

Appendix 28: Impediments

1. Purpose

The focus of this appendix is to highlight some of the statutory and non-statutory impediments to the range of priority actions being recommended for the restoration of the health and wellbeing of the Waikato River. The priority actions are described in Section 7.

Impediments were identified during workshops with regional and local council staff from within the Waikato region in December 2009 and at a Study team workshop in May 2010. The impediments are grouped into statutory or non-statutory categories. The statutory impediments all relate to actions that are likely to be regulated or influenced by legislation. Non-statutory impediments relate to all other impediments.

2. Non-statutory impediments

2.1 Te Ture Whaimana ownership

Broad acceptance and shared ownership by iwi, community, business and regional and local councils is essential to achieving the overall vision of Te Ture Whaimana for a healthy and well Waikato River. Without this shared commitment the process of change and activities needed to implement it will be resisted.

Key to this is the development and implementation of communication, consultation and engagement strategy for both the review of Te Ture Whaimana, as well as to activities or initiatives that are proposed as part of the priority actions.

The review of Te Ture Whaimana post settlement includes a public submission and hearing process. This provides an opportunity for broad public engagement early on to highlight the need, discuss response options and clearly communicate the priority activities selected for inclusion in the reviewed strategy document. The focus should be on identifying the benefits of these actions, the costs and consequences of not doing them and the risk of continued degradation.

The success of the engagement process applied from the outset will influence not only the buyin to Te Ture Whaimana, but also the amount of time and effort that will need to be taken to cascade the reviewed vision and strategy in Te Ture Whaimana through related statutory documents like the regional policy statement and plans, district plans, etc. all of which will have statutory submission, hearing and appeal processes.

2.2 Cost of implementation

Most of the Study's recommended actions will incur costs to implement. The costs can be broken into several categories and may be incurred by a number of parties.

In broad terms there may be a capital and operating cost to purchase land, build, operate or maintain the action and a cost to gain resource and/or building consent for the activity. There may also be opportunity costs associated with an action with communities and businesses having a limited pool of resources to make decisions, and act if necessary, if they think a recommended action will affect viability of their service provision or commercial operations.

For example, if all treated wastewater was disposed to land this will raise the question about who pays and who benefits, the quality improvement resulting from the action and cost versus the significant improvement to cultural values. When considering new consents or the renewal of any existing sewage discharge consents the Local Authorities (LAs) or other applicants are generally required to investigate and report on the technical and economic feasibility of implementing a land disposal scheme. Many councils in the Waikato are understood to have assessed the technical and economic feasibility of land-based disposal and have reached the conclusion that land-based treatment is either not feasible technically or involves CAPEX and OPEX costs which are beyond the resource of their communities to fund. At the same time, continued sewage discharge to waterways will be counter to the vision expounded in Te Ture Whaimana.

It will therefore be important to develop a funding plan for the implementation programme, factoring in input from TAs (and other public institutions). Given the 30 year plus timeframe for implementation there is opportunity to align priorities with council 10 year plan processes (for example). The ability to set up a regional development contributions regime under the Resource Management Act 1991 (RMA) or Local Government Act 2002 (LGA) should also be investigated – linking contributions to activities either using or affecting the river.

In the case of private property actions like riparian planting, the ability for landowners to contribute to this can be variable. For example, some farmers may be more able to afford riparian fencing and planting currently than others because of market conditions between the different properties and industries. This not only raises the 'ability to pay' question but also equity issues between neighbouring activities about where the costs of restoration should lie, whether contributions to private owner initiatives should be means tested and, if so, whether this lessens the buy-in to strategy implementation for some key segments. All will be key considerations for any funding policy that is developed.

2.3 Process coordination

Most of the Study's recommended actions will require coordinated planning if the intended outcome is to be achieved effectively.

During stakeholder workshops the difficulties associated with co-ordinating planning processes were raised in relation to a number of topics and actions. It was noted that there is difficulty achieving coordinated planning when the functions and strategies of local government operate under different legislation, at different time scales, within different levels of government (i.e., national, regional and district) and in some cases require implementation by organisations outside of local government altogether.

An example of this was noted in the Sinclair-Knight Merz (2010) study, which identified the need for improved links between RMA processes and the LTCCP. Currently, some non-regulatory methods identified in RMA documents never make it into the long-term council community plan (LTCCP) (commitment to education and advisory programmes etc.).

