



*Local Government New Zealand*  
*te pūtake matakōkiri*

**Submission to the Maori Affairs Select Committee  
On the Waikato-Tainui Raupatu Claims  
(Waikato River) Settlement Bill 2008**

**From *Local Government New Zealand***

**10 February 2009**

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## INTRODUCTION

1. *Local Government New Zealand* appreciates the opportunity to submit on the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Bill 2008 (“the Bill”).
2. *Local Government New Zealand* makes this submission on behalf of the National Council, representing the interests of New Zealand local government. This submission was endorsed under delegated authority by:
  - Lawrence Yule, as the President of the National Council
  - Kerry Prendergast, as the Vice President of the National Council
  - John Cronin, as the Treaty Issues Portfolio Holder of the National Council.
3. We support the overarching purpose of the settlement provided at clause 3 of the Bill and the greater involvement of Waikato-Tainui in restoring and protecting the health and wellbeing of the Waikato River. We acknowledge the significance of this Bill for Waikato-Tainui.
4. *Local Government New Zealand* believes that it is important for the Bill to empower Waikato-Tainui in respect of the Waikato River in a way which is compatible with the role of local government under the Resource Management Act 1991 (“RMA”) and Local Government Act 2002 (“LGA”). Our submission sets out suggested amendments to achieve the purpose of the Bill and ensure that the Settlement can work, while maintaining compatibility with the role of local government under this other legislation.
5. We note that local authorities are submitting to you on specifics of the Bill and their responsibilities. This *Local Government New Zealand* submission is focused on matters of principle relevant to this Bill and also relevant to future settlements or arrangements that may follow.
6. *Local Government New Zealand* wishes to appear before the Maori Affairs Committee in respect of our submission on the Bill.

## EXECUTIVE SUMMARY

### *Support for new arrangements*

7. *Local Government New Zealand* supports the intention of the Bill and the greater involvement of Waikato-Tainui in the management of the Waikato River. We recognise the significant opportunities provided by new arrangements including a stronger working relationship between local authorities and Waikato-Tainui and a co-management arrangement which is effective. *Local Government New Zealand* wants to ensure that the Bill secures an enduring Treaty Settlement which reflects the intention of all parties involved in the process and affected by the Settlement. *Local Government New Zealand* is committed to ensuring local authorities can enter into a new era of settlement arrangements which provide for co-management over natural resources.

### *Maintaining the constitutional role of local government*

8. *Local Government New Zealand* is anxious to ensure that the Bill is clear in its intent and provisions and enables the local authorities and statutory authorities created to work cooperatively, without uncertainty or ambiguity. Any ambiguity, uncertainty or difficulties with the provisions of the Bill and how they integrate with the RMA and LGA will increase compliance costs for the local authorities and Waikato-Tainui. Removing ambiguities and conflicts in the Bill will ensure that the settlement is enduring, which is a key goal for local government. Settlements which can be effectively implemented and are therefore enduring must be the objective of the Government. We are concerned that this Bill may set up processes, requirements and approaches which will

not work in practice. We are particularly concerned about ambiguity with the scope of transfer/delegation of powers (schedule 1) and with co-management arrangements.

9. *Local Government New Zealand* wants to ensure that the Bill is compatible with the RMA and LGA and that the role of local government is retained under the RMA and the LGA. The role of local government constitutionally is central to the public law system in New Zealand and provides for local government to protect and promote the interest of communities in the present and for the future. It is unable to make decisions for the benefit of one particular community over another and must operate in an effective, open and transparent manner. Local government is of the view that its statutory and constitutional role within the legislative framework can be maintained, alongside achieving the key principles of the Bill provided certain provisions of the Bill are amended or clarified. While certain functions or powers could be transferred or delegated or certain processes put in place, we seek clarity to ensure that decision-making powers under the RMA and LGA are not transferred or delegated.
10. The Bill needs to be drafted to enable the three pieces of legislation to operate together rather than in conflict. If there are any conflicts between the Bill and the RMA or LGA, priority would need to be given to one of the statutes over the other. Such a situation needs to be avoided.
11. This submission highlights the areas where the Bill may be in conflict with the RMA and LGA and recommends amendments or clarification to enable ambiguities and uncertainties to be avoided. This will ensure that Waikato-Tainui, the statutory authorities created and the local authorities work together and reach the common goal of giving effect to the purpose of the Deed of Settlement.

