

# Regulatory Impact Statement: Te Awa Tupua (Whanganui River) framework

## Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Office of Treaty Settlements.

It provides an analysis of the Te Awa Tupua framework, impacts of the framework on regulatory arrangements, the limits on the impact of the Te Awa Tupua Framework, and legal risk associated with the Te Awa Tupua framework.

In the past a RIS has not typically been prepared for Treaty settlement processes. This is because Treaty settlements are exempt from the Regulatory Impact Assessment requirements unless the settlement affects existing regulatory arrangements. The proposed Te Awa Tupua framework is novel redress and its implementation will require altering decision making and discretion under existing regulatory frameworks. A Regulatory Impact Assessment is therefore required.

When key Cabinet decisions were made in August 2012 [CAB Min (12) 30/14 refers], and in three subsequent reports to Cabinet before the Deed of Settlement was finalised, Cabinet was informed about the intent and scope of redress and the collaborative way it was being developed, involving both relevant Crown agencies and local government. There has therefore been an open and transparent approach taken from the outset of the negotiations to identify and mitigate legal risk and this was reflected in the provisions that were included in the signed Deed of Settlement in August last year. This RIS is therefore being prepared in order to confirm the approach that has been taken and how risk has been mitigated in the Te Awa Tupua framework.

A RIS is more usually prepared as part of policy development and includes analysis of options. Because binding commitments have now been made between the Crown and Whanganui Iwi, this RIS does not set out an analysis of options. Instead, the purpose of this RIS is to ensure Cabinet, Whanganui River users and the general public are aware that:

- a. the settlement will establish Te Awa Tupua as a legal identity , recognised as ‘an indivisible and living whole comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements’ (together the **Status**);
- b. the Te Awa Tupua framework will affect the Crown and local authorities, Whanganui Iwi and other River iwi and third parties through changes to how the existing regulatory framework is implemented;
- c. the settlement includes a range of parameters and safeguards to manage the risks associated with the framework and the changes by the framework to the effect on the regulatory environment; and
- d. there is legal risk should central and local government be seen as failing to fulfil their settlement obligations.

This RIS also sets out the areas of risk associated with the Te Awa Tupua framework and the ways in which those risks have been mitigated.

The Te Awa Tupua framework provides a community focused and collaborative approach to how people interact with and make decisions affecting the Whanganui River and Te Awa Tupua. It is intended to complement, rather than override, existing legislation. Central and local government retain the key decision-making roles under legislation. In other words, the existing institutional and statutory frameworks remain in place, but will be influenced by the Te Awa Tupua 'lens' provided through the settlement. That 'lens' will change how decision makers, and others, view and understand the Whanganui River. It is difficult to articulate all the regulatory impacts of the framework. This difficulty is in part because the forward-looking nature of the framework is intended to enable iwi, councils and other groups with interests in the Whanganui River to collaborate on implementing the framework, rather than hard-wiring prescriptive change. The RIS does not contain quantitative data on estimated implementation or compliance costs of the framework.

However, in this regard, it is important to note that the Whanganui River settlement (including the Te Awa Tupua framework) has been developed with local government and relevant Crown agencies closely involved throughout the negotiation process. We are satisfied that the primary decision-makers have a well-developed understanding of the Te Awa Tupua framework. Both Genesis Energy Limited (with whom Whanganui Iwi have a well-established and ongoing relationship) and local government have expressed their support for the settlement and what it seeks to achieve.



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**6 April 2016**

## Executive summary

1. The Crown has signed a Deed of Settlement with Whanganui Iwi that provides for the Te Awa Tupua framework. The framework recognises the status of the Whanganui River (including its tributaries) as Te Awa Tupua, a legal person (**the Status**, clause 14 of the Bill), with Tupua te Kawa, or intrinsic values of Te Awa Tupua (**the Values**, clause 13 of the Bill), and represented by two people jointly appointed by the Crown and iwi with interests in the Whanganui River (**Te Pou Tupua**, clause 18 of the Bill). The framework also provides a range of measures to promote Te Awa Tupua and its health and wellbeing. Subject to Cabinet approval, the Deed of Settlement will be given effect through the Te Awa Tupua (Whanganui River Claims Settlement) Bill (**the Bill**). This RIS outlines the Te Awa Tupua framework, its impact on the regulatory framework, its scope of impact on the regulatory framework, and legal risks.
2. The Te Awa Tupua framework provides a community focused and collaborative approach to how people interact with and make decisions affecting the Whanganui River and Te Awa Tupua. It is intended to complement, rather than override, existing legislation. Central and local government retain decision-making roles under legislation. In other words, the existing institutional and statutory frameworks remain in place, but will be influenced by the Te Awa Tupua 'lens' provided through the settlement.
3. The settlement includes redress elements that have been used in previous settlements such as 'legal weighting' provisions that specify how relevant decision makers will be required to implement different elements of the framework. Local and central government agencies will be required to 'recognise and provide for' the Status and Values and 'have particular regard to' the River Strategy (Te Heke Ngahuru ki Te Awa Tupua) when exercising functions, powers and duties under the legislation listed at **Appendix One**. However, this requirement will only exist where the exercise or performance of a function, power or duty relates to the Whanganui River. This obligation is limited for the Resource Management Act 1991 (**RMA**) to circumstances in which a regional policy statement, regional plan or district plan is being prepared or changed. For all other functions, duties or powers exercised under the RMA, as well as those under the Heritage New Zealand Pouhere Taonga Act 2014 and the Public Works Act 1981, persons have to comply with the lesser legal weighting 'have particular regard to' the Status and Values of Te Awa Tupua.
4. The settlement also includes:
  - a. a statement of general relevance that ensures that Te Awa Tupua is a relevant consideration in the exercise of all statutory functions, duties or powers relating to the Whanganui River or activities in the catchment affecting the Whanganui River; and
  - b. 'non-derogation' provisions that ensure existing regulatory frameworks will be unaffected, except where expressly provided for, for example by the legal weighting and statement of general relevance. Existing private property rights and public access are also specifically protected through the settlement.
5. Guidance can be provided by Te Pou Tupua for central and local government decision-makers about how to give effect to settlement obligations. Regardless of the guidance provided, there is a risk that central and local government decision-makers may fail to

meet their legal obligations created under the Bill, particularly in so far as those legal obligations require interpretation of the meaning of the Te Awa Tupua status in a particular context. There is a risk of litigation should central and local government decision-makers be seen as failing to comply with the law, although that risk exists in the context of all new legislation.

6. The settlement is intended to improve understanding of the connection iwi have with the Whanganui River, promote the health and wellbeing of Te Awa Tupua, and provide a framework that complements existing legislation. Overall, the Office of Treaty Settlements' (OTS) view is that the Te Awa Tupua framework has the potential to provide real benefit to both the Whanganui community and the Crown. Both local government (who have been involved closely throughout the negotiations) and Genesis Energy Limited (**Genesis Energy**), who is a key River stakeholder, have expressed their support for the settlement.