An example in relation to the topic of river access is that there is currently no Regional Access Plan that outlines the priorities for access throughout the region, the purposes for which access might be required e.g., for cultural, aesthetic or sporting purposes, and prioritising resources (time, money, people etc.) to implement effective solutions. A coordinated plan would enable all agencies to work towards common priorities and objectives.

It is noted that development of an Integrated River Management Plan is a key activity arising from Section 35 of the Waikato–Tainui Raupatu Claims (Waikato River) Settlement Act 2010. The purpose of this plan is primarily centered on management of aquatic life, habitats and natural resources, and hazard management. However, this plan could be extended to become a document that is used to better coordinate the priority actions the Waikato River Authority decides to fund – e.g., by informing funding criteria and decision making of the Trust, RMA decision making and, potentially, other agency activity planning as well (e.g., TAs, Environment Waikato, New Zealand Transport Authority, etc.).

2.4 Commissioner training

The lack of training for RMA commissioners about Te Ture Whaimana – the Vision and Strategy for the Waikato River and the statutory powers of the Waikato River Authority is also identified as an impediment to the successful implementation of the recommended priority actions, particularly those actions that will need resource consents to be assessed by RMA commissioners. Training of Waikato River Authority (or river iwi) accredited commissioners will be a necessary ongoing commitment (and is also a legal requirement in the Waikato–Tainui Raupatu Claims (Waikato River) Settlement Act 2010).

2.5 General knowledge and education

A lack of knowledge or information about how to mitigate adverse land use effects or undertake improvements can be an impediment to the Study's actions for behaviour change (e.g., farming practice) and physical change (e.g., riparian restoration).

It is noted that Environment Waikato, farm advisors and industry groups currently play a role in education.

Readily available information showing good practice examples and technologies that are endorsed by the regional council and/or an independent industry organisation, similar to the Energy Efficiency and Conservation Authority (EECA), would help. The voluntary uptake of such advice may be greater if it is seen to come from an independent advisor as opposed to the agency enforcing compliance.

Education should also be focused at school levels – with the youth of today being both those that will be implementing the actions in the future and who will influence the perceptions and actions of their families now.

2.6 Attitude change and industry collaboration

Unwillingness by the Waikato community to change behaviour or attitudes could be a key impediment to the successful implementation of many of the recommended priority actions such as mitigating adverse farming or urban effects, or undertaking restoration actions. Illustrating the benefits of change is one way to instigate gradual attitudinal change e.g., illustrating the benefits of an action to the quadruple bottom line, international market drivers for sustainability and the national 'clean, green' image.

Working with industry, rather than against it, is a positive method to work towards industry-wide changes. There are existing successful examples of collaboration with industry such as the Dairy Industry Clean Streams Accord between Fonterra, regional councils, Ministry for the Environment and Ministry of Agriculture and Forestry which sets a national-level framework for reducing the impacts of dairying on the quality of New Zealand's water bodies. One of the targets often quoted in relation to this Accord is the target to exclude dairy cattle from 90 percent of streams, rivers and lakes by 2012.

3. Statutory framework – an overview

Many of the recommended priority actions in the Study are influenced or controlled by the Resource Management Act 1991 (RMA), Local Government Act 2002 (LGA) or Land Transport Management Act (LTMA) processes. The diagram below outlines some of the relevant legislation, associated documents and some of the relationships between these.

