protect appropriate sites associated with the Waikato River that are of significance to the Waikato regional community.*
8. *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.*
9. *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.*
10. *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.*

The Waikato River Settlement has given way to a new era of co-management which brings a different philosophical approach to the management of the River and its catchment. It is now heavily focused on relationships and learning.

Strategy 5 of the Vision and Strategy will require consideration when developing the inputs into regional plan amendments. This provision will require integration with the approach to apply maatauranga Maaori. Also Strategy 8 could be argued to already have occurred in part through the regional plan development through consultation and engagement with the community.

However, this strong education and advocacy imperative may also occur outside of the regional plan process e.g. through existing River Care groups and organisations. This aspect will need to be addressed and given effect to in the regional plan review process but practical application may be alongside and in addition to the regional plan amendments.

6.1.3(e) Concepts – “Cumulative Effects” and the “Precautionary Approach”

Objectives

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.

Strategies

11. Ensure that cumulative adverse effects on the Waikato River of activities are appropriately managed in statutory planning documents at the time of their review.

The concept of a precautionary approach is inherent in the RMA. It requires an informed but cautious approach to decisions where full information on effects is not available at the time of decision-making, particularly when there is a high level of uncertainty and where decisions are effectively irreversible. The precautionary approach is commonly applied to the management of natural hazards and climate change. It is particularly relevant where the effects of an activity have a low probability but a potentially high impact in the event of their occurrence.

Although the precautionary approach is implied in the regional plan it does not specifically meet Objective F of the Vision and Strategy. This may require either the adoption of a policy or the identification of activities where there may be low probability of adverse effects but a high impact in the event of their occurrence.

On cumulative effects, Strategy 11 requires the regional plan to “address cumulative adverse effects of activities on the Waikato River”. The concept of cumulative effect is entrenched in the RMA through the definition of effect:

*In this Act, unless the context otherwise requires, the term **effect** includes—*

- (a) any positive or adverse effect; and
- (b) any temporary or permanent effect; and
- (c) any past, present, or future effect; and
- (d) any cumulative effect which arises over time or in combination with other effects—

regardless of the scale, intensity, duration, or frequency of the effect, and also includes—

- (e) any potential effect of high probability; and
- (f) any potential effect of low probability which has a high potential impact.

In a limited number of policies in the regional plan, directives to consider cumulative effects are specifically stated and a clear direction is provided. However a cumulative effects approach to the Waikato River does not specifically exist and will

need to be more explicitly stated and given effect to in the regional plan review process.

7 Module Analysis

The purpose of this section is to:

1. Identify themes across the Modules;
2. Be a useful tool when undertaking amendments to identify areas that may require the greatest area of attention, and
3. Identify provisions in the regional plan that need to be amended to give effect to the Vision and Strategy;
4. Identify principles that can be incorporated into the regional plan to give effect to the Vision and Strategy.

7.1 Module 2 - Matters of Significance to Maori

The purpose of this module is to identify the broad tribal groups of the region, give a basic introduction for why Module 2 is included in the regional plan and present the RMA framework that justifies its inclusion.

The provisions are broad based and give overarching direction with regard to relationship of tangata whenua with resources and awareness rising. They are focused on minimising the uncertainty in regards to the relationship between tangata whenua and resources, as well as tangata whenua being able to give effect to kaitiakitanga.

Whilst giving effect to kaitiakitanga is not specific to the 'protection and restoration' directives of the Vision and Strategy, as part of this assessment kaitiakitanga is considered a means that goes some way towards this directive and as such the 'giving effect to kaitiakitanga' provisions are considered to give limited effect to parts of the Vision and Strategy.

In the consideration of this section it was unclear as to how the precautionary approach will be applied in regards to waahi tapu in line with Objective F of the Vision and Strategy.

General Observation

Section 2.3 has a greater number of provisions that give limited effect to the Vision and Strategy than those that give effect to the Vision and Strategy.

Also, provisions that relate to the recognition and protection of sites of significance, waahi tapu, flora, fauna and fisheries, as well as the recognition of the relationships to these aspects are defined as having limited effect.

Information sharing, and the fostering and promoting of public knowledge and understanding are considered to be not given effect to as part of this Module, as with cumulative effects are not addressed as part of the provisions.