## Status quo and problem definition

7. The Whanganui River is New Zealand's longest navigable river. Its catchment comprises approximately 7,100 square kilometres and includes land in two national parks (Tongariro and Whanganui) as well as the urban areas of Whanganui and Taumarunui. The waters of the Whanganui River have long been used to generate hydroelectricity.
8. The Whanganui River is currently subject to a range of legislation for natural resource management. The key legislation is outlined below.
  - a. the RMA is the primary legislative instrument for the sustainable management of natural and physical resources;
  - b. the Local Government Acts of 1974 and 2002 provide for the governance and management roles of local authorities in the area;
  - c. conservation legislation (particularly the Conservation Act 1987, National Parks Act 1980, Reserves Act 1977 and Wildlife Act 1953) provides for the governance and management of public conservation lands and for conservation values generally such as the protection of wildlife. Governance and management is undertaken by a range of entities including the Department of Conservation (**DOC**), the NZ Conservation Authority, Conservation Boards and Fish and Game New Zealand;
  - d. the Fisheries Act 1996 and Forests Act 1949 provides for the management of fisheries and forestry activities;
  - e. the Biosecurity Act 1993 provides for the management of biosecurity risks; and
  - f. the Land Act 1948 provides for management of most of the Crown-owned parts of the bed of the Whanganui River and its tributaries by the Commissioner of Crown Land.
9. In most cases the above legislation provides limited recognition (if any at all) of the relationship Whanganui iwi have with the Whanganui River and no statutory recognition or guidance about how to provide for the values associated with Te Awa

Tupua or how to provide for iwi involvement in the governance and management of the River in an integrated and effective manner.

10. Whanganui Iwi have maintained the position that they have never willingly relinquished their authority over the Whanganui River nor have they ever accepted Crown ownership of the riverbed. The Waitangi Tribunal considered and reported on the Whanganui River claim (Wai 167) in 1999. The Tribunal reported that no other iwi has gone to such lengths to achieve recognition of authority over a river.
11. Through the settlement, the Crown acknowledges that since 1840 it has assumed control and authority over the Whanganui River. The Crown promoted and implemented legislation during the nineteenth and early twentieth centuries that had little or no recognition of Whanganui Iwi interests in the Whanganui River and made no provision for the involvement of Whanganui Iwi in the management of the Whanganui River. By the middle of the twentieth century the cumulative effect of the Crown's acts and omissions in relation to the Whanganui River had caused significant prejudice to Whanganui Iwi.

## Settlement Objectives

12. The Crown's objective is to settle the historical Treaty grievances of Whanganui Iwi in relation to the Whanganui River. This will be achieved by enacting the Bill to give effect to the commitments made in the Deed of Settlement. The Crown's objectives with the Te Awa Tupua framework are consistent with the Natural Resource Guidelines approved by Cabinet in 2010 to guide development of redress involving natural resources in Treaty settlements [CBC (10) 78 refers]. The Crown's objectives with the Te Awa Tupua framework are to:
  - a. recognise Te Awa Tupua and the Whanganui Iwi connection with the Whanganui River;
  - b. recognise and protect the range of other interests in the Whanganui River catchment;
  - c. provide an effective role for iwi in the governance and management of the Whanganui River;
  - d. lead to good environmental, economic, social and cultural outcomes for iwi and other New Zealanders;
  - e. consider the issues giving rise to the Whanganui Iwi claims as they relate to the Whanganui River but not create new injustices;
  - f. provide transparency and an affordable settlement; and
  - g. result in the durable settlement of Whanganui Iwi claims as they relate to the Whanganui River.
13. During negotiations, Whanganui Iwi have consistently stated that their objective is to establish an inclusive framework that other Whanganui River iwi, third parties and Whanganui River users can participate in. The Whanganui Iwi vision for the Te Awa

Tupua framework is to change the 'lens' through which people interact with and make decisions affecting the Whanganui River and Te Awa Tupua.

14. Commitments have now been made to the Te Awa Tupua framework through a signed Deed of Settlement between Whanganui Iwi and the Crown as well as preceding Cabinet decisions, a Record of Understanding (**ROU**) (2011) and a subsequent Agreement (2012). The Deed of Settlement represents a legally binding commitment between the Crown and Whanganui Iwi.
15. A summary of the settlement is provided in **Appendix Two**.

## Impact analysis

### Impact of the Te Awa Tupua framework

#### *Impact of the Te Awa Tupua framework on the regulatory environment*

16. The Te Awa Tupua framework aims to influence central and local government agencies' processes for decision-making in respect of matters that could affect Te Awa Tupua.
17. The Deed and Bill, should the Bill be enacted, includes a statement of general relevance (clause 11 of the Bill). This states that the Te Awa Tupua framework will be a relevant consideration in the exercise of all statutory functions, duties or powers relating to the Whanganui River or relating to activities in the catchment affecting the Whanganui River. The statement of general relevance brings Te Awa Tupua within the broader legislative context. It will require decision-makers exercising functions, powers or duties in relation to the Whanganui River and its catchment to consider the Te Awa Tupua framework. The statement applies generally, not just in relation to those Acts listed in **Appendix One**.
18. The legal weighting clauses will provide that persons exercising duties, functions, or powers under any of the 26 specified statutes listed at **Appendix One** will be required to either 'recognise and provide for' or, as the case may be, 'have particular regard to' the Status and Values. The requirement to 'have particular regard to' the Status and Values applies to the Public Works Act 1981, Heritage New Zealand Pouhere Taonga Act 2014, and the RMA other than in respect of policy and plan making by the local authorities. Importantly, the drafting at clause 15(5) of the Bill confirms that 'recognising and providing for' or 'having particular regard to' the Status and Values:
  - a. does not remove, or prevent the exercise of, any discretion that a decision maker has in exercising or performing a function, power, or duty under the Acts listed in **Appendix One**; but
  - b. permits a decision maker to consider the Status and Values as determining factors when exercising or performing a function, power, or duty under the Acts listed in **Appendix One**.
19. A requirement for a decision-maker to 'recognise and provide for' the Status and Values provides direction to the decision-maker (whether it is an agency or a local authority) that it must both recognise and provide for the relevant factor when reaching its final decision. There is case law to indicate that 'recognise and provide for' leaves

discretion to the decision-maker in terms of how to 'provide for' matters in the particular decision. A decision maker is not able to 'provide for' a factor by recognising but then discarding it, but is not bound to 'provide' for a matter in any particular way.

20. Having 'particular regard' to the Status and Values means that the decision-maker must take the matter into account, recognising it as something important to the particular decision and therefore to be considered and carefully weighed in coming to a conclusion. The decision-maker retains flexibility as to whether other relevant factors predominate only after the matters to which they must have particular regard, have been fully considered.
21. In relation to the RMA, the obligation to 'recognise and provide for' refers to when a regional policy statement, regional plan or district plan is being prepared or changed by the relevant local authority. For all other functions, duties or powers exercised under the RMA, as well as under the Heritage New Zealand Pouhere Taonga Act 2014 and under the Public Works Act 1981, persons must 'have particular regard to' the Status and Values of Te Awa Tupua. The obligation to 'have particular regard to' the Strategy applies to the RMA in full as well as to the Heritage New Zealand Pouhere Taonga Act 2014.
22. The process to consider resource consent applications relating to the Whanganui River, or activities in the catchment, will be supported by access to a register of accredited hearing commissioners, which will be maintained by Te Pou Tupua and may include persons nominated by iwi with interests in the Whanganui River. It will include appointees with skills across a range of disciplines including tikanga Māori, knowledge of the Whanganui River and an understanding of the Te Awa Tupua framework. When appointing hearing commissioners in relation to an application for resource consent, a relevant authority must 'have particular regard' to appointment from the Te Awa Tupua register. Having 'particular regard' in this instance is the same consideration as has been described in paragraph 20. Consenting authorities will retain final decision making powers on appointments for hearings on applications relating to the Whanganui River but they will need to have particular regard to the register.
23. A broad range of decision makers will be required to document how they have considered Te Awa Tupua in their decision documents.
24. The settlement includes collaborative processes to review existing regulation of activities on the surface of the Whanganui River and to explore development of a regulatory mechanism to provide for customary food gathering. These processes will provide the opportunity for iwi and relevant agencies to assess existing regulation and make recommendations to the relevant Ministers for improvements, for example improvements to address public safety concerns.
25. Overall, it is expected that local and central government agencies, as well as individuals and organisations, will benefit from having a better understanding of iwi and community interests in relation to the River, and an enhanced framework within which to engage with Te Awa Tupua. The Te Awa Tupua framework provides a collaborative approach to decision-making affecting Te Awa Tupua. Local authorities have been closely involved in the development of the framework and are supportive of it. The new arrangements are intended to contribute to better collaboration and policy development and lower the risk of litigation processes.

