

## Lincoln University Digital Dissertation

### Copyright Statement

The digital copy of this dissertation is protected by the Copyright Act 1994 (New Zealand).

This dissertation may be consulted by you, provided you comply with the provisions of the Act and the following conditions of use:

- you will use the copy only for the purposes of research or private study
- you will recognise the author's right to be identified as the author of the dissertation and due acknowledgement will be made to the author where appropriate
- you will obtain the author's permission before publishing any material from the dissertation.

**Legal personhood of the Whanganui Awa: To what extent has  
the Te Awa Tupua Act 2017 influenced decision-making for  
activities that affect the Whanganui River?**

---

A dissertation  
submitted in partial fulfilment  
of the requirements for the  
Degree of Master

at  
Lincoln University

By  
Emily Ireland

---

Lincoln University

2021



The Whanganui River (*Photograph by Emily Ireland*)

Legal personhood of the Whanganui Awa: To what extent has the Te Awa  
Tupua Act 2017 influenced decision-making for activities that affect the  
Whanganui River?

by  
Emily Ireland

## Abstract

The survival of Indigenous peoples is directly associated with their sustainable interaction with the land and the beliefs and practices tied to that place. However, as a consequence of colonial conquest and state expansion, Indigenous peoples have been systematically marginalised and excluded from planning, decision-making and management processes. Since the 1980s, however, there has been a resurgence to transform planning systems towards self-determination for Indigenous people. This resurgence includes re-shaping environmental governance to support the inalienable connections between Indigenous peoples and their ancestral places, resources, and environments.

Over the last four years, the decision to grant legal personhood status to natural entities has gathered global momentum, with examples of national parks and rivers receiving legal rights in the USA, India and Australia. However, it was here in Aotearoa, New Zealand, that first initiated this movement, with the granting of legal personhood to the forest of Te Urewera in 2014. New Zealand then became a world-first when parliament established the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, which granted a river (the Whanganui River) with *“all the rights, powers, duties and liabilities of a legal person”* (s 14, TATA 2017).

This action was part of a Treaty of Waitangi claim settlement between the Crown and Whanganui Iwi, which recognised the special relationship between the Whanganui Iwi and the Whanganui River through cultural and financial redress. Since the enactment of Te Awa Tupua, many researchers have commented on the significance of legal personhood, with some stating that Te Awa Tupua is a way to achieve an eco-centric framework while still using anthropocentric tools (legal rights).

Ngā Tāngata Tiaki o Whanganui, the post-settlement governance entity for Te Awa Tupua, hold that the Act is a way to bring together multiple and competing values in the management of the Whanganui Awa for the purpose of protecting and enhancing the health and wellbeing of the Awa.

It has now been over four years since the enactment of Te Awa Tupua; however, there has been no research on the implications this legislation is having on the ground. This dissertation seeks to determine whether the Te Awa Tupua Act 2017 has a tangible difference in how planning is being carried out. Specifically, this dissertation investigates the influence of the Te Awa Tupua Act 2017 on the decision-making process of business owners, private planning consultants, public sector planners and Crown entities in regard to activities that affect the Whanganui River.

**Keywords:** Legal personhood, Te Awa Tupua, Whanganui Iwi, Treaty settlements, decision-making, environmental governance, self-determination of Indigenous peoples, environmental protection, procedural effects, substantive effects, symbolic effects.

## Acknowledgements

It is no doubt that this year has been the most challenging academic year of my life! Through undertaking this dissertation, I have greatly tested my time-management skills, concentration and writing ability. However, it was also only with the fantastic support of the people around me that I could complete this dissertation.

Firstly, I would like to thank my supervisor, Dr Hamish Rennie, for his helpful guidance and professional input. His knowledge and advice only spurred my interest in the topic and helped me produce research that I am proud of. His countless sheep stories also provided a sweet distraction.

Thank you to my Mum and Dad for their words of encouragement and unwavering faith in me to complete this research. Some words of appreciation for my flatmates, a.k.a my best friends, for being fantastic listeners and advice-givers. My partner Liam who helped me through the tough times with all his positivity and made sure I was taking deserved time outs. Muchas gracias!

Our Master of Planning tutors, Ashley and Richard. Your patience in answering our many questions and support is much appreciated. Thank you both.

I would also like to thank my participants for giving up their time and sharing their valuable knowledge with me. Some participants invited me into their homes that were right next to the Awa. It was very special and humbling to hear your stories about the Awa.

I would also like to thank Hillary Rayner, and her late husband, Tony Rayner, for providing me with the A.C Rayner Memorial Scholarship. I was privileged to receive this scholarship which contributed to my trip up to Whanganui and aided me to undertake this research.

Finally, best wishes to my fellow Master of Planning classmates. Completing this dissertation without them would have been extremely difficult, and they have all added to my student life here at Lincoln University. Thank you, Annabelle, Kestri, Mawardah and Will!