Suggestions

Provisions of Module 2 can be amended to:

- Take the extra step so that relationships once defined and recognised can be restored, protected and enhanced. E.g. Strategy 10 needs to be reviewed and strengthened.
- Maatauranga Maori to be recognised and incorporated into provisions especially in regards to monitoring.
- Greater emphasis should be made to not only recognise sites of significance to tangata whenua and the wider community but also to protect these.
- Information sharing and promoting of public knowledge and understanding needs greater integration into the provisions of this section.
- Strategy 6 whilst limited effect to recognising and protecting waahi tapu, this is tenuous link and needs to be made clear in the review of this section.
- Strategy 11 needs to be addressed as there is no direction to address cumulative effects.

7.2 Module 3 - Water

Module 3 has the greatest relevance to the Vision and Strategy as it addresses all aspects of the use of water. Amongst other aspects of water use it also incorporates the amendments made as part of the Variation 6 in regards to Water Takes and Efficient Use of Water. Accordingly analysis of each section is provided in the following.

Objective 3.1.1 provides overarching direction for the management of water bodies and at a high level gives limited effect to the Vision and Strategy. However as an overarching directive it does not make a clear statement as to the prevention of further degradation to water bodies such as the Waikato River.

As a complete suite of provisions the Objective and Policies provided in 3.1 and 3.2 are directed to avoid, remedy or mitigate adverse effects or that further degradation of water bodies is avoided. It is assessed that this goes some way to address the Vision and Strategy directive of 'protect and restore' the health and wellbeing of water bodies and as such gives limited effect to the purpose of the Vision and Strategy.

The following sections of Module 3 were analysed and grouped for this summary:

- a) Section 3.1 and 3.2 – Water Resources and Water Management Classes
- b) Section 3.3 and 3.4 – Water Takes and Efficient Use of Water
- c) Section 3.5 and 3.6 – Discharges and Damming and Diverting
- d) Section 3.7 – Wetlands
- e) Section 3.8 – Drilling
- f) Section 3.9 – Non-Point Source Discharges
- g) Section 3.10 – Lake Taupo Catchment

7.2.1(a) Section 3.1 and 3.2 - Water Resources and Water Management Classes

General Observation

Whilst at a high level the objective and the policies of the regional plan give limited effect to the Vision and Strategy, the assessment indicates that very rarely are these provisions considered to give effect to the Vision and Strategy.

Suggestions

Water management classes address defined reaches of waterbodies, and as such, apply separate management regimes in these defined areas. It is considered taking this approach is a means to provide a whole of river management framework provided these management frameworks recognise the interconnected nature of the water bodies.

Across the Objective and Policies of the regional plan, a discrete number of objectives and strategies of the Vision and Strategy are relevant but are not given effect to.

It is recommended that the Objective and Policies of 3.1 and 3.2 be amended to address, as is appropriate, the following:

- Decisions makers to take a precautionary approach.
- Recognition of the strategic importance of water bodies specifically the Waikato River.
- Whilst limited effect is assessed to be given to protecting and restoring the health and wellbeing of the Waikato River there is no recognition given at the highest level to the restoration and protection of the Waikato River.
- Monitoring to be incorporated as a tool to be used and as such a policy directive is needed within the regional plan.
- Promote and foster public knowledge and understanding amongst the Waikato community.

7.2.1(b) Section 3.3 & 3.4 – Water Takes and Efficient Use of Water

In line with the overarching decision of the Environment Court, this section is considered to have a high degree of effect given to the Vision and Strategy. Whilst some aspects of this assessment indicate effect is not given to specific aspects of the Vision and Strategy, this should be seen as highlighting opportunities where further effect could potentially be given where necessary.

General Observation

Most of the objectives and strategies of the Vision and Strategy that are relevant to Sections 3.3 and 3.4 have been given effect to.

The rules within Sections 3.3 & 3.4 refer directly to implementing specific policies of the section, and as such this makes the rule assessment relatively simple as the effect given to the Vision and Strategy by the rules in the regional plan, align to the effect given of those policies.

As an example, Policy 1 of Section 3.4.3 is first part of the regional plan that seeks to ensure the further degradation of water quality is avoided. However, the application of this policy is limited to the “Efficient Use of Water” as it applies to permitted activities and consents for the use of water and any associated discharge of water onto or into land.