26. Broadly speaking, the Regional Council expects that there will be changes to their activities, but it is too early to tell what form those might take. Servicing post-settlement institutions will require an increase in resourcing from the Council. However, the Council anticipates that the settlement will add value to their planning processes in relation to the River in the longer term, and view the Te Awa Tupua framework positively.

*Impact on ownership of riverbed*

27. The Bill will remove the Crown's title to those parts of the riverbed that are currently held under the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980 and the Land Act 1948. This will enable those parts of the riverbed to be vested in Te Awa Tupua.
28. Except in relation to national parks, the Crown's former ownership functions and interests will be the responsibility of Te Pou Tupua. Vested parts of the riverbed within the national parks will retain their current conservation classification and the Minister or Director-General of Conservation will maintain their decision-making roles. The use and management of those parts of the riverbed will not change.
29. The vesting of the Crown held parts of the riverbed in Te Awa Tupua will not create new rights or interests, as Te Pou Tupua will have the same landowner rights currently held by the Crown. There will be a continuation of the current system where riverbed ownership is determined on a case-by-case basis through legal and technical investigation.
30. The land vested in Te Awa Tupua by or under the Bill is declared to be inalienable. Crown or local authorities will be excluded from acquiring or taking a fee simple interest in formerly Crown-owned riverbed to be vested in Te Awa Tupua through the Public Works Act 1981 (**PWA**). This addresses the objective of Whanganui Iwi that Crown-owned riverbed to be vested in Te Awa Tupua should remain in fee simple ownership of Te Awa Tupua. However, the Crown and local authorities will retain the ability to acquire or take an interest, less than fee simple, in Crown-owned riverbed vested in Te Awa Tupua where required for a public work. This is subject to a process for involving Te Pou Tupua. An interest less than a fee simple interest could include a lease or easement. A lease or easement provides the Crown sufficient security to justify investment in public works. The provisions of the PWA will continue to apply to the acquisition of any such interest in land including a lease or easement. This arrangement is fiscally neutral; it requires no additional investment in public works. It does not affect how the PWA is applied or how compensation is calculated for the acquisition of interests.
31. Overall, it is expected that there will be little day-to-day change for River users and communities as a result of the change in ownership of the riverbed. The role previously held by the Crown as a landowner will, in the future, largely be exercised by Te Pou Tupua. The exception to this is in relation to riverbed land that runs through the Whanganui National park where the Crown will retain its landowner functions. In the future there will need to be a close dialogue between Te Pou Tupua and relevant Crown agencies where riverbed land abuts other Crown land. While there may be little change to existing processes associated with land ownership, the establishment of Te Awa Tupua, and the associated vesting of riverbed, provides a platform for an enduring

Treaty partnership between Crown and Iwi through the jointly exercised role of Te Pou Tupua.

*Impact on other Whanganui River Iwi, third parties and Whanganui River users*

32. Land use in the catchment is split approximately equally between native vegetation cover and sheep and beef farming with a small amount of dairy farming along the middle reaches of the River. DOC is the largest land manager in the catchment. There is also a significant amount of Māori owned land.
33. Information on the status of current consents on the Whanganui River is included in **Appendix Three**.
34. There will be a downstream impact on those applying for consents and concessions in the future. Individuals or organisations applying for resource consents and DOC concessions will find that the process for resource management and granting of consent will include specific consideration of Te Awa Tupua holistically, rather than only the separate elements of the Whanganui River. The primary resource consents on the Whanganui River are those relating to the Tongariro Power Scheme held by Genesis Energy. While it is difficult to exactly quantify what the outcome of the Te Awa Tupua framework will be, Genesis Energy has a strong and constructive relationship with Whanganui Iwi and is supportive of the proposed new framework for the Whanganui River as noted earlier. Moreover Genesis Energy will be a member of Te Kōpuka, the group tasked with developing a Strategy for the River (see **Appendix Two**). As is currently the case, some activities relating to the bed of the Whanganui River (for example, building structures) require permission from the owner of the riverbed. In the event that any such activities are proposed in the future in respect of parts of the bed that are owned by Te Awa Tupua, permission will have to be sought from Te Pou Tupua rather than the Crown.
35. The provision of authority for Whanganui Iwi to carry out identified customary activities (see **Appendix Two** “*authority for Whanganui Iwi to carry out authorised customary activities*”) may affect consent applications from other groups. Consents will not be granted where they would affect the ability of Whanganui Iwi to undertake activities that they have identified in their annual notice to local authorities and DOC.
36. The settlement will create and increase public awareness of the identity of Te Awa Tupua. It will require persons using the name Te Awa Tupua for commercial purposes to seek authorisation from Te Pou Tupua. It will provide acknowledgement of the connection between Whanganui Iwi and the term Te Awa Tupua.
37. Overall, it is anticipated that the inclusive nature of the framework will provide a means to recognise and protect a wide range of interests in the Whanganui River catchment. It is anticipated that Whanganui River communities will benefit from being able to participate in measures that could lead to an improvement to the overall health and wellbeing of Te Awa Tupua:
  - a. third parties and Whanganui River users, including Fish and Game and Genesis Energy, will be part of the strategy group, Te Kōpuka. Genesis Energy holds the resource consent for the Tongariro Power Scheme and will be involved in Te Kōpuka because of their interests in hydroelectricity generation (and, as noted, they have been supportive of the settlement and have a strong working

relationship with Whanganui Iwi). Te Kōpuka must prepare Te Heke Ngahuru ki Te Awa Tupua (**River Strategy**), a document that must identify issues relating to the environmental, social, cultural and economic health and wellbeing of Te Awa Tupua; provide a strategy to address those issues; and provide recommended actions to address those issues. The River Strategy will be developed through a public consultation process including notification and submissions on the draft report;

- b. River Iwi, local government, and individuals and groups within the communities of the River will also be able to apply for funding from the contestable Te Awa Tupua fund to support projects that benefit the health and wellbeing of the whole River;
- c. one of the persons comprising Te Pou Tupua will be nominated by iwi with interests in the Whanganui River. Iwi with interests in the Whanganui River includes Whanganui Iwi and other River Iwi as defined in clause 8 of the Bill; and
- d. Te Karewao, the advisory group to Te Pou Tupua, will include one person appointed by Whanganui Iwi, one person appointed by other River Iwi, and one person appointed by local government.