# Table of Contents

<b>Abstract .....</b>	<b>iv</b>
<b>Acknowledgements.....</b>	<b>v</b>
<b>Table of Contents.....</b>	<b>vi</b>
<b>List of Tables .....</b>	<b>ix</b>
<b>List of Figures .....</b>	<b>x</b>
<b>List of Abbreviations .....</b>	<b>xi</b>
<b>Chapter 1 Introduction .....</b>	<b>1</b>
1.1 Research question .....	2
1.2 Introducing Te Awa Tupua .....	2
1.2.1 Historical context.....	2
1.2.2 The provisions of TATA.....	3
1.3 Personal position.....	4
1.4 Dissertation structure .....	5
<b>Chapter 2 Theoretical Context.....</b>	<b>6</b>
2.1 Introduction .....	6
2.2 The relationship between people and nature.....	6
2.3 The role of Indigenous peoples in planning and decision-making processes.....	10
2.4 The drivers for granting legal personhood to natural entities .....	12
2.5 Critique of legal personhood of natural entities to provide for self-determination .....	14
2.6 Creating a ‘third space’ .....	15
2.7 The link between values, behaviour, and decision-making for the environment.....	17
2.7.1 Personal and social factors .....	19
2.7.2 Societal awareness and social learning .....	19
2.7.3 Additional factors .....	20
2.8 Chapter summary.....	21
<b>Chapter 3 Statutory Context.....</b>	<b>23</b>
3.1 Introduction .....	23
3.2 The Resource Management Act 1991 .....	23
3.3 Provision for Māori interests in the RMA.....	23
3.3.1 Purpose and principles .....	24
3.3.2 Resource consenting .....	25
3.3.3 Decision-making on resource consents.....	26
3.4 Te Pā Auroa nā Te Awa Tupua— the Te Awa Tupua framework .....	27
3.4.1 Decision making under the Te Awa Tupua Act 2017 .....	27
3.5 Te Pou Tupua.....	30
3.6 Other regulatory changes to activities under TATA .....	31
3.6.1 Activities on the surface of water.....	31
3.6.2 Customary food gathering.....	31
3.6.3 Te Heke Ngahuru ki Te Awa Tupua (Te Heke Ngahuru).....	32
3.7 Limitations in regulatory effectiveness of TATA.....	32

3.8	Conclusion .....	33
<b>Chapter 4 Methodology .....</b>		<b>35</b>
4.1	Research methodology.....	35
4.2	Case-study.....	35
4.3	Semi-structured interviews.....	36
4.4	Data analysis.....	37
4.5	Ethics .....	37
4.6	Limitations.....	37
<b>Chapter 5 Measuring Decision-Making .....</b>		<b>39</b>
5.1	Introduction .....	39
5.2	Measuring processes and outcomes of the decision-making process .....	39
5.3	Creating an evaluative framework .....	43
5.3.1	Equity.....	44
5.3.2	Partnership.....	45
5.3.3	Recognition.....	46
5.4	The evaluative framework.....	47
5.5	Limitations.....	47
<b>Chapter 6 Results .....</b>		<b>51</b>
6.1	Introduction .....	51
6.2	Summary of equity within the decision-making process (Table 5) .....	57
6.3	Summary of partnership within the decision-making process (Table 6).....	58
6.4	Summary of recognition within the decision-making process (Table 7) .....	59
6.5	Further interview results.....	60
6.5.1	Constraints to implementing TATA .....	60
6.6	Document analysis .....	62
6.6.1	Resource consent relating to TATA .....	62
6.7	Summary of entire results.....	64
<b>Chapter 7 Discussion .....</b>		<b>67</b>
7.1	Introduction .....	67
7.2	Differing worldviews regarding resource management methods.....	67
7.3	Pro-environmental behaviour .....	68
7.4	Achieving social and cultural licence.....	69
7.5	Towards self-determination for Whanganui Iwi? .....	70
7.6	Tension with the RMA planning process.....	72
7.7	Summary .....	73
<b>Chapter 8 Conclusion .....</b>		<b>74</b>
8.1	Introduction .....	74
8.2	Substantive effects vs symbolic effects.....	75
8.3	Future recommendations.....	76
8.4	Conclusion .....	77

<b>References .....</b>	<b>80</b>
<b>Appendix A Human Ethics Committee Approval .....</b>	<b>87</b>
<b>Appendix B Consent Form .....</b>	<b>88</b>
<b>Appendix C Interview Questions .....</b>	<b>89</b>

## List of Tables

Table 1 Facets of environmental justice .....	48
Table 2 Measurement of equity in the decision-making process.....	49
Table 3 Measurement of partnership in the decision-making process .....	49
Table 4 Measurement of recognition in the decision-making process .....	50
Table 5 Evaluation of equity in the decision-making process.....	51
Table 6 Evaluation of partnership in the decision-making process .....	53
Table 7 Evaluation of recognition in the decision-making process .....	55

## List of Figures

Figure 1 Flow-chart of variables in the Value-Belief-Norm theory highlighting direct causal relationships between factors at adjacent causal levels in the contribution to environmentalism (from Stern et al. 1999).....	18
Figure 2 Whanganui River Catchment Map. Source: Ruruku Whakatupua.....	30
Figure 3 An assessment of Tupua te Kawa and how the proposal aligns with them .....	64
Figure 4 Summary of substantive changes to the decision-making process .....	65

## List of Abbreviations

AEE	Assessment of Environmental Effects
DOC	Department of Conservation
FC	Farm Consultant
NTT	Ngā Tāngata Tiaki o Whanganui (the post settlement governance entity)
PPCs	Private Planning Consultants
PSP	Public Sector Planner
RMA	The Resource Management Act 1991
TAT	Te Awa Tupua (the River's legal status as an indivisible and living whole)
TATA	The Te Awa Tupua (Whanganui River Claims Settlement) Act 2017
TK	Te Kōpuka
TkT	Tupua te Kawa (the four intrinsic values)
TOR1	Tour Operator 1
TOR2	Tour Operator 2
TPT	Te Pou Tupua (the two appointed guardians of the Awa)