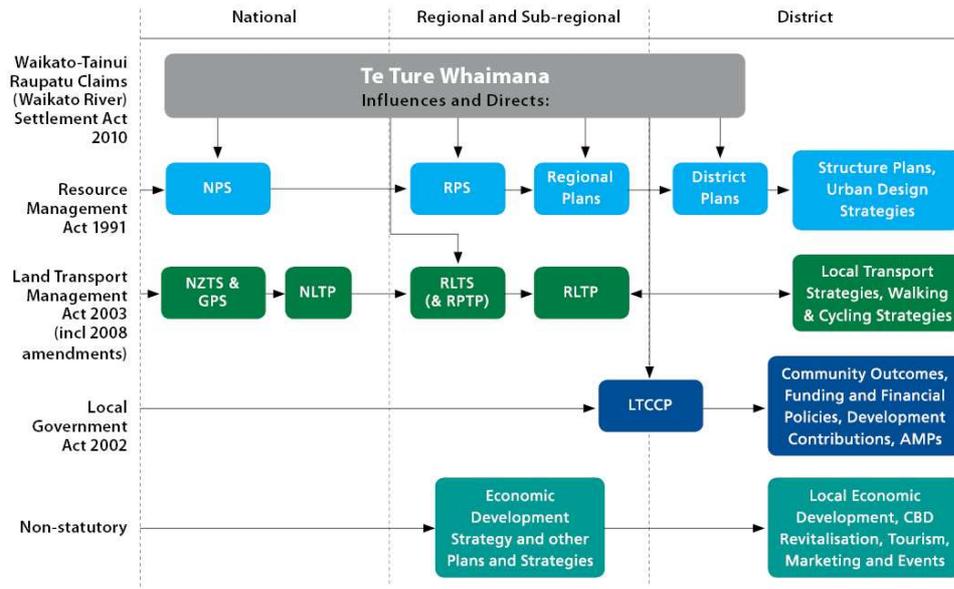


Figure 1: Waikato River Independent Scoping Study context (sourced and adapted from the Future Proof Growth Strategy and Implementation Plan).

Under the RMA, the key planning documents are national policy statements (NPS), regional policy statements (RPS) and regional and district plans. Where an NPS exists it sets national policy direction. An RPS sets the region-wide policy direction and cannot be inconsistent with an NPS. Regional plans and district plans must give effect to the RPS.

The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Bill direct Environment Waikato to incorporate Te Ture Whaimana – the Vision and Strategy for the Waikato River into the Waikato Regional Policy Statement without a formal Schedule 1 RMA process of submissions and hearings. Te Ture Whaimana content also prevails over any inconsistent provision of a National Policy Statement. Environment Waikato is also required to update the RPS (if necessary) so that it is not inconsistent with Te Ture Whaimana without going through the Schedule 1 RMA process.

3.1 Reviews of Te Ture Whaimana – Vision and Strategy for the Waikato River

The first review of Te Ture Whaimana is required to commence not more than three months after the settlement date. Subsequent reviews are necessary no earlier than five years later, then 10 years thereafter. The reviews are required to consider whether Te Ture Whaimana should include specific targets and measures for achieving the overarching purpose of the settlement agreement. These reviews are required to follow a consultation and submission process outlined in the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

Once the review has been completed, all councils within the region are required to review their own RMA documents to consider whether changes to Te Ture Whaimana result in the need for a change to their respective RMA documents (RPS, regional and district plans).

Such reviews are required to go through formal Schedule 1 RMA processes and therefore will be also subject to submission, hearing and potentially appeals to the Environment Court – meaning it could be months/years until such time as all documents are aligned with each review of Te Ture Whaimana. Having said that, where a plan change is consistent with Te Ture Whaimana, there will be less ability to contest the content of the policy statement or plan change process.

3.2 Impact on resource consent process and existing consents and designations

Regional and district plans outline which activities require resource consent. A resource consent application requires an assessment against the RMA, objectives, policies and rules of relevant RMA documents and an Assessment of Environmental Effects on the Environment – this will now include a need to provide commentary of the proposed activity in terms of its consistency with Te Ture Whaimana.

Depending on the activity status for which resource consent is required, the resource consent may be notified and go through a submission and hearing process. Should a hearing committee need to be established for applications of interest to the Waikato River Authority, the panel is required to be made up of an equal number of Waikato River Authority appointed decision makers as those appointed by council. An independent chairperson also needs to be jointly appointed.

After a local authority has updated its RMA planning documents to align with Te Ture Whaimana, a council may begin a review of conditions of resource consents under Section 127 of the Act to make them consistent with Te Ture Whaimana. There is no such ability for councils to initiate a review of conditions of a designation – councils will need to focus such reviews on the conditions of any resource consents that are associated with the designated use.

4. Study recommendations – RMA impediments

Possible RMA process impediments are identified below. It is noted that RMA impediments typically tend to be related to concerns about the impacts of additional cost, additional time and increased uncertainty on business and communities as a result of the resource consent or designation processes. Many of the Study's recommendations for priority actions have resource consent or designation implications and these are discussed below.