#### *Vision and Strategy Statement*

12. The Vision and Strategy statement, which is a deemed national policy statement under the RMA, has not been drafted under the RMA and as such has not been prepared using a statutory process. We note that no process has been followed to determine whether the matters covered by the Vision and Strategy statement are matters of national importance or significance. The status of the Vision and Strategy Statement is unique.
13. The Vision and Strategy statement can be amended by order in council, rather than by normal legislative or government policy procedure, which denies full input from the public, affected parties or the full parliament. The content of the Vision and Strategy Statement is important and we believe that any amendment to it should be debated fully by parliament after public consultation.

#### *Statutory Entities*

14. The Bill establishes various bodies and gives them a variety of roles and functions. Members of local authorities are required to belong to these legislative bodies. The role of a local authority member under the LGA may conflict with the role the local authority member has in the various legislative bodies under the Bill. The Bill needs to resolve those conflicts and ensure that the statutory authorities, local authorities and Waikato-Tainui work co-operatively.

#### *Transfer or Delegation of Powers*

15. A full transfer or delegation of powers and functions in terms of decision-making is not intended in the Deed of Settlement or the Bill. In order for local government to remain credible and meet the purposes of the RMA and LGA it needs to retain its full decision-making powers. The Bill should provide that a local authority may transfer or delegate any one or more of its management functions, powers or duties under the RMA or LGA but may not transfer or delegate any of its decision-making functions and powers.
16. Clause 4(2)(a)(ii) of schedule 1 to the Bill could be interpreted as requiring some of the local government's decision-making power to be transferred. This is not the intention of the Deed of Settlement or the Bill and accordingly that clause needs to be amended to remove the ambiguity.

17. Liability for the powers and functions transferred needs to be clarified.

#### *Co-management Arrangements*

18. Co-management is supported but it needs to be effective in the context of the local authorities' decision-making powers under the RMA and LGA. The Bill cannot undermine local democracy or put at risk the basis on which the RMA and the LGA were established.
19. Amendments are required to the Bill to ensure that co-management is effective, local democracy is maintained and that local government retains its governance and decision-making role under the RMA and LGA.

#### *Cost of Monitoring Programmes and Reviews*

20. Cost implications to local government need to be addressed.

### **THE ROLE OF LOCAL GOVERNMENT**

21. This section of the submission sets out the role of local government which provides the context for our comments and recommendations on the Bill.
22. *Local Government New Zealand's* concerns with the Bill centre around the relationship of the Bill on existing legislation, particularly the RMA and LGA. Local government plays a central role under the RMA and LGA regimes in ensuring recognition of sound environmental values, effective public participation, well-compiled policy and good decision-making. Local government is accountable to citizens and communities and must ensure that this accountability is strengthened and not diminished by other legislation. We are unclear the extent to which communities understand or are engaged in the changes that may be imposed on them through this Settlement Bill.
23. *Local Government New Zealand* wants to ensure that the Bill is effective in securing sound and effective Treaty-based relationships for the future. *Local Government New Zealand* is committed to ensuring that its members can enter into a new era of co-management over natural resources where the overarching purpose of a Treaty settlement is to restore and protect the health and wellbeing of those natural resources for future generations.
24. Any reforms must keep in mind the fundamental importance of local government within the current legislative framework. *Local Government New Zealand* is of the view that it is vital that the Bill establishes mechanisms which are able to achieve consistency across other legislation relevant to the current and future management of the Waikato River.
25. *Local Government New Zealand* is particularly concerned with the implementation of the co-management arrangements under the Bill and the integration of the co-management processes with the RMA and LGA. It is important in public law terms that the Bill operates together with the existing legislation and does not compromise the decision-making powers of local government or the integrity of that legislation.
26. It is clear from a review of the Bill that its purpose is quite different from the purpose of the RMA and LGA. The purpose of the Bill is to give effect to the Deed of Settlement and to restore and protect the health and wellbeing of the Waikato River for future generations. The Bill recognizes and provides for the various instruments discussed in the Deed. The purposes of the RMA and LGA are of course much wider and essentially provide local government with certain management and decision-making powers in relation to resources within their jurisdictional boundaries.
27. Where the Bill deals with similar matters as the RMA and LGA it must be drafted to make it reasonably possible to construe the provisions so as to give effect to all three statutes.<sup>1</sup> The Bill should not be inconsistent with, or repugnant to the other, that the