# Chapter 1

## Introduction

Around the world, Indigenous peoples have long sought to have greater rights in the management and decision-making of the natural environment and the resources in their local area (Te Aho, 2012). The survival of Indigenous peoples is directly associated with their sustainable interaction with the land and the beliefs and practices tied to that place (Schlosberg & Carruthers, 2010). Furthermore, Native peoples' contribution to environmental management is important globally as they provide different worldviews deeply rooted in an inalienable human-environment relationship (Lyver et al., 2019). However, until recently, the ultimate locale of power and right to make planning decisions lay nearly exclusively with colonial non-Indigenous governments (Matunga, 2013). Even today, the legal systems established by colonial governments perpetuate legal and political conflicts between Indigenous communities and the nation-state due to fundamental differences in the conceptions of human-nature relationships (Hibbard et al., 2008).

In order to recognise and include these different perspectives of the environment within environmental management, co-management arrangements have become popular mechanisms to promote power sharing and responsibilities between the government and Indigenous communities. Outcomes identified as a result of implementing co-management approaches show that these mechanisms provide a space that fosters solidarity, common ground and greater cooperation between Indigenous peoples, settler governments and broader institutions (Lyver et al., 2019). The granting of legal personhood to natural entities is also perceived as a way to incorporate Indigenous values into legislation that still fit with present laws and social norms while improving environmental outcomes (Eckstein et al., 2019).

Moreover, included within the recently published volume of the *Journal of Human Rights and the Environment*, was an article discussing three constitutional orders in Latin America that see rivers as legal persons. These new legal paradigms for rivers were included in the *Journal* because they are seen as part of the essential reading regarding the Earth's ever-changing future and struggle against climate change. The author argues that this "New Latin American Constitutionalism" derived from Indigenous peoples' worldviews challenges the extractivist economic model and a capitalist logic (Grear, 2021, p. 143). Aotearoa, New Zealand, is seen as taking the lead on challenging these dominant colonial paradigms when it recognised the forest of Te Urewera as a legal person possessing "all the rights, powers, duties, and liabilities of a legal person" (Kōkiri, 2016; s 11, Te Urewera Act 2014). This type of recognition for a natural entity occurred a second time in New Zealand, with the granting of legal personhood to the Whanganui River in 2017. Legal personhood to

the Whanganui River was granted through the enactment of the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (**TATA**). One of the key intentions of TATA is to protect and promote the health and wellbeing of the Whanganui River, iwi, hapū and other communities of the River (Ruruku Whakatupua – the Whanganui River Deed of Settlement 2014).

## **1.1 Research question**

Despite many researchers addressing the legal concepts and the significance of these legal personhood mechanisms, at present, there have been minimal studies on the actual implementation of these statutes, including none on the legislation in Aotearoa, New Zealand. Thus, whether these legal mechanisms are having a tangible difference to the way planning is carried out is yet to be researched. Therefore, the questions posed for this research dissertation are, *does granting legal personhood to a natural entity make a substantive and procedural difference to planning? And if so, what kind of substantive or procedural differences?*

In order to investigate the presence of any potential changes to planning, the case study of Te Awa Tupua – the legal personhood status of the Whanganui River – was chosen.

## **1.2 Introducing Te Awa Tupua**

The Whanganui Awa<sup>1</sup> is New Zealand's longest navigable river (290km). However, not only is the Awa highly regarded for its great length but it is considered a tupuna awa (an ancestor) of the Whanganui Iwi with great mana<sup>2</sup> and provider of spiritual sustenance (Waitangi Tribunal, 1999). This cultural significance of the River for Whanganui Iwi led to the eventual signing of Ruruku Whakatupua (the Whanganui River Deed of Settlement) in 2014 between Whanganui Iwi and the Crown (Kōkiri, 2016). This Deed of Settlement gave rise to the enactment of the Te Awa Tupua (Whanganui River Claims Settlement) Bill 2017, which confers recognition of the Whanganui River as a legal person (NZ Government, 2020). Before detailing any further provisions and TATA's meaning, the events that led up to the signing of Ruruku Whakatupua provide an important context for this research.

### **1.2.1 Historical context**

During the 1840s, a substantial Māori population resided along the route of the Awa, with an estimated 143 marae<sup>3</sup> dotted along its banks (Waitangi Tribunal Report, 1999). These iwi and hapū exercised rangatiratanga (absolute authority) over the Whanganui River as their ancestors had before them (Salmond, 2018). The creation of the Whanganui River is embedded within Māori

---

<sup>1</sup> The te reo Māori word for river, stream, or creek. Throughout this dissertation the word *awa* will be used interchangeably with the English word *river*.

<sup>2</sup> Prestige or strength

<sup>3</sup> A meeting house for Māori

cosmology. Ranginui, “the supreme universe”, created Mount Ruapehu, who then became lonely. As a solution, Ranginui placed two “teardrops” under the mountain’s feet. One teardrop became the Tongariro River, and the second became the Whanganui River (Royal, 2018).