4.1 Need for resource consents and/or designations

Many of the priority actions recommended by the Study in Section 7 involve physical works or activities that will require resource consents to be obtained from either district or regional councils (or both).

Resource consent requirements are often seen as an impediment because they add uncertainty (until resource consent is obtained), time and cost to a project or activity. In the case of the Study's recommendations, resource consents will typically be required by a regional plan for activities that involve dredging, water takes or diversion, geothermal water takes and reinjection, discharges to land, water or air, and significant earthworks in proximity to water bodies. At the district level, resource consents will typically be required for 'out of zone' buildings and structures, vegetation removal and earthworks.

Consents/designations will therefore likely be required for some restoration actions such as those that will improve access to and around the river (e.g., to construct and operate the river walkway, visitor centres, reserves, boat ramps), alter drainage systems, improve flood protection, alter hydro-power schemes to facilitate/improve fish passage or alter geothermal power schemes to re-inject geothermal water.

Many existing activities, such as point source discharges from industrial activities and municipal wastewater, are operating to consented regimes. If a higher level of treatment or alternative disposal methods are required this will involve reviewing and amending the existing consent conditions, reconsidering the consent at the time the existing consent period expires and capital costs to alter site activities. Costs are associated with both the resource consent process and the technological improvements required to improve the quality of the point source discharge. For example, obtaining new or renewing existing wastewater treatment plant consents can often be a lengthy process, with many taking more than 10 years to work through from the initial concept and strategy development stage, community consultation, consenting and then implementation. This means there are often significant lag periods between any improvement processes commencing to the time where quality improvements actually occur.

A review of the regional and district planning framework for the recommended priority activities is suggested, with a possible outcome being development of a regulatory regime that makes restoration or quality improvement activities more readily able to be consented, or potentially resource consents not required and activities identified as permitted if specific standards or criteria are able to be complied with.

4.2 Permitted activities

District and regional plans can identify activities that are permitted provided they meet the standards or criteria set out in the plan. Currently farming activities such as

pastoral dairy farming and clear felling forestry in high catchment areas are a permitted activity in most district and regional planning documents within the region subject to permitted activity standards.

Permitted activity standards don't currently reinforce the requirement for change. Conversely, radical changes of approach to regulating historical (and economically important) land use practices are likely to be unacceptable – and will be costly to look to propose via the RMA process as evidenced by Variation 5 to the Waikato Regional Plan. It was proposed in 2005 and is still under appeal to the Environment Court now.

Many of the Study's recommended actions therefore look to change and/or improve rural land management practices by way of education and voluntary actions (e.g., industry approaches and potentially self regulation). These could be undertaken in conjunction with an aligned regulatory regime – including a review of permitted activity standards.

4.3 Monitoring

The effectiveness of standards and rules in district plans and resource consent conditions are required to be monitored to ensure that they achieve the intended environmental result. Resource consent conditions also require monitoring to ensure they are being complied with. However monitoring tends to be poorly resourced, which results in poor data being gathered to inform strategy and policy review and refinement.

Collection of data aligned with the Study's objectives, strategies and actions will be imperative if the effectiveness of the Study's recommended priority actions is to be able to be critically reviewed. The increased focus on monitoring quality and effectiveness will likely require increased effort (and cost) to be invested in this activity, with a well defined and focused reporting regime set up to monitor the effectiveness of the priority actions to achieving an improved environmental state. This is addressed in Section 8 of the Report and in Appendix 30: Report cards.

4.4 Lack of national guidance

The recent Sinclair-Knight Merz (2010) study notes that councils feel there is a need for national direction on water quality/quantity issues including a clear outline of what is important at the national level. The impact of non-point source pollution arising from land use activities (predominantly agricultural) is generally considered to be a key issue to be addressed. However, as detailed earlier, this is potentially difficult to achieve with a long-term horizon via local regulation which is influenced by the short-term election cycle every three years. Central government direction on national priorities could assist by reducing delays and disagreements when setting priorities at a regional level that are for longer periods of time. The Settlement Act

also deals with this issue by placing statutory obligations on councils with respect to restoring and protecting the river for future generations.