Policy 2(c) of Section 3.4.3 makes specific reference to raising public awareness amongst the regional community about water efficiency issues and techniques. This directive does not appear to be picked up clearly in other objectives and policies across the regional plan.

Suggestions

Given the high level of effect considered to be given in this section of the regional plan to the Vision and Strategy, along with the Environment Court decision which endorses effect is given to the Vision and Strategy, it is not recommended that any review be undertaken on this section.

However, if a review is undertaken, there is the opportunity for the provisions identified as not given effect to, to be reviewed and effect given as is appropriate. These have been identified below:

- *Objective 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.*
- *Objective H - The recognition that the Waikato River is degraded and should not be required to absorb further degradation as a result of human activities.*
- *Objective L - The promotion of improved access to the Waikato River to better enable sporting, recreational, and cultural opportunities.*
- *Strategy 2 - Establish what the current health status of the Waikato River is by utilising maatauranga Maaori and latest available scientific methods.*
- *Strategy 3 - Develop targets for improving the health and wellbeing of the Waikato River by utilising maatauranga Maaori and latest available scientific methods.*
- *Strategy 4 - Develop and implement a programme of action to achieve the targets for improving the health and wellbeing of the Waikato River.*
- *Strategy 5 - 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.*
- *Strategy 8 - 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.*

- *Strategy 11 - Ensure that cumulative adverse effects on the Waikato River of activities are appropriately managed in statutory planning documents at the time of their review.*
- *Strategy 12 - Ensure appropriate public access to the Waikato River while protecting and enhancing the health and wellbeing of the Waikato River.*

7.2.1(c) Section 3.5 & 3.6 – Discharges and Damming and Diverting

The objectives and policies of these sections in the regional plan do not provide the directive to protect and restore the health and wellbeing of the Waikato River but does give the directive to avoid discharges and to manage adverse effects on water bodies. As such it is considered that these sections give limited effect to the Vision and Strategy.

The objectives for both Section 3.5 and 3.6, directs that discharges of contaminants to water, be undertaken in a manner that is not inconsistent with Objective 3.1.2 (described below).

Objective 3.1.2

The management of water bodies in a way which ensures:

- a. that people are able to take and use water for their social, economic and cultural wellbeing*
- b. net improvement of water quality across the Region*
- c. the avoidance of significant adverse effects on aquatic ecosystems*
- d. the characteristics of flow regimes are enhanced where practicable and justified by the ecological benefits*
- e. the range of uses of water reliant on the characteristics of flow regimes are maintained or enhanced*
- f. the range of reasonably foreseeable uses of ground water and surface water are protected*
- g. inefficient use of the available ground surface water resources is minimised*
- h. an increase in the extent and quality of the Region's wetlands*
- i. that significant adverse effects on the relationship tangata whenua as Kaitiaki have with water and their identified taonga such as waahi tapu, and native flora and fauna that have customary and traditional uses in or on the margins of water bodies, are remedied or mitigated*
- j. the cumulative adverse effects on the relationship tangata whenua as Kaitiaki have with water their identified taonga such as waahi tapu, and native flora and fauna that have customary and traditional uses that are in or on the margins of water bodies are remedied or mitigated*
- k. the management of non-point source discharges of nutrients, faecal coliforms and sediment to levels that are consistent with the identified purpose and values for which the water body is being managed*
- l. the natural character of the coastal environment, wetlands and lakes and rivers and their margins (including caves), is preserved and protected from inappropriate use and development*
- m. ground water quality is maintained or enhanced and ground water takes managed to ensure sustainable yield*
- n. shallow ground water takes do not adversely affect values for which any potentially affected surface water body is managed*
- o. concentrations of contaminants leaching from land use activities and non-point source discharges to shallow ground water and surface waters do not*

reach levels that present significant risks to human health or aquatic ecosystems

- p. that the positive effects of water resource use activities and associated existing lawfully established infrastructure are recognised, whilst avoiding, remedying or mitigating adverse effects on the environment.*

As such, the level of effect given to Objectives 3.5.2 and 3.6.2 is reflective of the effect given to Objective 3.1.2.

This is also the case with Policies 1 and 2 of both Section 3.5 and 3, which refer to the policies of Section 3.2.3. As such the level of effect given across all the policies of 3.2.3 are amalgamated into one and this amalgam denotes the level of effect ascribed to Policies 1 and 2 of both sections.