However, conflicts began to emerge between the Whanganui Iwi and the Crown concerning the takeover of the River’s management by the Crown, post-signing of the Treaty of Waitangi in 1840 (New Zealand Government, 2020, November). For example, despite the Whanganui Iwi being strongly opposed, several diversions were made to the River to fuel the Tongariro Hydro Power Scheme in 1958, which caused a reduction in water quantity (Waitangi Tribunal, 1999). The Whanganui Iwi were not consulted on these diversions, which caused them extreme trauma as the drop in water levels affected riparian vegetation, enabled sediment build-up, and reduced fish catches. In turn, these effects damaged the River’s mana and mauri (Rāwiri, 2020; Waitangi Tribunal, 1999). Disputes over treatment of the River continued, and tensions reached an all-time high during an election campaign in 2011 when the National Party stated that it sought to partially privatise several state-owned assets (Salmond, 2014). This partial privatisation included three power companies which would ultimately affect the Whanganui River (Salmond, 2014). In response to this proposal by National, a submission was made to the Waitangi Tribunal in 2012 by the New Zealand Māori Council. They stated that this partial privatisation would enable private owners not bound by the Treaty of Waitangi to disregard compensation for the loss of Māori rights to water and reduce Māori involvement in the governance of the River, including the ability to obtain shares in the power companies (Salmond, 2014).

Finally, the Ruruku Whakatupua (the Whanganui River Deed of Settlement) was formulated and signed in August 2014 to settle these grievances of the Whanganui iwi (New Zealand Government, 2020, November).

### **1.2.2 The provisions of TATA**

As explained, by signing Ruruku Whakatupua by Iwi and the Crown, this gave rise to the enactment of TATA in 2017. TATA established a new legal framework known as Te Pā Auroa nā Te Awa Tupua to support the Whanganui River as Te Awa Tupua “*an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements*” (s 12, TATA 2017). Moreover, Te Awa Tupua (TAT) is declared to be a legal person with “*all the rights, powers, duties and liabilities of a legal person*” (s 14, TATA 2017). TATA has tikanga<sup>4</sup> Māori values at its heart. For example, articles in TATA (s 12 & s 13) recognise the River as an indivisible and living entity possessing physical and spiritual values. This source of both physical and spiritual sustenance nurtures the “inalienable connection “between the Whanganui Iwi and the Awa and

---

<sup>4</sup> Correct procedure, custom

enhances the obligation to protect it for future generations as kaitiaki (guardians) (Sanders, 2018). This Māori worldview is reflected in the four Tupua te Kawa that make up the essence of TAT and prescribes four intrinsic values to the Whanganui River, these are;

**Ko Te Kawa Tuatahi.**

*Ko te Awa te mātāpuna o te ora:* the River is the source of spiritual and physical sustenance.

**Ko Te Kawa Tuarua;**

*E rere kau mai i te Awa nui mai i te Kahui Maunga ki Tangaroa:* the great River flows from the mountains to the sea.

**Ko Te Kawa Tuatoru**

*Ko au te Awa, ko te Awa ko au:* I am the River and the River is me.

**Ko Te Kawa Tuawhā**

*Ngā manga iti, ngā manga nui e honohono kau ana, ka tupu hei Awa Tupua:* the small and large streams that flow into one another form one River.

(s 13, TATA 2017).

Importantly, as the River cannot appear in court itself, the legislation allows two representatives to act as guardians of the River, called Te Pou Tupua. The two guardians, both mutually chosen by Whanganui Iwi and the Crown, are to stand as the human face of the Awa and are required by law to act and speak on behalf of Te Awa Tupua in accordance with Tupua te Kawa (O'Donnell & Macpherson, 2019). Moreover, the legislation establishes a multi-stakeholder governance body called Te Kōpuka, a committee including Iwi representatives, the Government, local authorities, commercial users, recreational users, and environmental groups (s 29, TATA 2017). Members of Te Kōpuka must work on issues collaboratively relating to the River to advance the health and wellbeing of the TAT (s 29, TATA 2017). A deeper analysis of TATA and its provisions is given in Chapter 3.

### **1.3 Personal position**

My background is in the science realm, in which I hold an undergraduate double major degree in Ecology and Development Studies. I am not of Māori descent, and I acknowledge that this positionality will impact my understanding and interpretation of others' research findings and my own findings regarding this culturally rich topic. In an attempt to prevent misunderstandings of Māori beliefs, I have drawn upon literature from various sources, including as far as possible, publications by Māori researchers. However, it is recognised that there is no single Māori perspective as each iwi will have its own distinctive, yet similar, views and practices. Therefore, this dissertation does not claim to include all the diverse values and attitudes held by the many different iwi and hapū that make up the collective "Whanganui Iwi", as referred to in this dissertation.

## **1.4 Dissertation structure**

This dissertation comprises seven chapters. Chapter 2 analyses the literature outlining the different ways the relationship between people and nature is conceptualised and discusses factors that influence these conceptualisations, such as culture, worldviews, citizenship, and anthropocentric and ecocentric paradigms. Other important concepts are discussed, such as the resurgence towards self-determination of Indigenous peoples that provides opportunities for collaboration and co-management between themselves and settler governments. Notably, the different ways in which these co-management arrangements and attempts at recognition and reconciliation are carried out, including legal personhood mechanisms, are critiqued. Chapter 3 describes the relevant provisions within the Resource Management Act 1991 and the Te Awa Tupua Act 2017, including the resource consenting process and how decisions should be made on these consents. The research methods undertaken for this dissertation are outlined in Chapter 4. Chapter 5 describes the process taken to develop an evaluative matrix to measure the outcomes of participants' decision-making process. Perceptions and information from interview participants are evaluated and summarized in Chapter 6, demonstrating the various changes to the planning and decision-making processes that the implementation of TATA has influenced. Chapter 7 connects the results in the previous chapter with the literature in Chapter 2 and discusses the theoretical implications of this dissertation. Chapter 8 ends with a conclusion presenting the results in light of the research objectives and provides areas for future research and recommendations for increasing the success of implementing TATA to protect and enhance the health of the Awa.