The Sinclair-Knight Merz study also noted that the majority of councils think national guidelines on water quality limits are needed to reduce arguments around methods and limits and avoid duplication of effort. It is noted that the Land and Water Forum is currently reviewing water policy at the national level at the moment. With a report due to be provided to the Minister for the Environment by September 2010, it is anticipated that this will consider (and address) establishment of nationally consistent standards, approaches and guidance for the management of freshwater in New Zealand.

5. Study recommendations – LGA 2002 implications and impediments

Councils in New Zealand are required to prepare a long-term council community plan (LTCCP) every three years. The LTCCP is guided by community outcomes, which are an expression of a community's desired outcomes in terms of the present and future social, economic, environmental and cultural wellbeing of the community. Councils consult with their community when developing the LTCCP and, once adopted, the LTCCP can be changed only after appropriate consultation with the community. The LTCCP outlines details of all of the council's activities and how these activities contribute to the desired community outcomes. It also outlines the council's budget, explaining what the council plans to spend over the next ten years.

The recommended actions outlined in the Study propose a number of new activities for Environment Waikato and district councils to act on – many of which will not have been identified in their current LTCCPs. Activities like walkways, boat ramps, visitor centres and wastewater treatment process changes will ultimately cost the local communities more (e.g., through increased rates, development contributions, etc.). Many councils are reporting difficulties with servicing existing community activities identified in their LTCCPs, with many activities being deferred. The likely ability of these councils to introduce additional work activities into their 10 year plans will be a challenge.

6. Study recommendations – LTMA implications

The Study's recommended actions propose a number of new activities for road controlling authorities to act on – many of which will not have been identified in their current activity plans or budgets.

Improved treatment for point source road run-off discharges and culvert upgrades to provide fish passages are such examples. They will require budgeting for – both in long-term council community plans (LTCCPs) where councils are Road Controlling Authorities, but also by the New Zealand Transport Agency in the case of State Highways and potentially the Department of Conservation (where conservation land is affected).

7. Conclusions and key recommendations

A number of potential impediments to Waikato River Independent Scoping Study implementation have been identified, namely:

- Lack of ownership and partnership.
- The funding gap.
- Process coordination.
- Regulation.

Suggested approaches to mitigating or minimizing the potential for these impediments to occur are:

Ownership/partnership

- Prepare an engagement strategy for now, short- and medium-term with the community, landowners, politicians and industry, focusing on increasing the visibility of the issues associated with river degradation, costs (social, cultural, economic and environmental) and need for and benefit of change and how Te Ture Whaimana implementation is important for all.
- Highlight that the preference is for change to occur voluntarily but set clear expectations of what is expected and by when and consequences of inaction (e.g., regulation).
- Develop an education plan and implement it – with a series of different focus points, at industry, community and schools.

Funding gap

- Review the priority list of actions and develop a short-, medium- and long-term funding plan in a coordinated manner with councils, industry and stakeholders – recognizing that sustained investment will be needed in some activity areas.
- Investigate ability to establish a development contribution regime (under either RMA or LGA) for contributions to be taken to avoid, remedy or offset impacts of activities and channeled to the priority actions.

Process coordination

- Consider broadening the scope of the Integrated River Management Plan and whether it should be extended to become the key 'integration and coordination' document for implementation, being used to coordinate the priority actions the Waikato River Authority Trust decides to fund – e.g., by including funding criteria and identifying priority activities within defined implementation periods, informing RMA decision making and potentially other agency activity planning as well (e.g., TAs, Environment Waikato, NZTA, etc.).

Regulation

- Review the regional and district planning frameworks for the implementation actions and consider the merits of developing a 'carrot' approach – providing opportunities for activities associated with river enhancement to establish or be undertaken with minimum consenting requirements.
- Consider the merit of establishing a policy review framework that aligns the Waikato River Strategy Review with review of regional and district planning documents, i.e., similar to a Board of Inquiry process where submissions are sought for any necessary changes to all documents at once, with one hearing or inquiry held to minimise implementation delays and costs.

8. References

Sinclair Knight Merz (2010). Regional Council Practice for Setting and Meeting RMA-Based Limits for Freshwater flows and Quality. *Ministry for the Environment. National Summary Report.*