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<sup>1</sup> Burrows, J F. *Statute Law in New Zealand* (third edition).

two are incapable of standing together, so that it is necessary to decide which statute is to prevail. Inconsistencies between the Bill and the RMA and LGA should be avoided if at all possible.

28. *Local Government New Zealand* is of the opinion that the Bill needs to be analysed and amended to enable it to operate alongside the RMA and LGA and, as such, achieving the purposes of the three pieces of legislation, rather than giving the Bill precedence over the other two more general pieces of legislation.

#### *Recommendation*

29. *Local Government New Zealand* recommends that the Bill should operate alongside the RMA and LGA and should be drafted to make it reasonably possible to construe its provisions to give effect to the Bill, the RMA and LGA.

## **VISION AND STRATEGY STATEMENT**

### Status of a National Policy Statement

30. The Waikato-Tainui Deed provides for the development and adoption of a Vision and Strategy statement for the Waikato River.<sup>2</sup> The Vision and Strategy statement is included in the Bill at schedule 2. The Vision and Strategy statement is a national policy statement within the meaning of the RMA.<sup>3</sup> As it is deemed a national policy statement, any person exercising a function under the RMA must, in carrying out those functions, have particular regard to it.<sup>4</sup>
31. We note that no process has been followed to determine whether the matters covered by the Vision and Strategy are matters of national importance or significance as per the RMA process.

### Amendment to Vision and Strategy Statement

32. Clause 14 provides for amendments to the Vision and Strategy statement. Any amendment to the Vision and Strategy statement could affect the relevant planning documents which may also need to be amended. We are concerned about the ability to change the Vision and Strategy statement by order-in-council, rather than by normal legislative or government policy procedure. Amending legislation by order in council is considered a flawed approach, particular when dealing with values and policy issues, which should be debated by a full parliament after public consultation.
33. A comparison of the way in which the Hauraki Gulf Marine Act 2000 works in tandem with the RMA assists in assessing the implications of the approach taken in the Bill.<sup>5</sup> Sections 7 and 8 of the Hauraki Gulf Marine Act 2000 are a deemed national policy statement and councils must amend any relevant planning documents to give effect to those sections. The Hauraki Gulf Marine Act 2000 makes no specific provision for making amendments sections 7 and 8 and as such the normal legislative procedure would need to be followed which would allow for some public input.

#### *Recommendation*

34. *Local Government New Zealand* recommends that the Bill follow the same procedure as the Hauraki Gulf Marine Act 2000 in terms of making amendments to the Vision and Strategy statement. This would require clause 14 to be deleted.

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<sup>2</sup> Clauses 5.1 and 5.4 of the Waikato-Tainui Deed of Settlement.

<sup>3</sup> Clause 9 of the Bill.

<sup>4</sup> Clause 11 of the Bill and clause 5.10.1 of the Waikato-Tainui Deed of Settlement.

<sup>5</sup> See **Long Bay-Okura Great Park Society Inc v North Shore City Council** A78/2008.

## STATUTORY ENTITIES

35. Under the Bill various bodies are established which Councils have to become members of. The Bill establishes a statutory body “The Guardians of the Waikato River” (Clause 16(1), a Waikato River Statutory Board (clause 21), and a joint working party (clause 30(3)).
36. *Local Government New Zealand* supports the creation of statutory authorities and wants to ensure that there is no conflict with local authorities being members of the new authorities and also meeting obligations under other legislation. It is critical that those bodies, local authorities and Waikato-Tainui can work cooperatively to achieve the purpose of the Deed of Settlement and that any conflicts are appropriately managed. This can be achieved by clearly setting out the role of members in the Bill’s statutory bodies, by maintaining the role of local government under the RMA and LGA (where conflicts are already managed), and by the Bill not interfering with the management of conflict in stating that decisions and binding<sup>6</sup>.