General Observation

In Sections 3.5 and 3.6, the Permitted Activity rules are not targeted to specific policies and therefore the assessment is a generic approach and based on the wording contained in each specific the permitted activity rule.

Permitted Activity Rule (3.5.9.1) is considered as not giving effect to the Vision and Strategy in that it allows a discharge to water of dye and salt tracer, and in doing so, does not address the management of the associated adverse effects. However it could be argued that at such low concentrations the activity will result in effects that will have a minor effect to the water body, and as such, does not need reference in the rule that addresses the management of adverse effects.

With Discretionary Activities, the level of effect given as assigned to discretionary rules of the regional plan is reflective of the policies located within each of Section 3.5 and 3.6. Where these rules are considered to be 'red', this could be changed to 'green' if amendments were made to the objectives and policies of these sections to reflect the Vision and Strategy e.g. further degradation.

Also, with Non-Complying Activities, the level of effect given that is assigned to non-complying rules is reflective of the objectives and policies of the Water Module and as such all of the rules across the Water Module have been assigned the same level of effect given, and have the same colour coding.

A point of difference in Section 3.6 is found in the rules where the provisions have direct reference to undertaking monitoring and reporting. Whilst these are denoted as giving effect to the Vision and Strategy, these provisions of the regional plan could be more consistent with the intent of the objectives and strategies of the Vision and Strategy by way of recognising and using maatauranga Maori.

Suggestions

It is recommended that the Objective, Policies and Rules of Sections 3.5 and 3.6 be amended to address, as is appropriate, the following:

- Directive is given to decision makers to use a precautionary approach.
- The use of monitoring and incorporation of maatauranga Maori.

- Development and sharing of expertise.
- Recognition and protection of sites of significance to the regional community.
- Promoting and fostering public knowledge and understanding.
- Addressing cumulative effects.

The following objectives and strategy of the Vision and Strategy are considered to have a lesser bearing on the review of the provisions of this section:

- Objective H Part 1 – A statement in regards to the degraded state of the Waikato River.
- Objective J – A statement in regards to the strategic importance of the Waikato River.
- Strategy 1 – A statement in regards to the highest recognition of protection and restoration of the Waikato River.

7.2.1(d) Section 3.7 - Wetlands

General Observation

The provisions of this section are not considered to give effect to the protection and restoration of the health and wellbeing of the Waikato River or water body in the catchment area. This section is focused on wetlands and as such it could be argued that given this focus, the section should not address the health and wellbeing of waterbodies. However a holistic approach is applied to the assessment given to this section and each provision is assessed and applied to the Vision and Strategy.

With Discretionary Activities, the level of effect given as assigned to Discretionary Rules is reflective of the policies located within each of those sections of the regional plan. Where these rules are considered to be 'red', this could be changed to 'green' if amendments were made to the objectives and policies of this section to reflect the objectives and strategies of the Vision and Strategy e.g. further degradation.

Suggestions

Given application of this section to the Vision and Strategy, it is recommended that the Objective, Policies and Rules of Section 3.7 be amended to address, as is appropriate, the following:

- Directive be given to decision makers to use a precautionary approach.
- Prevention of further degradation.
- The use of monitoring and incorporation of maatauranga Maori.
- Development and sharing of expertise.
- Recognition and protection of sites of significance to the regional community.

- Promoting and fostering public knowledge and understanding.
- Addressing cumulative effects.

The following objectives and strategy are considered to have a lesser bearing on the review of the provisions of this section:

- Objective H Part 1 – A statement in regards to the degraded state of the Waikato River.
- Objective J – A statement in regards to the strategic importance of the Waikato River.
- Strategy 1 – A statement in regards to the highest recognition of protection and restoration of the Waikato River.

7.2.1(e) Section 3.8 - Drilling

The objectives and policies of this section does not provide a directive to protect and restore the health and wellbeing of the Waikato River but does give the directive to avoid discharges and to manage adverse effects on water bodies. As such it is considered that this section gives limited effect to the Vision and Strategy.

General Observation

The objectives of the section direct that activities are to be undertaken in a manner that is not inconsistent with Objective 3.1.2. As such the level of effect given to Objective 3.8.2 is reflective of the effect given to Objective 3.1.2.

Discretionary Activities, the level of effect given as assigned to Discretionary Rules is reflective of the policies located within each of those sections of the regional plan. Where these rules are considered to be 'red', this could be changed to 'green' if there amendments were made to the objectives and policies of this section to reflect the objectives and strategies of the Vision and Strategy e.g. further degradation.