#### *Regulatory impact on Whanganui Iwi*

- 38. The provisions of Te Awa Tupua are designed to provide a broad range of benefits to Whanganui Iwi. Because of the intrinsic connection between Whanganui Iwi and the Whanganui River, anything that improves the health and wellbeing of Te Awa Tupua will benefit Whanganui Iwi. Through the settlement the Crown acknowledges that Whanganui Iwi has an inalienable interconnection with, and responsibility to, Te Awa Tupua and its health and wellbeing. Whanganui Iwi will be recognised as having an interest in Te Awa Tupua greater than and separate from that of the public generally.
- 39. The Pātukurukuru: Whanganui Iwi – Crown relationship agreement (provided for in the Deed of Settlement) will include provisions that reflect a renewed relationship and mutual commitment between Whanganui Iwi and the Crown through Te Awa Tupua. It will provide for a commitment to engage on the ongoing integrity and application of the principles of the settlement. It will also provide a basis for subsequent discussions about how Te Awa Tupua can be recognised in the day to day work of the Crown.
- 40. The Bill will require that the trustees of Ngā Tāngata Tiaki o Whanganui (the post-settlement governance entity for Whanganui Iwi for the purpose of the Whanganui River settlement) be treated as an iwi authority for the purposes of the RMA. The trustees of Ngā Tāngata Tiaki are entitled to lodge submissions or be heard on matters affecting the Whanganui River. For the purpose of other statutory frameworks Ngā Tāngata Tiaki are deemed to be an interested party. The trustees of Ngā Tāngata Tiaki will be entitled to lodge a submission or be heard on matters affecting the Whanganui River where there is a submission process or a hearing, proceeding or inquiry is to be held on the matter.
- 41. The settlement will enable members of Whanganui Iwi to carry out authorised customary activities including for example tribal games or collection of river stones, despite:

- a. sections 9 to 17 of the RMA;
  - b. a rule in any regional or district plan;
  - c. the requirement for any permit or authorisation under the Conservation Act 1987, National Parks Act 1980 or the Reserves Act 1977;
  - d. a navigational bylaw; or
  - e. the requirement for any permit or authorisation under any other legislation.
42. Obligations to comply with legislation, where those obligations relate to the health and safety of persons and the safety of structures, must still be fulfilled.

### **Mitigation of the impact of Te Awa Tupua framework**

43. 'Non-derogation' clauses are built into the settlement to ensure that existing regulatory frameworks are unaffected by the settlement, except where expressly provided for (for example through the legal weighting provisions and the statement of general relevance, see paragraphs 17 to 23).
44. The Bill states that the exercise of legal weighting provisions:
- a. must be carried out in a manner that is consistent with the purpose of the Act under which the function, power, or duty is exercised or performed; and
  - b. does not remove or prevent the exercise of the discretions that the decision maker has under the statutes subject to the legal weighting requirements, though a decision maker may consider the Te Awa Tupua status to be a determining factor in exercising or performing those functions, powers, or duties.
45. The settlement is not intended to derogate from the freshwater policy review process; resolve the issue of rights and interests in water; override existing private property interests; or affect rights or interests in wildlife, fish, aquatic life, seaweeds or plants (except those attached to the riverbed).
46. Those parts of the riverbed that are privately owned or owned by State Owned Enterprises will not be vested in Te Awa Tupua. The Marine and Coastal Area will not be affected by the proposed vesting. It will remain owned by no-one in accordance with the Marine and Coastal Area (Takutai Moana) Act 2011.
47. Existing public use of the Whanganui River would be preserved and existing private property rights, third party rights, and conservation values would be protected. The existing ownership of legal structures, and other existing resource consents and existing statutory authorisations, are unaffected. There will be some change to existing consent for legal structures with Te Pou Tupua to be treated as the grantor of existing interests granted by the Crown as landowner. Fishing rights recognised under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and other relevant fisheries legislation are also unaffected.

48. The Bill will provide that:

- a. the vesting of the Crown-owned parts of the bed of the Whanganui River in Te Awa Tupua does not create or transfer a proprietary interest in water;
- b. the consent of Te Pou Tupua is not required for the use of water, although a consent authority under the RMA may determine that Te Pou Tupua is an affected person in respect of resource consents relating to water;
- c. the consent of Te Pou Tupua may be required separately as the landowner in relation to the use of the bed of the Whanganui River; and
- d. except as expressly provided for, nothing in the settlement creates, limits, transfers, extinguishes or otherwise affects any rights or interests in water.

**Legal risk associated with the Te Awa Tupua framework**

49. This section is based on legal advice from Crown lawyers and those paragraphs that are covered by legal privilege will be withheld when the RIS is published.

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## Consultation

56. Central government agencies that have been closely involved in the development of the Te Awa Tupua framework include DOC, Department of Internal Affairs, Land Information New Zealand, Ministry for the Environment (MfE), MPI, Te Puni Kōkiri, the Ministry for Business Innovation and Employment, (the Economic Development Group) and the Treasury. Crown Law Office has also been extensively involved.
57. The relevant local authorities Horizons (Manawatu-Wanganui) Regional Council and the Ruapehu, Stratford and Wanganui District Councils) have also been closely involved in the development of the Te Awa Tupua framework and support the proposed redress. OTS and Whanganui Iwi have begun more intense discussions with the councils, DOC and MfE to jointly work together in the implementation of key elements of the settlement framework. Other Whanganui River iwi were engaged by both Whanganui Iwi and the OTS during the negotiations that led the Deed of Settlement. Heritage New Zealand Pouhere Taonga, Fish and Game NZ and Genesis Energy were also consulted. The signed Deed of Settlement has been available on the OTS website for public viewing since August 2014.

58. Whanganui Iwi objectives for a change in the manner in which the Whanganui River is viewed have been met through the framework, subject to its successful implementation. The interests of other Whanganui River Iwi have also been taken into account by ensuring that all iwi with interests in the Whanganui River can participate in and benefit from the framework.

## **Implementation plan**

59. Whanganui Iwi, OTS, MfE, DOC and local authorities are currently undertaking preparatory work to ensure that the requisite information, processes and arrangements are in place ready for the enactment of the settlement. Once the Bill has been agreed by agencies and Whanganui Iwi to submit to Cabinet Legislation Committee for approval, Whanganui Iwi and OTS will engage with other agencies on work to prepare to implement the settlement. This transitional work will provide an opportunity for the parties involved to identify and assess costs associated with the framework, including where those costs are likely to fall.
60. Ongoing collaboration between the Crown and Whanganui Iwi to implement the settlement will be formally set out in Te Pātukurukuru, the Whanganui Iwi - Crown Relationship Agreement (as provided for in the Deed of Settlement).
61. Agencies will be encouraged to develop guidance for their officials before settlement date about how to implement settlement redress. Nonetheless, there may be a period of 'bedding in' adherence to new obligations. This is not unusual.

## **Monitoring, evaluation and review**

62. Te Pou Tupua is empowered to work with relevant agencies, decision-makers and other bodies, following the enactment of the settlement, to assist that agency, decision maker or other body in its understanding, application and implementation of the status and values. This will include, if agreed, the development and review of relevant guidelines or policies.
63. Te Kōpuka will have a role in monitoring implementation of the framework by producing the River Strategy and updating it not later than 10 years after its release or previous update. Updates to the Strategy will include identification of any new issues that have arisen and a strategy and recommended actions to address those issues.
64. The Post Settlement Commitments Unit works alongside the rest of the Crown, local government and settled iwi to safeguard the durability of historical Treaty settlements and to ensure the gains made to Crown-Māori relationships through Treaty settlements are maintained and built upon. Relevant agencies will have responsibility for implementing parts of the settlement and ongoing engagement with Te Awa Tupua.