### *Recommendation*

37. The Bill needs to ensure that the statutory entities established under the Bill can operate together with the local authorities. The Bill needs to ensure that it does not undermine the appropriate management of conflict of interest members may face, for example clause 10 of schedule 3 and 4 should be amended to not bind members to decisions.

## TRANSFER OF FUNCTIONS OR POWERS

### Revocation/Suspension of Transfer

38. Clause 32 of the Bill makes provision for the revocation or amendment of a transfer. It provides that a local authority may not revoke or amend the terms of that transfer without complying with a specific process. Where a local authority has significant concerns over the exercise of the function, power or duty, it may suspend the transfer until the process set out in clause 32 has been worked through.<sup>7</sup>
39. The process for revocation in clause 32 is more complex than the process under the RMA, which allows for revocation on notice without a process. If it is intended for the Bill to prevail over the RMA process then the Bill needs to clarify that.
40. Given clause 32 of the Bill, it is clear that a local authority will need to review how the transferee is performing the function or exercising the power. The Bill needs to enable the local authority to oversee the performance of functions and the exercise of transferred powers.

### *Recommendation*

41. The Bill needs to be amended to enable a local authority to oversee the performance of functions and the exercise of the powers transferred.

### Delegation of Powers under RMA

42. A delegation of power is one approach under the RMA which ensures that the decision-making power remains with local authorities. Under section 34 a local authority can delegate functions to a committee of the local authority or to a community board. Section 34A provides the power of delegation to an employee, hearings commissioner or other person. A local authority may delegate to a person outside the council any function, power or duty except:

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<sup>6</sup> clause 10 of schedule 3 and clause 10 of schedule 4

<sup>7</sup> Clause 33 of the Bill.

- (a) the approval of a policy statement or plan;
  - (b) the power of delegation;
  - (c) the decision on an application for a resource consent; and
  - (d) the making of a recommendation on a requirement for a designation.
43. Clause 8.12 of the Deed provides that the establishment committee will be provided an initial list of functions, powers and duties. Clause 8.13 includes within that list functions, duties and powers relating to RMA planning, resource consent, compliance and enforcement processes. Although RMA planning and resource consent functions may be delegated or transferred, the RMA will not permit the final decision making power to be delegated.
44. Even though functions, powers and duties may be delegated to another party under the RMA, the performance or exercise of any function, power or duty remains with the local authority. The Bill needs to clarify liability issues in relation to any function or power delegated. In particular, we note the potential role of the Crown, should liability arise, due to the role of the Crown in the Settlement.

*Recommendation*

45. The Bill needs to clarify liability issues in relation to any function or power delegated.

Transfer of Powers under LGA

46. In reality it is very unlikely that any powers and functions could be transferred under the LGA because although a local authority can transfer its responsibilities under the LGA, it can only do so to another local authority. A local authority can delegate certain powers to other persons but it retains responsibility for the manner in which those tasks are undertaken, including legal responsibility.

Transfer under the Bill

47. *Local Government New Zealand* is concerned that the scope of transfer of functions or powers is not clear in the wording of clause 4(2)(a)(ii) of schedule 1 to the Bill. This clause could be interpreted as requiring some of local government's decision-making power to be transferred. Such an interpretation would be contrary to both the Deed of Settlement and the Bill. The Bill needs to be amended to ensure consistency with the Deed and should not diminish the role of local government.
48. *Local Government New Zealand* recommends that the Bill should provide that management matters may be transferred but the ultimate decision-making powers of local government may not be transferred or delegated. This will resolve the issue that the statutory board and the river trust do not have the same statutory authority or function as local authorities and are not the representatives of local communities. If the decision-making powers of local government cannot be transferred or delegated there will be no conflict between the Bill and the RMA and LGA, and it will be reasonably possible to construe the relevant provisions so as to give effect to all three statutes.