# Chapter 2

## Theoretical Context

### 2.1 Introduction

In 2017, the New Zealand Parliament created a world-first when it granted the Whanganui River legal personhood status by enacting the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (O'Bryan, 2017). Decisions to give legal status to nature have since gathered global momentum, with other examples taking place in the USA, India and Australia (Clark et al., 2018). Despite this increase in international acceptance of new claims and declarations for nature, little is known about the implications that these legislative mechanisms have on the ground. For example, are these new rights for nature leading to a change in the way the community perceives the environment? In turn, are these legislative mechanisms influencing both environmental management and environmental planning approaches?

To address these knowledge gaps, this chapter reviews relevant theoretical concepts. Literature outlining the different ways in which the relationship between people and nature are conceptualised, the role of Indigenous peoples in resource management, the drivers for granting legal personhood to natural entities, and the theoretical links between values, beliefs and decision-making for the environment are reviewed.

### 2.2 The relationship between people and nature

To gain a better understanding of how TATA might impact the framing and conceptualisation of the Whanganui River by individuals, corporations and government entities, we must first recognise the ways in which ideas about the relationship between people and nature are formed.

A common theme found throughout literature supports the concept of cultural factors playing a significant part in producing meaning, knowledge, and value systems toward nature. For example, Meinert (2013) states that insights into various cultures display many different perceptions of nature and interactions between humans and the environment. Meinert (2013) describes culture from a "meaning-oriented understanding" lens, whereby the attitudes that arise reproduce and change within a culture reflecting forms of interpreting the world and symbolising an "organisation of reality" that in turn informs the background of all social practices (p.5). Kauffman (2020) in a similar vein, notes that for many Indigenous peoples, culture fosters the idea about the order of the Universe, where we all come from and consequently the purpose of life. This concept of culture offered by Kauffman has its roots within the importance of place, stating that one becomes

connected to the place wherever it is that they were born to. Hence, an intimate relationship with "the land" and the natural world is cultivated. Clark (2018) also addresses the significant connection between people, nature, and particular space. They argue how part of the value of certain natural places is attained from their cross-generational and continuous role in the lives of Indigenous communities.

Many theorists of green political thought take the position that embedded within a culture is the concept of 'citizenship'. As described by Marshall, citizenship is "*a status bestowed on those who are full members of a community*" (1950, p. 87 quoted in Gabrielson, 2008). This model fosters the idea of citizenship as a public status that grants the individual civil, social and political rights Gabrielson (2008). Gabrielson (2008) states that many supporters of green philosophy believe that this idea of citizenship can be utilised to emphasise rights to tackle environmental problems and create 'ecological citizens.' This ideology produces values toward nature and promotes specific ways of imagining and living with it for society. For example, Christoff (1996) argues that ecological citizens should represent the rights of both animals and future generations, which are established in culture, law and constitutional rights. Christoff (1996) supports a "hierarchy of value" in which ecological values (such as conservation of biodiversity) are placed above other particular ecological values (protection of individuals of a certain species) and anthropocentric values (p. 163-164). However, Gabrielson (2008) argues that this approach has issues regarding how this hierarchical value system is negotiated and decided. Naess (1973) critiques this ecological citizenship model for reflecting anthropocentric interests that perceive the environment through a lens of instrumental rationality.

Anthropocentrism and ecocentrism are two key concepts that frequently appear in literature and seem to characterise much of the discourse surrounding interpretations of nature. Many definitions of anthropocentrism exist similar to the one above provided by Naess (1973). Within society, nature is seen as a bare resource and is only valuable to the extent it benefits humans (Youatt, 2014). De-Shalit (1995) states that within liberal models, the idea of the "good life" is heavily influenced by private preferences and economic measures based on "rational behaviour" (p. 305). This philosophy frames society as a tool to be subjugated for the benefit of individuals and that nature should be utilised to fulfil individualistic preferences. Whiteside (2006) provides a definition that includes the idea of human cognitive superiority over the environment as she states that anthropocentrism "presupposes that we (humans) know what nature is and how it behaves" (p.26). This belief then allows us to perceive nature within the lines of human interest to utilise it to fulfil our desires (Whiteside, 2002). This way of thinking about nature promotes an ecosystems services approach which as described by Gómez-Baggethun and Ruiz-Pérez (2011), depicts ecosystems and their biophysical components as natural capital that provide various goods and services for human

communities. Gómez-Baggethun and Ruiz-Pérez (2011) claim that these services also include non-market benefits such as gains from ecological processes such as climate regulation, clean air, flood buffering and other non-material benefits such as cultural heritage, human health and wellbeing and recreation.