## Appendix One: List of legislation where legal weighting applies

Delegated Ministers agreed that persons exercising duties, functions or powers under the legislation listed below would be required to either:

- a. 'recognise and provide for' the Status and Values; or
- b. 'have particular regard to' the Status and Values.

For the majority of the legislation listed below, the legal weighting of 'recognise and provide for' applies. Ministers agreed that for the RMA, the requirement to 'recognise and provide for' the Status and Values relates only to preparing or changing a regional policy statement, regional plan or district plan. For other duties, functions or powers under the RMA, the Heritage New Zealand Pouhere Taonga Act 2014 and the Public Works Act 1981, persons must 'have particular regard to' the Status and Values.

A requirement for a decision-maker to 'recognise and provide for' the Status and Values is a strong directive to the decision-maker (whether it is an agency or a local authority) that it must consider and provide for the relevant factor when reaching its final decision. Often (as in s6 of the RMA), 'recognise and provide for' leaves discretion to the decision-maker in terms of how to 'provide for' matters; for example, whether by policies, plans or rules. A decision maker is not able to 'provide for' a factor by considering and then discarding it.

Having 'particular regard' for the Status and Values means that the decision-maker must be satisfied that the decision meets the purposes that are relevant, to the extent that that can be achieved in harmony with other relevant considerations applying to the decision. The decision-maker retains flexibility as to whether other relevant factors predominate only after the matters for which they must have particular regard, have been fully considered.

The list below includes the administering agency and analysis provided by that agency on how the proposed legal weighting will affect processes involved in implementing existing regulatory arrangements. The first list applies to the legal weighting of 'recognise and provide for'. The second list applies to the legal weighting of 'have particular regard to'.

<b>Legislation that the legal weighting 'recognise and provide for' applies to</b>		
<b>Legislation</b>	<b>Agency</b>	<b>How the legal weighting will amend or affect existing regulatory arrangements</b>
Biosecurity Act 1993	MPI	<p>The proposed legal weighting will affect the process involved in implementing the Biosecurity Act 1993. It will put a duty on those developing regulatory instruments, including regional pest management plans and regional pathway management plans, to ensure the proposed regulatory instrument recognises and provides for the Status and Values and has particular regard to the Strategy. Decision-makers will be required to:</p> <ol style="list-style-type: none"> <li>a. identify how any proposed regulatory instruments will impact upon the Whanganui River;</li> <li>b. assess whether any proposed regulatory instrument would be contrary to the Status and Values; and</li> </ol> <p>ensure that any proposed regulatory instrument recognises and provides for the Status and Values and has particular regard to the Strategy.</p>

Conservation Act 1987	DOC	<p>The legal weighting will put a duty on the Department, New Zealand Conservation Authority, Conservation Board(s) and Fish and Game to give appropriate consideration to the Status, Values and Strategy in decisions affecting the Whanganui catchment. The greatest implications are likely to be on statutory planning (conservation management strategy and conservation management plans) in the catchment, concessions decisions that may affect River, and statutory land management decisions (e.g. changing conservation status of riparian lands, disposing of public conservation lands etc). Greater consideration will need to be given to 'whole of catchment' effects of proposals, and greater weight given to Iwi values in relation to the River. The effect on decision making will depend on the nature and strength of the relationship between the Status, Values and Strategy with decision at hand, with decisions that relate strongly to those matters needing to factor in the Status, Values and Strategy to a greater degree.</p> <p>DOC is required to give effect to the Treaty principles, and therefore the legal weighting may be in some ways a more nuanced and river-focussed articulation of an existing Treaty duty.</p>
Fisheries Act 1996	MPI	<p>The proposed legal weighting will affect the process for making fisheries sustainability and management decisions made under the Fisheries Act 1996. Decision-makers will be required to:</p> <ol style="list-style-type: none"> <li>a. identify how proposed fisheries sustainability and management decisions will impact upon the Whanganui River;</li> <li>b. assess whether any such decisions would be contrary to the Status and Values; and</li> <li>c. ensure that any decision recognises and provides for the Status and Values and has particular regard to the Strategy.</li> </ol>
Forests Act 1949	MPI	<p>The proposed legal weighting will affect the process for making decisions under the Act (e.g. approving sustainable forest plans, issuing forest management permits et cetera). Decision makers will be required to:</p> <ol style="list-style-type: none"> <li>a. identify how any decision will impact upon the Whanganui River;</li> <li>b. assess whether any decision would be contrary to the Status and Values; and</li> <li>c. ensure that any decision recognises and provides for the Status and Values and has particular regard to the Strategy.</li> </ol>
Freedom Camping Act 2011	DOC and DIA	<p>Freedom camping in the Whanganui catchment is likely to be relevant to both people's relationship to Te Awa Tupua and the health and wellbeing of Te Awa Tupua.</p> <p>Decisions to make bylaws/ notices under the FCA in the catchment would need to apply legal weighting. Values could potentially weigh in favour of or against restricting freedom camping as waste can be an issue for the River's health, however the relationship between people and the Whanganui River is facilitated by people camping near the Whanganui River to facilitate kayaking/fishing/mahinga kai etc.</p>

Harbour Boards Dry Land Endowment Revesting Act 1991	DOC	<p>This Act allows specified lands held by local councils to be re-vested in Crown for conservation purposes, or to be declared to be a reserve for the purposes of the Reserves Act 1977. Those specified lands cannot be sold, disposed of, damaged or modified without the Minister's permission. Specified lands include certain Whanganui Harbour lands. The Status, Values and Strategy would be factored into decision making about whether lands should be re-vested, and in the Minister's decision to permit the disposal or modification of those lands.</p>
Land Drainage Act 1908	DIA	<p>The Land Drainage Act 1908 contains powers to carry out works within watercourses and drains for drainage and flood control purposes. These powers may be exercised by a Land Drainage Board, constituted under the Act for a Land Drainage District, or by a local authority for land not in a Land Drainage District.</p> <p>There is currently no Land Drainage District or Drainage Board within the area affected by the Settlement. If a local authority exercises powers under the Land Drainage Act 1908 within the area affected by the Settlement, it will be required to act in accordance with the Local Government Act 2014 (LGA 2002) (see comments below).</p>
Local Government Act 2002	DIA	<p>The LGA 2002 requires local authorities to provide opportunities for Māori to contribute to decision-making processes. A local authority must also take into account the relationship of Māori and their culture and traditions, when making decisions relating to land or a body of water.</p> <p>The requirement to 'recognise and provide for' the Status and Values of Te Awa Tupua will complement existing provisions in the LGA 2002. Te Awa Tupua, itself, has no ethnicity. However, the Values of Te Awa Tupua will include recognition of the connection between Te Awa Tupua and Whanganui Iwi.</p> <p>The requirement to 'recognise and provide for' the Status of Te Awa Tupua will require relevant local authorities to develop mechanisms for engaging with Te Awa Tupua as a legal person. For example, it will require relevant local authorities to reflect the Status of Te Awa Tupua in their Significance and Engagement policies. Other provisions of the settlement enable local authorities to enter into joint committee arrangements with Te Awa Tupua as a public body.</p> <p>Local authorities will be required to 'recognise and provide for' the Values of Te Awa Tupua to the extent they are relevant when developing LGA 2002 documents, such as long term plans, infrastructure strategies and bylaws.</p> <p>Local authorities may require implementation support, such as guidance on when and how the Status and Values of Te Awa Tupua should be considered (e.g. when a function, power or duty would meet the relevance test in clause 16(1) of the Bill).</p>