With Non-Complying Activities the level of effect given that is assigned to Non-Complying rules is reflective of the objectives and policies of the Water Module and as such all of these rules across the Module have the same colour coding.

It is considered that there is a greater level of effect given to a number of the objectives and strategies at the rule level in comparison to that assessed at the policy level.

For example, rules are considered to give effect to the recognition and protection of waahi tapu and sites of significance where the policies are considered to give limited effect. This is also the case for the restoration and protection of the relationships of Waikato-Tainui/tangata whenua with the Waikato River / resources.

Suggestions

With the policy and rules of Section 3.8, it is recommended that these are amended to address, as is appropriate, the following:

- Directive be given to decision makers to use a precautionary approach.

- Prevention of further degradation.
- The use of monitoring and incorporation of maatauranga Maori.
- Development and sharing of expertise.
- Recognition and protection of sites of significance to the regional community.
- Promoting and fostering public knowledge and understanding.
- Addressing cumulative effects.

The following objectives and strategy of the Vision and Strategy are considered to have a lesser bearing on the review of the provisions of this section:

- Objective H Part 1 – A statement in regards to the degraded state of the Waikato River.
- Objective J – A statement in regards to the strategic importance of the Waikato River.
- Strategy 1 – A statement in regards to the highest recognition of protection and restoration of the Waikato River.

7.2.1(f) Section 3.9 – Non-Point Source Discharges

Section 3.9 of the regional plan focuses on non-point source discharges. Policies 1 and 2 of Section 3.9 are considered to give limited effect to the Vision and Strategy. Both policies do not provide a directive to protect and restore the health and wellbeing of the Waikato River but do give the directive to avoid discharges and to manage adverse effects on water bodies. The other provisions are not considered relevant.

Suggestions

It is recommended that the Objective, Policies and Rules of Section 3.9 be amended to address, as is appropriate, the following:

- Protect and restore community relationships with the Waikato River.
- Directive be given to decision makers to use a precautionary approach.
- Prevention of further degradation.
- The use of monitoring and incorporation of maatauranga Maori.
- Development and sharing of expertise.
- Recognition and protection of sites of significance to the regional community.
- Promoting and fostering public knowledge and understanding.

- Addressing cumulative effects.

The following objectives and strategy are considered to have a lesser bearing on the review of the provisions of this section:

- Objective H Part 1 – A statement in regards to the degraded state of the Waikato River.
- Objective J – A statement in regards to the strategic importance of the Waikato River.
- Strategy 1 – A statement in regards to the highest recognition of protection and restoration of the Waikato River.

7.2.1(g) Section 3.10 – Lake Taupo Catchment

The primary focus of the provisions of this section is focused on managing nitrogen as applied to land and water within the Lake Taupo catchment as this is the main degrading factor in regards to Lake Taupo water quality. Whilst the main purpose of the Vision and Strategy is to protect and restore the health and wellbeing of the Waikato River, through this assessment it is considered that the management of nitrogen as provided for in the section addresses the protection of water quality and as such gives limited effect to the purpose of the Vision and Strategy.

General Observation

Limited effect is assigned to objectives and strategies of the Vision and Strategy that address the restoration and protection of the health and wellbeing and water quality aspects.

Suggestions

Opportunities exist, through a review process, for amendments to be made which strengthen the level of effect given to the Vision and Strategy in regards to restoring water quality and the health and wellbeing of the Waikato River and Lake Taupo.

7.3 Module 4 – River and Lake Bed

The main focus of this Module is addressing effects of activities that occur in, on and over the beds and banks of rivers and lakes. The Objectives and Policies of this Module do not provide the directive to protect and restore the health and wellbeing of the Waikato River but do give the directive to avoid discharges of sediment and to manage adverse effects on water bodies including the destabilisation of river and lake beds and banks. As such it is considered that this Module gives limited effect to the Vision and Strategy.

General Observation

The Objectives 4.2.2 & 4.3.2 direct activities to be undertaken in a manner that is not inconsistent with Objective 3.1.2, as such the level of effect given to these objectives are consistent with that given to Objective 3.1.2.