Ecocentrism, on the other hand, alludes to an obligation of morality between us and nature. For example, De-Shalit (1996) considers non-human objects such as ecosystems, individual animals or plants as “moral clients” and considers the moral relationship between humans and non-humans (p. 291). Whiteside (2002) also asserts that ecocentrism denotes that non-human entities have morally considerable interests. Youatt (2014) and Argyrou and Hummels (2019) argue that ecocentrism understands that nature exists in its own right and should be valued intrinsically and as an end in its self. On the whole, Whiteside (2002) questions the concept of ecocentrism as a solution for environmental degradation, however. Whiteside (2002) states that even values labelled as 'intrinsic' such as appreciation of beauty or cultural significance are still – like all values – derived from human beliefs and the idea of what makes a rich and vibrant “good life” for humans. This similar argument can critique the establishment of Christoff’s (1996) “hierarchy of value” concept. Whiteside states that this concept of ecocentrism still promotes a form of ‘centrism’ (p. 45). Even if nature is placed at the centre of human society, this does not change the real understanding of what nature is. Ecocentrists’ believe that nature and humanity are separate from one another. Instead, Whiteside (2002) suggests that solutions to environmental issues should conceptualise the interdependencies of humanity and nature, while also accepting natural things as they are and putting an end to questioning the identity of nature as “trees are trees, and we must let them be” (p. 46).

The idea of interdependency between humans and the environment and protecting nature for its own sake is embedded within a Māori worldview. This worldview demonstrates an understanding of a relationship between nature and humanity that does not represent any ‘centrism’ of some kind, where Māori perceive themselves as not above or separate from nature, but as an integral part of it (Ruru, 2004). Much literature exists that aims to explain the fundamental beliefs and creation stories within Māori culture, such as Te Aho (2019), Roberts et al. (1995), Lyver et al. (2019). Lyver et al. (2019) describes the complex cosmology rooted within Māori culture, which tells of the interconnectedness of all things in the Universe, inanimate and animate, via whakapapa – their ancestors. Robert et al. (1995) state that within this cosmology, everything is essentially linked by the gods Papatūānuku (earth mother) and Ranginui (sky father). From these two parents, whence came many offspring, all gods with guardianship over specific natural phenomena. Natural phenomena such as landforms, rivers, flora and fauna, are described as living conscious beings, their tupuna (ancestor) of which present Tāngata Whenua, have a responsibility to protect and care for and to act

as kaitiaki (guardians) of them (Te Aho, 2019). There exists an inalienable connection between natural entities and human beings, highlighting the importance of place to Tāngata Whenua (Te Aho, 2019). Te Rūnanga o Tamaupoko and Te Rūnanga o Tūpoho, the collective hapū of the Whanganui Iwi, also support this and explain how a Māori worldview is the practice of a unique environmental ethic that embodies the spiritual, historical and cultural association with the land.

This kinship concept between natural treasures and humans born to the same land reflects the earlier ideas discussed by Kauffman (2020) about the importance of place to culture and identity. Moreover, this worldview also parallels the concept of “ecological citizens”, as discussed earlier by Gabrielson (2008). Mead (2016) states that for Māori, the land in which they live becomes the centre of their world and the roots of their identity as citizens of a social unit.

Hence, a te ao Māori worldview is quite different to the anthropocentric interpretation of nature that assumes that humans know what nature is and how it behaves, as theorised by Whiteside (2002). Contrastingly, a Māori belief asserts that the natural order of an ecosystem is so complex that humans are incapable of fully comprehending it. This view valorises nature for intrinsic elements such as mysteriousness and prestige.

In conclusion, it is recognised that culture is an essential factor that influences cosmologies about where we come from that consequently shape our way of interpreting nature. Furthermore, the concept of “citizenship” is embedded within culture, which promotes ideas about rights within society and implications of human obligation toward non-human entities. Within a Māori worldview, the inalienable connection to a particular place denotes kaitiakitanga, an intergenerational responsibility to care for these tupuna.

Indigenous peoples, including Māori, and their worldviews are becoming more and more utilised in attempts to deliver appropriate cultural responses to resource management issues (Te Rūnanga o Tamaupoko & Te Rūnanga o Tūpoho, n.d). However, before colonialism, Indigenous communities had always undertaken their own planning centred on sustainable use and guardianship (Matunga, 2017). This following section discusses literature identifying the role of Indigenous communities, specifically Māori, within environmental and urban planning systems in Aotearoa, New Zealand.

## 2.3 The role of Indigenous peoples in planning and decision-making processes

Schlosberg and Carruthers (2010) emphasise further the interdependence between native communities and the land by stating that the survival of Indigenous nations is directly tied to their sustainable interaction with the natural environment and with the practices, rituals, and beliefs connected to that place (Schlosberg & Carruthers, 2010). Along the same lines, Hibbard et al. (2008) write how this interdependence has meant that Indigenous communities have historical experience with the kind of forward-thinking, anticipatory assessments and management of resources that are categorised under the sphere of 'planning' (Hibbard et al., 2008). Before colonialism, Indigenous communities conducted planning derived from their own set of practices (Matunga, 2013). Matunga (2017) defines Indigenous planning as:

*“Indigenous people making decisions about their place (whether in the built or natural environment) using their knowledge (and other knowledges), values and principles to define and process their present and future social, cultural, environmental and economic aspirations” (p.642).*

However, as already mentioned in Chapter 1, as a consequence of colonial conquest and state expansion, Indigenous peoples all over the world have been systematically marginalised and excluded from planning, decision-making and management processes (Walker et al., 2013). Matunga (2013) states that this was no different for Māori, in New Zealand where until recently, the central power to direct these planning and decision-making processes lay mainly in the power of the settler non-Indigenous government. This marginalisation began with the settler government's rapid purchase of Māori customary land in 1865 (Matunga, 2013). Consequently, Māori were alienated from their land and forced to the peripheries of society through these land purchases that resulted in just 4 per cent of land remaining in Māori ownership by 2000 (Matunga, 2013).