Local Government Act 1974	DIA	<p>Much of the Local Government Act 1974 has been repealed. The remaining provisions that are potentially relevant to Te Awa Tupua relate to roads, service lanes and access ways, drainage and river clearance. Local authorities exercising powers under the 1974 Act are required to make decisions in accordance with the LGA 2002 (see comments above).</p>
Marine and Coastal Area (Takutai Moana) Act 2011	MoJ	<p>The Marine and Coastal Area (Takutai Moana) Act 2011 (<b>MACA Act</b>) applies to the lower 6 km stretch of the Whanganui River from the Cobham Street bridge down to the river mouth.</p> <p>There are a limited number of functions, duties or powers that Chief Executives or Ministers must or may exercise under the MACA Act which will be subject to the obligation to recognise and provide for the status of Te Awa and Tupua te Kawa.</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>i. Vesting of reclaimed land <p>When the Minister for Land Information makes decisions about whether Crown interests in reclaimed land should be vested in a private owner (or the conditions that should apply), the recognise and provide for weighting would apply. This consideration complements existing provisions in the MACA Act to consider "the cultural value of the reclaimed land and surrounding area to tangata whenua" (section 36(2)(f)).</p> <p>Such reclaimed land would be regarded as forming part of the river catchment as it is no longer in the CMCA; and</p> </li> <li>ii. By-laws or regulations for coastal administration <p>Under sections 119 to 121 of the MACA Act, the Minister of Conservation may recommend regulations or make by-laws in respect of certain matters in the CMCA, if those matters are not already regulated by a local authority. The matters include preservation or protection of the natural environment and the placing or deposit of objects.</p> </li> </ul> <p>In addition the Act imposes a number of obligations on parties making decisions under other Acts. Most relate to the need to give certain weight to the views of specified groups under the MACA Act or to a planning document produced by a customary marine title (CMT) group. The status of Te Awa Tupua and Tupua te Kawa must be recognised and provided for in each of these They include obligations on:</p> <ul style="list-style-type: none"> <li>i. the DG or Minister of Conservation when making certain decisions under Conservation legalisation (the Participation in Conservation Processes provisions in Part 3 sub-part 1 of the MACA Act); and</li> <li>ii. regional councils when making decisions on the extent to which the matters in a CMT group</li> </ul>

		<p>planning document must be reflected in regional council policy statements and regional coastal plans:</p> <p>The Deed provides an exception to the above in that the obligations do not affect the ability of a group to apply for and have determined, applications for customary marine title (CMT) and protected customary rights (PCR).</p>
Marine Mammals Protection Act 1978	DOC	Consideration of the health and wellbeing of Te Awa Tupua may be relevant when considering population management documents including plans and permits in relation to marine mammals and their habitat at the mouth of the river
Marine Reserves Act 1971	DOC	Establishment and management of marine reserves could have relevance for Te Awa Tupua (and vice versa), depending on the location of any reserves.
Maritime Transport Act 1994	Ministry of Transport	<p>Existing regulatory arrangements under the Maritime Transport Act 1994 (MTA), as they may affect Te Awa Tupua, are limited. Maritime New Zealand administers two Maritime Rules (Rule Parts 81 and 82), which are made under the MTA, and which respectively regulate commercial river rafting operations and commercial jet boating. Both of these activities occur on the Whanganui River. The Rules specify requirements for the safe conduct of such operations (including the vessels used in them) and are the entry point for those wishing to conduct them. Rule Parts 81 and 82 do not include any specific requirements in terms of such protection of the marine environment (which includes rivers). The RMA (not administered by Maritime New Zealand) specifically provides such protections in terms both of the number and impact of commercial operations on the river, and is administered regionally.</p> <p>Rule 19 is also made under the Maritime Transport Act and regulates domestic maritime transport operators. Those operating under this Rule must have an Operator Plan that covers (among other matters) harm prevention procedures that address reasonably foreseeable hazards in the operation in relation to the protection of the environment. In its administration of this Rule, to the extent it may apply to commercial transport operators wishing to operate on the River, Maritime New Zealand will be required to recognise and provide for, and have particular regard to, the Status of the Whanganui River and the future Values and Strategy for the River.</p>
National Parks Act 1990	DOC	<p>Decision-making in Whanganui and Tongariro National Parks will often be relevant to the River.</p> <p>The implications under the National Parks Act 1990 are largely the same as those identified for the Conservation Act.</p>
Native Plants Protection Act 1934	DOC	This Act is rarely used, as the Conservation Act tends to be the main vehicle for protection of native plants. The Status, Values and Strategy could potentially be cited as part of a case for the protection of particular native plants under the Act.
New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008	LINZ	The New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa (NZGB) recognises and respects the Crown's responsibility to take appropriate account of the Treaty of Waitangi (section 6), and to that end may consider proposals that promote the collection (section 11(1)(d)), and use, (section 11(1)(e)) of original Māori names in light of the

		purpose of the Act which is to, amongst other things, provide the means for appropriate recognition to be accorded to cultural and heritage values.
Queen Elizabeth the Second National Trust Act 1977	DOC	The QEII Trust would need to give appropriate consideration to the Status, Values and Strategy in decisions affecting the Whanganui catchment. The Trust operates independently of DOC and would need to be informed of its obligations.
Reserves Act 1977	DOC	The implications under this Act are similar to those identified for the Conservation Act but will arise regarding decisions to classify or reclassify reserves, and in reserve management decisions, where these are relevant to River.
River Boards Act 1908	DIA	<p>The River Boards Act 1908 contains powers to carry out works in a river, stream or watercourse for the purposes of flood protection.</p> <p>There is currently no River Board or River District within the area affected by the Settlement, and there is no power in the River Boards Act 1908 to constitute new River Districts. A local authority can only exercise powers under the River Boards Act 1908 within a River District.</p>
Soil Conservation and Rivers Control Act 1941	MfE	The regional council will be required to recognise and provide for the Status and Values, and have particular regard to the Strategy when exercising powers under this Act, including powers to maintain and improve watercourses and manage floods. The regional council also has other powers under the Act to do certain works and purchase land. Whenever these powers are exercised within the Whanganui River catchment, decision makers should recognise and provide for the Status and Values and have particular regard to the Strategy.
Trade in Endangered Species Act 1989	DOC	The legal weighting is unlikely to have much significant impact on implementation of the Trade and Endangered Species Act 1989. It is conceivable that decisions to permit the export or import of taonga species (as distinct from object protected under the Protected Objects Act 1975) from Whanganui may need to give consideration to Te Awa Tupua, if taonga was related to river. For example, someone might want to import or export a stuffed whio from the Whanganui catchment, and could cite a relationship to Awa as being a factor in favour of allowing this. Conversely, the health and wellbeing of Te Awa Tupua could be considered a reason to not allow trade in rare birds from the river.
Walking Access Act 2008	MPI	<p>The proposed legal weighting will affect the process for making decisions under the Act (e.g. establishing, maintaining, and improving walkways and determining types of access that may be associated with walking access et cetera). Decision makers will be required to:</p> <ol style="list-style-type: none"> <li>identify how any decision will impact upon the Whanganui River;</li> <li>assess whether any decision would be contrary to the Status and Values; and</li> <li>ensure that any decision recognises and provides for the Status and Values and has particular regard to the Strategy.</li> </ol>

Wild Animal Control Act 1977	DOC	This Act is administered in order to, among other things, protect lands, waters and soils. Those undertaking wild animal control operations, planning or research are likely to need to consider the impact wild animals have on Te Awa Tupua, and ensure that decisions made recognise and provide for the Status and Values and have particular regard to the River Strategy.
Wildlife Act 1953	DOC	Most indigenous birds are subject to this Act. Freshwater invertebrates and marine species are only subject to the Wildlife Act if they have been added to its Schedules. Decisions to add, remove or amend fish species listed in the Schedules may be relevant (depending on species and whether it's found in Whanganui) and therefore subject to legal weighting. There may be relevant consideration in the permitting decisions for possession of live or dead native animals from Whanganui catchment for customary use. Water fowl may be categorised as 'absolutely protected' as is the case with whio, or as 'game' as is the case with other ducks. Decisions relating to them will need to recognise and provide for the Status and Values and have particular regard to the River Strategy.