*Recommendation*

49. Clarification should be provided by amending Schedule 1 clause 4(2) to include a sub-clause (3):
- No matters in sub-clause (2)(a) shall remove the decision-making powers and functions of the local authority.

**CO-MANAGEMENT ARRANGEMENTS**

Co-Management

50. One of the purposes of the Bill is to provide “co-management” arrangements for the Waikato River.<sup>8</sup> It is clear from the Deed of Settlement and the Bill that “co-management” is central to the settlement and that local government must provide more explicit arrangements to facilitate Waikato-Tainui’s participation in natural resource management. Given the significance of “co-management” it is imperative that it can be successfully implemented.
51. The term “co-management” is not defined in the Bill. Part 2 of the Bill includes the following under the heading of “co-management arrangements”:
- (a) Integrated river management plan for Waikato River;
  - (b) Waikato-Tainui Environmental Plan;
  - (c) Resource Management Act 1991 planning processes; and
  - (d) Oversight of functions or powers transferred from local authorities.
52. Schedule 1 to the Bill provides the principles described in the Kiingitanga Accord. One such principle is “co-management”. Clause 4 of schedule 1 describes the principle of co-management as including:
- (a) The highest level of good faith engagement; and
  - (b) Consensus decision-making as a general rule;
- while having regard to statutory frameworks and the mana whakahaere of Waikato-Tainui and other Waikato River iwi.
53. Clause 4 further provides that to be effective co-management must include:
- (a) development, amendment and implementation of strategies, policy, legislation and regulation that may potentially impact on the health and wellbeing of the Waikato River, and
  - (b) processes for granting, transferring, varying and renewing resource consents for all activities that potentially impact on the health and wellbeing of the Waikato River.
54. Clause 4 requires effective Waikato-Tainui input and participation by engagement at an early stage in the statutory and management process. Clause 4 makes it clear that what is required is early and effective input rather than simply an obligation to consult.
55. *Local Government New Zealand* is fully supportive of a co-management arrangement and the effective input of Waikato-Tainui in the processes stated above, but wants to ensure that co-management effectively contributes to the framework for local democracy and the relevant local authorities’ decision-making powers under the RMA and LGA.
56. Any co-management arrangement must be *effective* and must not disillusion parties with respect to the process. If co-management is not effective then the repercussions will be significant not only for the Crown, Waikato-Tainui, local authorities but also for the community in general.
57. Even under a co-management system local government still needs to comply with its obligations under the RMA and the LGA, which involves making itself aware of and having regard to the views of its communities. It is necessary for local government (and all other parties who have a role to play under the Bill) to fully understand how “co-management” will work so that it is effective.
58. Developing of a meaningful relationship between local and authorities and iwi presents a continuing challenge to both parties. Any structure the Bill implements must provide for that relationship to develop and continue into the future.

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<sup>8</sup>

Clause 4(f) of the Bill.

59. *Local Government New Zealand* is concerned about the potential implications of co-management processes for the costs and timelines of RMA consents. Plan-making processes will also be affected and further delays, costs and complications could ensue. The co-management arrangements could be in direct conflict with the objectives of the government in reforming the RMA.

#### *Recommendation*

60. The Bill needs to clarify “co-management” and how it will be effectively implemented in practice without adding further to complexity and cost issues faced by all parties with RMA and LGA processes.