This Module is the only part of the regional plan that addresses public access, although the provisions are not considered to give full effect, they are considered to give limited effect across the Module. This is as a result of the wording of the Vision and Strategy seeking the

“improvement” of public access where the provisions in these sections address the “maintenance” of public access.

Suggestions

It is recommended that the Objectives and Policies be amended to address, as is appropriate, the following:

- Community relationship with the river.
- Precautionary approach.
- Strategic importance of the relationship with the Waikato River in line with public access and restoration and protection.
- Monitoring and maatauranga Maori.

7.4 Module 5 – Land and Soil

The main focus of this Module is to address activities occurring on land and as such one of the aspects it addresses is in regard to erosion and the sedimentation of water bodies. The Objectives and Policies of this Module do not provide the directive to protect and restore the health and wellbeing of the Waikato River but do give the directive that no adverse effects will occur to water quality with reference to the Objectives in 3.1.2. As such it is considered that this Module gives limited effect to the Vision and Strategy.

General Observation

Given the specific focus of the Module there is limited application to the Vision and Strategy but each provision is assessed as to its relevance and where it is deemed relevant assessment has been undertaken.

Suggestions

It is recommended that the Objectives and Policies be amended to address, as is appropriate, the following:

- Community relationship with the river.
- Precautionary approach.
- Strategic importance of the relationship with the Waikato River in line with public access and restoration and protection.
- Monitoring and maatauranga Maori.
- Recognise and protect significant sites to regional community.
- Promoting and fostering public knowledge and understanding.
- Cumulative effects.

The following strategy is considered to have a lesser bearing on the review of the provisions of this module:

- Strategy 1 – A statement in regards to the highest recognition of protection and restoration of the Waikato River.

7.5 Module 6 - Air

Without prejudice, the review has used the definition of the Waikato River in the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (section 6 “interpretation”), as a means to determine the scope of the Waikato River. The definition is as follows:

Section 6 - Interpretation

Waikato River

- a. *In sections 3, 4, 8, and 88, means the Waikato River and its catchment:*
- b. *In sections 9, 16, 17, 20, 22, 23, 26, 32, and 44 and Schedules 1 to 6, means –*
 - i. *on SO plan 409144; and*
 - ii. *All tributaries, streams, and watercourses flowing into the part of the Waikato River described in subparagraph (1), to the extent to which they are within the areas marked “A” and “B” in SO plan 409144; and*
 - iii. *Lake and wetlands within the areas marked “A” and “B” on SO plan 409144; and*
 - iv. *The beds and banks of the water bodies described in subparagraphs (i) to (iii):*
- c. *In sections 35 to 38, 40, 42, 45, 47, 56 to 64, 66, 69, 72, 80, and 93 and Schedule 7, means–*
 - i. *the body of water known as the Waikato River flowing continuously or intermittently from Karapiro to the mouth of the Waikato River shown as located within the area marked “A” on SO plan 409144; and*
 - ii. *all tributaries, streams, and watercourses flowing into the part of the Waikato River described in subparagraph (i), to the extent to which they are within the area marked “A” on SO plan 409144; and*
 - iii. *lakes and wetlands within the area marked “A” on SO plan 409144; and*
 - iv. *the beds and banks of the water bodies described in subparagraphs (i) to (iii)*

Accordingly, the review did not undertake an assessment of Module 6

7.6 Module 7 - Geothermal

The focus of this Module identifies and discusses resource management issues that specifically concern geothermal water as to the effects of the take, use and discharge of geothermal energy and water on other resources including freshwater.

The Module provides specific reference at the objective and policy level to the effects of geothermal discharges on fresh water as well as avoiding, remedying or mitigating effects on other natural and physical resources.

General Observation

Section 7.3 provides the overarching objectives for this Module and as to be expected the large majority of these are focused on the use of the geothermal resource. However consideration of the effects of the use and discharge of this resource is applied to resources other than geothermal in Objectives 6 and 7. This is replicated at the policy level with Policies 11 and 12. In these provisions it is considered limited effect is given to the overarching purpose of the Vision and Strategy and the objectives and strategies that address the restoration and protection of water quality.

Suggestions

Provisions can be amended to give full effect of the Vision and Strategy in relation to the restoration and protection of fresh water.

7.7 Monitoring Provisions

It is anticipated that the provisions regarding monitoring although not directly referenced in objectives and policies are addressed in the sections of the regional plan.