Hibbard et al. (2008) discuss the application of Indigenous planning now in contemporary society. Hibbard et al. (2008) highlight that within environmental and political realms, legal systems established by the settler government and fundamental differences in the conceptions of land ownership and relationships with nature, perpetuate legal and political conflicts between Indigenous communities and the nation-state. Shrinkhal (2021) argues that for Indigenous peoples to achieve self-determination, the political and moral authority of nation states must respect and recognise “difference and diversity” across various governance levels” (p.73).

In Aotearoa New Zealand, Te Tiriti o Waitangi (the Treaty of Waitangi), provides a founding document for recognition and partnership between Māori and the Crown, signed on the 6<sup>th</sup> February

1840 (Dencer-Brown et al., 2018). Under Te Tiriti o Waitangi, Article 2 of the English Text guarantees the “full exclusive and undisturbed possession” of Māori lands, estates, and resources, “so long as it is their wish and desire”. This Article translates in the Māori Text as the guarantee of Māori “tino rangatiratanga” (absolute sovereignty) over their lands, homes and everything they value (Huynens et al., 2012). The application of these principles by the Government throughout enactments, therefore, must recognise Māori aspirations for tino rangatiratanga and protect Māori interests and values such as their right to carry out kaitiakitanga to safeguard the natural environment and associated resources (Hudson & Russell, 2008).

Furthermore, Ruru (2018) discusses the ability of Te Tiriti o Waitangi to act as a “legal anchor” in the courts for the recognition of Māori rights, interests, and responsibilities for the safeguarding of their treasured lands and waters. At the same time, Ruru (2018) states that in many aspects, Te Tiriti o Waitangi aligns with other judicial systems looking to reconcile with their native communities. However, Ruru questions whether it is leading to enhanced opportunities for Māori to exercise rangatiratanga compared to the colonial past. Ruru (2018), the Randerson Review Panel (2019) and Joseph et al. (2019) stress that despite the integration of the Treaty principles into many key legislations such as the RMA, it is widely acknowledged that the current resource management system has failed to empower iwi and iwi have not been able to take up opportunities provided in the legislation.

Lyver et al. (2019) claim that this poor attempt to interpret and implement legislation in line with Te Tiriti o Waitangi suggests that te ao Māori values and constructs are weakly recognised and understood by representatives of the Crown, or that the Crown is unwilling to share power as an equal Treaty partner. Since the 1980s, however, Matunga (2013) discusses how there has been a resurgence triggered by local Indigenous peoples’ protests over lost lands. This resurgence is an avenue to write Indigenous planning “back into history”(p.29). In contemporary society, this resurgence is morphing into a movement that extends beyond the gaze of colonialism, focusing on transformations within systems towards the self-determination of Indigenous peoples. Matunga (2013) suggests that while this resurgence's central goal is to reclaim traditional land and resources, this journey may also lead to opportunities for collaboration and co-management with settler governments.

Berkes (2009) defines co-management as “*the sharing of power and responsibility between the Government and local resource users*” (p. 1692). Moreover, Berkes (2009) highlights the benefits of co-management, detailing that this approach fosters legitimacy, equity, justice, and empowerment principles. These principles are relevant to co-management as these arrangements are based on the

premise that the people who are most likely to be affected by management decisions are entitled to have a say in how those decisions are made. Research undertaken by Lyver et al. (2019) discuss the importance of co-management approaches. They provide a space for increased solidarity, common ground, and greater cooperation between Indigenous communities, state governments and broader institutions and organisations.

On the other hand, Outram (2017) also cautions that these co-management arrangements do not always ensure equity in resource sharing. Berkes (2009) supports this further by stating how co-management sceptics have questioned government entities' willingness to ever give up power. This concept puts into question the real incentives by Governments to partake in co-management approaches with Indigenous communities and local resource users. This leads me to the next section, which identifies and discusses the literature on the drivers for granting natural entities legal personhood.

## **2.4 The drivers for granting legal personhood to natural entities**

Christopher Stone in his article "Should Trees Have Standing? Toward Legal Rights for Natural Objects" (1972) was one of the first to pursue the concept of giving natural entities such as streams and forests legal standing and he has assumed an enduring place in environmental statute and ethics today (Oksanen, 2012). In a later article (2010), Stone argues that the initial idea of extending rights beyond humans to natural entities may seem absurd to some because many individuals cannot see beyond that thing's instrumental use to themselves or society. Instead, what is perceived of the entity or object is the current "idealised" version needed (p.3). Thus, Stone states that before something can be given rights, it needs to be valued for itself.

Stone (2010) gives the example of the first woman in Wisconsin who wanted the right to practice law. At the time, she was denied by the court on the terms that "*the law of nature destines and qualifies the female sex for the bearing and nurture of children of our race and for the custody of the homes of the world...*", and therefore women were deemed to be just as ill-suited for engaging in judicial conflicts as they were for "*the physical conflicts of the battlefield*", and were not perceived for what they were and what they could become beyond their performative and socially constructed gender roles (p.3). This exploitive view of women can also be applied to the environment and its natural resources. Just as women once were, nature is mainly seen as a resource valued by the extent to which it can satisfy societal preferences. Thus, Stone (2010) suggests this extension of rights to certain environmental entities is a way of recognising the intrinsic value of nature. On a similar note, D'Andrea quoted in Eckstein et al. (2019), notes that this increase in the last decade to

grant rights and legal personality to the environment reflects the sentiment that humans feel that they ought to defend the existence of the environment, not just for our sake, “but also for its own survival” (pg. 805). This concept was implemented in Ecuador when in 2008, the constitutional right of Mother Earth to exist and evolve was recognised (Eckstein et al., 2019).