#### Integrated River Management Plan

61. The Bill provides for the preparation and approval of an integrated river management plan.<sup>9</sup> The plan will be divided into components, one of which is a regional council component. This component deals with:  
Issues related to the resource management, biosecurity, and local government functions of Environment Waikato under the Resource Management Act 1991, Biosecurity Act 1993, Local Government Act 2002, and any other relevant enactments.<sup>10</sup>
62. The regional council component becomes a component of the plan once it is approved jointly by Waikato-Tainui and Environment Waikato.<sup>11</sup> If a component cannot be approved, each component on which agreement has been reached may be approved.<sup>12</sup>
63. The Bill is silent on the status of a component if approval is not reached. It is assumed that in such circumstances the plan will not include a component dealing with those matters. The status of the integrated river management plan for local government resource management decision-making needs to be evaluated if agreement cannot be reached on the RMA component of that plan. It is assumed that if approval cannot be reached between Waikato-Tainui and Environment Waikato on the regional council component, then any regional council decision will be made under the relevant regional plan and not the integrated river management plan.
64. The status of the plan is important for local government when making decisions under section 104 of the RMA. If the regional council component is not approved then a consent authority should not take that component into account under section 104(1)(c) because it is considered that it would not be a relevant consideration. This is particularly important if any powers or functions related to section 104 are transferred to either the Waikato River Statutory Board or the Waikato Raupatu River Trust.
65. Although the integrated river management plan may not include a regional component if it is not approved by Waikato-Tainui and Environment Waikato, either party will have the option of promoting a plan change under the RMA to the relevant regional plan to include those matters which would normally be included in the regional component.

#### *Recommendation*

66. *Local Government New Zealand* recommends the following additional sub-clause to clause 25:  
If a component cannot be approved under subsection (2), the integrated river management plan for the Waikato River will not include a component dealing with those issues.

#### Environmental Plan

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<sup>9</sup> Clause 25 of the Bill.  
<sup>10</sup> Clause 24(3)(c) of the Bill.  
<sup>11</sup> Clause 25(2)(c) of the Bill.  
<sup>12</sup> Clause 25(3) of the Bill.

67. Under clause 28 of the Bill, Waikato-Tainui may prepare an environmental plan. No detail is provided in relation to this plan.
68. For an instrument to have any status under the RMA it must either be a planning document recognised by an iwi authority, or a management plan and strategy prepared under another Act.
69. The Bill provides that a local authority must take into account the environmental plan when it is preparing, reviewing or changing a planning document in the same manner as would be required for an iwi management plan.<sup>13</sup>
70. Although the Deed provides that a local authority should take the plan into account in the same manner as would be required for an iwi management plan, it does not provide that such a plan is to be “a planning document recognised by an iwi authority under the RMA”. Clarification in the Bill may be needed in regard to the status of the Environmental Plan.

### **COST OF MONITORING PROGRAMMES AND REVIEWS**

71. An evaluation is required of the impact of the Bill on the work of local authorities in respect of monitoring programmes and plan reviews under the RMA. *Local Government New Zealand* is concerned with the significant cost being imposed on local authorities to implement aspects of the Bill. For example, the additional requirements for Environment Waikato under the Bill include:
- (a) Amending planning documents to give effect to the Vision and Strategy statement;
  - (b) Having particular regard to the Vision and Strategy statement when performing functions and exercising powers under the RMA;
  - (c) Being a member of the Guardians of the Waikato River;
  - (d) Being a member of the Waikato River Statutory Board;
  - (e) Approving an integrated river management plan;
  - (f) Having regard to the integrated river management plan when preparing, reviewing or changing a planning document;
  - (g) Taking the environmental plan into account when preparing, reviewing or changing a planning document;
  - (h) Having regard to the environmental plan when considering a resource consent application;
  - (i) Being a member of any joint working party considering preparing, reviewing, or changing a planning document; and
  - (j) Oversight of functions or powers transferred from local authorities.
72. Clause 12 of the third and fourth schedules to the Bill provides that the Crown will bear the operational costs of the Guardians and the Board. The regulatory impact statement for the Bill provides that:
- It is anticipated that the costs associated with reviewing, and if necessary amending, existing plans or policies to reflect the vision and strategy will be absorbed by the existing statutory decision-makers.
73. *Local Government New Zealand* submits that the above statement is erroneous and unreasonable. Existing rate payers should not have to bear the cost of a local authority having to comply with new obligations imposed by Central Government. Compliance costs for local authorities have significantly increased over time without adequate analysis of expected costs and where those costs should appropriately fall. This Bill

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<sup>13</sup> Clause 29(1) of the Bill.

should allow local government to operate in a manner which does not impose unnecessary compliance costs on communities. As a Settlement made by the government, resources are required at a national level to support the Deed of Settlement including assisting local authorities and iwi to fully embrace their resource management responsibilities under the Bill.