**Legal weighting considerations to apply to the Resource Management Act 1991:**

The legal weighting 'Recognise and provide for' will apply in relation to preparing or changing a regional policy statement, regional plan or district plan; 'have particular regard to' will apply in relation to all other provisions.

<b>Agency</b>	<b><u>How the legal weighting will amend or affect existing regulatory arrangements</u></b>
MfE	<p>Te Awa Tupua, Tupua te Kawa and Te Heke Ngahuru will be integral parts of the resource management landscape in the Whanganui River catchment and will be an important factor in decisions made under the RMA.</p> <p>The proposed legal weightings will impact on a wide range of decisions made under the Resource Management Act 1991 (RMA). Decision-makers will need to comply with the requirements of the Te Awa Tupua (Whanganui River Claims Settlement) Bill, in the context of exercising powers, functions and duties under the RMA. The Te Awa Tupua status and Tupua te Kawa do not override the exercise or performance of those statutory functions, powers, or duties, but they do become important aspects to be carefully considered in decision making.</p> <p><i>RMA plan making (regional policy statements, regional and district plans)</i></p> <p>From the date that the legislation comes into force, local authorities must give due consideration to the Te Awa Tupua framework when preparing or changing a regional policy statement, regional plan or district plan. Requirements would include, but may not be limited to:</p> <ol style="list-style-type: none"> <li>1. recognising and providing for the status and values of Te Awa Tupua and the Tupua te Kawa;</li> <li>2. having particular regard to Te Heke Ngahuru;</li> <li>3. recognising and providing for the acknowledgement of the Crown (clause 70) that customary activities by Whanganui Iwi is an integral part of the relationship of the iwi with the river;</li> <li>4. having regard to the statement of general relevance which makes Te Pā Auroa nā Te Awa Tupua a relevant consideration for all decision makers;</li> <li>5. consideration of any regulations (as required under RMA plan making provisions) which may be applicable to the Whanganui River; and</li> <li>6. stating in their s32 report and other decision documents how the local authority had fulfilled their obligations under the Te Awa Tupua framework.</li> </ol>

The impact of this will be that the Te Awa Tupua will be integrated into planning documents and shape resource management operations and consenting decisions in the region.

#### *Resource consents*

A consent application will be considered according to the planning framework above. In addition, consent authorities must:

1. have particular regard to Te Awa Tupua and the Tupua te Kawa;
2. have particular regard to Te Heke Ngahuru;
3. recognise and provide for the acknowledgement of the Crown (clause 70) that customary activities by Whanganui Iwi is an integral part of the relationship of the iwi with the river;
4. have regard to the statement of general relevance which makes Te Pā Auroa nā Te Awa Tupua a relevant consideration for all decision makers;
5. consider whether the consent, if granted, would prevent Whanganui Iwi from undertaking any customary activity that they have provided to the local authority in their annual notice; and
6. state their decision record how the consent authority dealt with the legal weightings required.

These requirements will give applicants and consent authorities the incentive to engage with Te Pou Tupua and Whanganui River iwi where applications in the catchment impact on the Whanganui River.

#### *Resource consents – customary activities*

Whanganui River Iwi will not require resource consents to carry out certain customary activities that have met other specified requirements.

#### *Other RMA decisions*

The legal weightings in Te Awa Tupua framework permeate all functions, powers and duties under the RMA. For example, for matters that impact on the River, the Te Awa Tupua framework is also likely to be relevant to:

1. notification decisions in the catchment;
2. section 32 report writing;
3. the process and decisions around designations and heritage orders;
4. water conservation orders;
5. decision making process and procedures for nationally significant proposals; and
6. declarations.

In exercising these sorts of powers, functions and duties in the catchment that affect the River, decision makers must (where relevant):

1. have particular regard to Te Awa Tupua and the Tupua te Kawa;
2. have particular regard to Te Heke Ngahuru;
3. recognise and provide for the acknowledgement of the Crown (clause 70) that customary activities by Whanganui Iwi is an integral part of the relationship of the iwi with the river;
4. have regard to the statement of general relevance which makes Te Pā Auroa nā Te Awa Tupua a relevant consideration for all decision makers; and
5. state in their decision record how the decision maker dealt with the legal weightings required.

#### *Hearings Commissioners*

For certain types of resource consent hearings that relate to water, and others as deemed appropriate by the consent authority, in the catchment, the local authority would need to have particular regard to the register of commissioners maintained by Te Pou Tupua as well as to Te Pā Auroa nā Te Awa Tupua, may appoint one or more of those

	<p>commissioners and must consult with Te Pou Tupua in its appointment. The relevant authority retains final decision making power over the appointments.</p> <p><i>Iwi Standing</i></p> <p>If there is a submission process under the RMA, the trustees of Nga Tangata Tiaki will be entitled to lodge a submission and be heard (where there is a hearing) on any matter relating to or affecting the Whanganui River.</p>
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<b>Legislation that the legal weighting 'have particular regard to' applies to</b>		
<b><u>Legislation</u></b>	<b><u>Agency</u></b>	<b><u>How the legal weighting will amend or affect existing regulatory arrangements</u></b>
Heritage New Zealand Pouhere Taonga Act 2014 ('have particular regard to')	MCH	<p>The legal weighting will ensure that Heritage New Zealand Pouhere Taonga accords appropriate weight to the Status and Values and to the views of Whanganui iwi in exercising its functions and powers in relation to archaeological matters under the Act relating to the Whanganui River or to activities in the catchment affecting the Whanganui River. This would include decisions about whether to grant or decline applications for archaeological authorities for activities that may or will modify or destroy an archaeological site (whether recorded or otherwise), within the Whanganui River area.</p> <p>Heritage New Zealand Pouhere Taonga will ensure the Whanganui River area is appropriately identified and recorded in its relevant databases to provide a clear point of reference for decision-makers exercising archaeological functions and powers under the Act relating to the Whanganui River or to activities in the catchment affecting the Whanganui River.</p> <p>The legal weighting will also ensure that Heritage New Zealand Pouhere Taonga accords appropriate weight to the Status and Values and to the views of Whanganui iwi in relation to requests for listing of historic places and areas within the Whanganui River area on the New Zealand Heritage List/Rārangi Kōrero. This may result in Heritage New Zealand Pouhere Taonga according a higher priority to processing such requests.</p>
Public Works Act 1981	LINZ	<p>This act applies to the acquisition and disposal of land. It does not cover the environmental impacts or authorisations for public works to be carried out (these are covered by the RMA).</p> <p>Decisions relating to the acquisition and disposal of land will need to have particular regard to the Status and Values in so far as these values apply to the acquisition and disposal of individual properties. This will be included in any decision-making process under the PWA.</p> <p>While the PWA includes a compensation regime for land acquisition, the compensation payable to landowners is set by statute. Most acquisitions are by agreement between owners and the Crown/local authorities; such acquisitions are a matter of contract and negotiation. Disposal is a statutory process relating to the return of land to those from whom the land was acquired.</p>