The failing in regards to monitoring is that there is no programme of action in regards to improving health and wellbeing and as such a programme of action needs to be introduced into the regional plan.

There are specific requirements in the Vision and Strategy around maatauranga Maori which are not implemented throughout the regional plan and this could be rectified by an overarching theme for monitoring rather than a Module by Module reference.

8 Challenges

The task of assessing the regional plan against the Vision and Strategy has presented a number of challenges and required a number of assumptions to be made namely:

- Defining what “giving effect to” means for this review.
- The review has been undertaken independently. The reviewer has attempted to consider the regional plan and Vision and Strategy strictly on the basis of the wording and to determine where gaps or correlations exist. This has been done based on the reviewer’s knowledge of the statutory instruments. As certain parts of the regional plan and the Vision and Strategy are qualitative and/or broad based concepts it is inevitable that a degree of subjectivity will creep in. This has been minimised as far as practicable by using a standardised methodology but subjectivity cannot be totally avoided. Judgements have been made on various provisions and those judgements may not necessarily have the agreement or support. The assessment has been undertaken as an unbiased a manner as possible.
- The statutory process has resulted in a time lag. The regional plan was developed in the years preceding the operative date of September 2007 and the Vision and Strategy came into effect in December 2009. The picture is further complicated by Variation 6. The decision of the Environment Court of 30 November 2011 took into account submissions regarding the incorporation of the Vision and Strategy and these were accordingly incorporated into Sections 3.3 (Water takes) and 3.4 (Efficient Use of Water). Judge Whiting in his decision stated that:

“Appropriate acknowledgement is given to the statutory direction that the Vision and Strategy is intended by parliament to be the primary direction-setting document for the Waikato River”.

The timing and evolution of the planning process is such that there are noticeable differences between those parts of the regional plan influenced by Variation 6 when compared to other Modules of the regional plan. It is evident that amendments will be required to these other parts. This is not a reflection on the quality of the existing operative regional plan but the result of a changing environment.

- The brief to Opus included an assessment of objectives, policies of the Water Module (3) and the rules of Sections 3.3 (Water takes) and 3.4 (Efficient Use of Water) in the regional plan. There was no remit to examine monitoring or implementation methods. There are a large number of objectives, policies and rules in the regional plan. In order to manage such a large quantity of data an initial assessment on a Module by Module basis was required. This approach has its draw backs as a Module by Module analysis of the regional plan, read in isolation, may present a partly distorted picture. A number of the Modules superficially appear to require extensive work to ensure the regional plan gives effect to the Vision and Strategy. However, the regional plan is a fully integrated document. So in addition to a Module review, it was imperative to review the findings across the whole regional plan. So although a single section in isolation may appear deficient, when assessed holistically, the Vision and Strategy may be sufficiently covered elsewhere in the regional plan or in a number of locations within the regional plan. An attempt has been made to address this by looking not only at the Module specific analysis but by comparing and contrasting the Modules across the regional plan.

9 Conclusion

The review has determined that the regional plan will require amendments to give effect to the Vision and Strategy. Amendments are largely required to those sections that have not been the subject of Variation 6.

There are several objectives and strategies in the Vision and Strategy that are either relatively new concepts or provide direct and specific guidance that have previously not been part of the statutory framework. These include concepts of maatauranga Maori, cumulative effects, the precautionary approach and a very clear directive on the status of the Waikato River and the approach to “degradation”. These will need to be encapsulated in any regional plan amendments. This may take the form of overarching principles in the regional plan rather than implementation on a Module by Module basis.

The Module analysis has highlighted areas that do not give effect to the Vision and Strategy on a Module by Module basis but may be covered elsewhere in the regional plan. Some of the objectives and strategies of the Vision and Strategy align well with the Modules and simply require minor wording amendments to ensure consistency.

Overall the conclusion is that:

- In recognition of the Environment Court decision, Variation 6 sections of the regional plan, substantially give effect to the Vision and Strategy. However, as the planning regime evolves, it is anticipated that over time, there will be room to further improve and amend those provisions. It is accepted that this is unlikely to happen in the short-term.
- Parts of the regional plan not influenced by Variation 6 require amendments to give effect to the Vision and Strategy. The changes required are largely around specific identified principles discussed in this report and may be able to be encapsulated in an overarching principles section. Fine-tuning may be required on a Module by Module basis.



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