#### *Recommendation*

74. Provision should be made in the Bill for the government to fund the additional costs to local authorities of having to comply with the Bill.

### **SUMMARY OF RECOMMENDATIONS**

75. In summary, *Local Government New Zealand* recommends the following:

#### *Integration of legislation*

- (a) The Bill must operate alongside the RMA and the LGA and must be drafted to make it reasonably possible to construe its provisions to give effect to the Bill, the RMA and the LGA. Any ambiguities and uncertainties must be removed.
- (b) The Bill must enable the local authorities, statutory authorities created and Waikato-Tainui to work co-operatively and must ensure that there are no conflicts between their various roles or with the RMA and LGA.

#### *Vision and Strategy Statement*

- (c) Schedule 2 should separate those matters which relate directly to matters covered by the RMA.
- (d) Clause 14, which deals with amendments to the Vision and Strategy statement, should be deleted.

#### *Statutory Entities*

- (e) The Bill needs to ensure that the statutory entities established under the Bill can operate together with the local authorities. The Bill needs to ensure that it does not undermine the appropriate management of conflict of interest members may face, for example clause 10 of schedule 3 and 4 should be amended to not bind members to decisions.

#### *Transfer and Delegation of Functions*

- (f) The local authority needs power to confirm or approve the transfer process as far as it relates to the effectiveness of the transferee performing a local authority function. The Bill needs to be amended to enable a local authority to oversee the performance of functions and the exercise of the powers transferred.
- (g) The Bill needs to clarify liability issues in terms of any function or power delegated.
- (h) Clause 4(2) should include the following as sub-clause (3):

No matters in sub-clause (2)(a) shall remove the decision-making powers and functions of the local authority.

#### *Co-management Arrangements*

- (i) The Bill needs to clarify “co-management” and how it will be effectively implemented in practice without adding further to complexity and cost issues faced by all parties with RMA and LGA processes.

- (j) An additional sub-clause is required to clause 25:
- If a component cannot be approved under subsection (2), the integrated river management plan for the Waikato River will not include a component dealing with those issues.

*Cost of Monitoring Programmes and Reviews*

- (k) Provision should be made in the Bill for the government to fund the additional costs to local authorities of having to comply with the Bill.

## CONCLUSION

76. *Local Government New Zealand* supports the overarching purpose of the settlement and the greater involvement of Waikato-Tainui in restoring and protecting the health and wellbeing of the Waikato River. We acknowledge the significance of this Bill for Waikato-Tainui. *Local Government New Zealand* is fully supportive of a co-management arrangement, but wants to ensure that co-management effectively contributes to the framework for local democracy and the relevant local authorities' decision-making powers under the RMA and LGA.
77. *Local Government New Zealand* is concerned that the significance of the role of local government constitutionally has not been fully considered in this Bill. Local authorities are not parties to the Deed and it is therefore this Bill that must recognise local government as a fundamental part of the public law system of New Zealand.
78. We make this submission to ensure compatibility between a tier of government (local government) and the bodies set up under the Bill as a result of the Deed of Settlement. Even under a co-management system local government still needs to comply with its obligations under the RMA and the LGA, which involves making itself aware of and having regard to the views of its communities. It is necessary for local government (and all other parties who have a role to play under the Bill) to fully understand how "co-management" will work so that it is effective.
79. *Local Government New Zealand* believes that Waikato-Tainui should be empowered as a result of the Deed of Settlement. We believe that local government can carry out its role in achieving the intention of both the Deed and the Bill without any amendments to statutes involving local government, provided our recommended amendments are made to clarify issues in the Bill.
80. We have recommended a number of amendments to the Bill to clarify uncertainties, reduce conflicts, and reduce compliance costs. The Bill must set up processes that work in practice for the long term implementation of the settlement.
81. This Bill embarks on a new path for Treaty settlement legislation. We expect this settlement legislation will be looked to in negotiations for future settlements. We encourage the Select committee to ensure the framework and implementation for an enduring settlement in the wider community interest.