## Appendix Two: Settlement summary

The Te Awa Tupua framework comprises the following elements:

- a. recognition of the Whanganui River as Te Awa Tupua, ‘an indivisible and living whole comprising the Whanganui River from the mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements’ and of Te Awa Tupua as a legal person (together, **the Status**);
- b. vesting of certain Crown-owned parts of the bed of the Whanganui River in Te Awa Tupua;
- c. appointment of two people to a guardianship role (**Te Pou Tupua**) to act and speak on behalf of Te Awa Tupua, to uphold the Status and Values and to promote and protect the health and wellbeing of Te Awa Tupua. Of the two people appointed to this role, one person will be nominated by the Crown and one will be nominated by iwi with interests in the Whanganui River. The iwi with interests in the Whanganui River and the Crown will jointly agree and appoint the two appointments to Te Pou Tupua;
- d. establishment of a technical group to advise Te Pou Tupua in the exercise of its functions (**Te Karewao**). Te Karewao will comprise one person appointed by Whanganui Iwi, one person appointed by other iwi with interests in the Whanganui River and one person appointed by local authorities. Te Pou Tupua may invite other persons to assist Te Karewao as required for example on technical matters;
- e. a set of Te Awa Tupua Values (**the Values**) that recognise the intrinsic characteristics of the Whanganui River as Te Awa Tupua and provide guidance to decision-makers. The Values reflect the Whanganui River as: a provider of sustenance; a living and indivisible whole; a River inter-connected with Whanganui Iwi; and as an integrated waterbody that comprises many elements and communities;
- f. a collaborative group (**Te Kopuka**) will be formed comprising representatives from Whanganui Iwi and other river iwi, central and local government and stakeholders representing the range of commercial, recreational and community interests; and
- g. the collaborative development of the Whanganui River Strategy, a long-term Whole of River Strategy, by iwi, central and local government, and sector representatives (**Te Heke Ngahuru ki te Awa Tupua**). The Strategy will identify issues for the Whanganui River, consider ways of addressing them, and recommend actions.

A \$30 million contestable fund, Te Korotete o Te Awa Tupua (**the Te Awa Tupua fund**) will assist with implementing the Te Awa Tupua framework. The fund will be available to support projects relating to the environmental, social, cultural, and economic health and wellbeing of Te Awa Tupua. Such projects will be intended to strengthen the relationship of the iwi, hapū and other communities of the Whanganui River with the Whanganui River in relation to its health and wellbeing, and, in turn, the social and cultural health of those communities.

The Deed and Bill, should the Bill be enacted, includes a statement of general relevance (clause 11 of the Bill). This states that the Te Awa Tupua framework will be a relevant

consideration in the exercise of all statutory functions, duties or powers relating to the Whanganui River or relating to activities in the catchment affecting the Whanganui River.

The Te Awa Tupua framework also provides for:

- a. *protections for the name 'Te Awa Tupua'* against unauthorised commercial exploitation;
- b. *establishment of the Te Awa Tupua register*, maintained by Te Pou Tupua, of accredited hearing commissioners who may be nominated for the register by Whanganui Iwi. Local authorities must consult the register when considering appointments to hear certain resource consent applications relating to the Whanganui River;
- c. *establishment of a fisheries coordination group* (involving Whanganui River iwi, Fish and Game New Zealand, and central and local government) to advance the protection, management and sustainable use of freshwater fisheries in the catchment;
- d. *interim custodian arrangements* in Te Awa Tupua for taonga tūturu found in the Whanganui River;
- e. *a collaborative process* to identify how to improve the regulation of activities on the surface of the River, involving Whanganui River iwi, Maritime New Zealand, and central and local government; and
- f. *a collaborative process* to explore the development of a regulatory mechanism to provide for customary food gathering, involving Whanganui River iwi and the Ministry for Primary Industries (MPI).

Te Awa Tupua is deemed to have a specific status under certain legislation. This includes deeming Te Awa Tupua to be:

- a. an institution for the purpose of applying for registration as a charitable entity under the Charities Act 2005;
- b. a public authority for the purposes of the RMA;
- c. a body corporate for the purpose of applying to be a heritage protection authority under section 188 of the RMA;
- d. a public body for the purposes of clauses 30 and 30A of Schedule 7 of the Local Government Act 2002;
- e. a public body for the purposes of sections 4 and 35 of the Walking Access Act 2008;
- f. a registered collector of taonga tūturu for the purposes of section 14 of the Protected Objects Act 1975; and
- g. a public authority for the purposes of section 33X of the Maritime Transport Act 1994.

The settlement includes other redress specific to Whanganui Iwi. The Deed of Settlement, and Bill as appropriate, provide for redress to recognise and further develop the relationship between Whanganui iwi and the Whanganui River through both cultural and financial redress:

- a. *Crown acknowledgements and apology* based on the agreed historical account;
- b. *Te Pātukurukuru: Whanganui Iwi – Crown Relationship Agreement* an overarching relationship document (provided for in the Deed of Settlement). to help the Crown and Whanganui Iwi work together to implement and give effect to the settlement, and represent commitment to Te Awa Tupua;
- c. *statutory recognition* to recognise and provide for the mana and relationship of Whanganui Iwi in respect of Te Awa Tupua and ensure that Whanganui Iwi are not required to establish its relationship with the Whanganui River in order to participate in statutory processes affecting the River;
- d. *authority for Whanganui Iwi to carry out authorised customary activities*, subject to appropriate protections, without the need to seek consents, concessions, permits or licences on a case by case basis. These activities are defined at clause 74 of the Bill. Such activities must be carried out in accordance with criteria to be agreed between Whanganui Iwi, the Director-General of the Department of Conservation and any other relevant officer of the Crown, in consultation with the relevant local authority; and
- e. *Other cultural redress* including:
  - i. Crown recognition of the significance of ripo (rapids) to the relationship of each hapū of the Whanganui Iwi with the Whanganui River and to the relationship of Whanganui Iwi collectively with the River;
  - ii. The assignment of official geographic names to certain features; and
  - iii. agreement to progress a social services project with relevant agencies to improve collaboration of health and related social services within the Whanganui region.

## Appendix Three: Status of current consents on the River

Horizons Regional Council have identified there are a total of 173 current (or active) resource consents within the Whanganui region.

75 current consents relate to discharges and land and water within the broader catchment. Of these there are six existing resource consents to discharge into the Whanganui River:

- with a duration between 16 and 35 years;
- two are due to expire in 2025 with the remainder in 2034/35; and
- three are held by the Wanganui District Council, one by the New Zealand Transport Agency and two by industrial companies.

There are 22 current consents for water takes and diversions related to the Whanganui River or its tributaries:

- 12 consents relate directly to the Whanganui River, with 11 of them being granted to either the Wanganui District Council or the New Zealand Transport Agency for riverbank protection, flood management or erosion control. The remaining consent is to a private hydroelectric company. The duration of these consents range from 34 to 35 years expiring between 2034 and 2039.
- 10 consents relate to tributaries of the Whanganui River. Seven of these relate to diversions, two of these to take water, and the final is to excavate bed material to build a dam. Half the consents are to either Horizons Regional Council or the New Zealand Transport Agency. The remainder are to industrial companies, farmers or agriculturists. The duration of these consents range from 26 to 35 years expiring between 2028 and 2041.