Other ideas found in literature also demonstrate that granting natural entities legal identity reflects the need to preserve it for its own sake and for unborn generations, symbolising an obligation of intergenerational responsibility. Stone (2010), for example, argues that giving a natural object a guardian to provide continuous supervision and representation is a way to stand up for contemporary and distantly injured humans, who are ‘injured’ by adverse effects such as pollution to a river. Clark’s thesis research (2018) similarly looks at the guiding intuition that some distinct natural places are a feature of what we owe the future. She argues that the status of the Te Awa Tupua Act 2017 is a result of decades of struggle the Whanganui Iwi have undergone to fight for the health and protection of this distinct place – the Whanganui Awa – and their unique relationship with it. The Iwi see the Whanganui Awa as a necessary component of a good life, and the wellbeing of the Whanganui Awa and the health of its people are perceived as one and the same (Rāwiri, 2020). Sanders (2018) highlights how this new legal framework symbolises a promise to recognise the mauri (life-force) and the mana (authority) of the water.

As briefly discussed in Chapter 1, it was only after years of conflict between the Crown and Whanganui Iwi regarding the control and management of the Whanganui River that Ruruku Whakatupua was agreed upon and signed. This agreement signalled the final settlement of all historical Te Tiriti o Waitangi claims by Whanganui Iwi concerning the Whanganui River arising from Crown acts or omissions (Kōkiri, 2016). From this settlement, Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 was born. Thus, TATA is just one outcome of many Treaty settlements that have taken place since the establishment of the Waitangi Tribunal in 1975 (Catalinac, 2004). Te Aho (2019) states that the purpose of these settlements is to “heal the past and build a future” (p. 1618), in which the Crown recognises the grievances caused and looks forward to establishing an ongoing relationship with the claimants derived from Te Tiriti o Waitangi principles. Te Aho (2019) further states that these settlements often include co-management agreements that seek to reframe legislative processes and decision-making frameworks, promote Tāngata Whenua to governance roles, and a re-connection of ourselves with nature.

In regards to TATA, Talbot-Jones quoted in Eckstein et al. (2019), claims that the granting of legal personhood to the Whanganui River was seen as a pragmatic solution to incorporate te ao Māori principles into statute in a way that could work with present laws and social norms. Argyrou and

Hummels (2019) perceive giving the Whanganui River legal personhood as a way towards achieving an eco-centric framework but still using anthropocentric tools (legal rights) to do so. Furthermore, Ngā Tāngata Tiaki o Whanganui (n.d) also demonstrate how the Act represents a solution to balance the multiple and commonly competing values relating to the management of the Whanganui Awa by creating Te Kōpuka. This collaborative group brings together iwi, farmers, tourism, local and central government agencies to be guided by the Tupua te Kawa (the four intrinsic values). Interestingly, Ngā Tāngata Tiaki o Whanganui (n.d) claim that while there have been many links made toward the 'rights of nature activism', the legal personhood of the Whanganui River for them was about re-affirming obligations and duties to perceive and situate themselves "within nature's scheme and ensure that we work with nature rather than against it". Sanders (2018) also supports this concept by contrasting how Stone's ideology attempted to reconstruct nature as a right bearer, while the legal personhood of Te Awa Tupua is about recognising the intrinsic identity that nature has always possessed.

Research undertaken by Kauffman (2020) found similar reasoning behind the Te Urewera Act enacted in 2014, which recognises the forest of Te Urewera in New Zealand as a legal person. For Ngāi Tūhoe an Iwi that links their whakapapa to the forest of Te Urewera, this legislation was not important because it gave the forest rights, but because it took away the current legal framework which opened up space for Tūhoe to design a new governance system. For Tūhoe, the concept of giving the forest rights was not emphasised because for them, "rights" is a colonial concept rooted within a Western system. Instead, the new system represented self-determination and upheld the idea of kaitiakitanga – the responsibility of guardianship toward Te Urewera and their ancestors. In a bid to account for historical wrongs committed by the Crown against Tūhoe Iwi, the granting of legal personality stood as a formal apology followed by NZ\$170 million for cultural and financial redress.

## **2.5 Critique of legal personhood of natural entities to provide for self-determination**

Marshall quoted in Eckstein et al. (2019), raises an interesting critique, however, about how in some cases, the push to grant legal personhood to certain natural entities can be counterintuitive from an indigenous perspective. Marshall uses the example of the reaction of the Aboriginal community in Australia to the proposal by the UN to declare the rights of Mother Earth. This paradigm of "rights of nature" applied within this proposed declaration assumes that all 'beings' seek to "exploit, destroy and abuse" the earth (p.808). Furthermore, the bill's purpose discusses the need to "recognise and defend the rights of Mother Earth" (Article. 1). This bill fails to recognise the intergenerational role

undertaken by Aboriginal peoples for tens of thousands of years to manage and protect nature and form totemistic relationships with flora and fauna.

Moreover, other researchers such as Coulthard and Alfred (2014) have remained sceptical over settler governments recent attempts at redress and reconciliation. They claim that in some situations where colonial rule no longer relies on employing state violence as a mechanism for control, it entices Indigenous peoples to identify with unequal and nonreciprocal modes of recognition granted to them by the settler state. The example in Canada is given where “reconciliation” is commonly undertaken to render things consistent, in agreement, or in harmony (Coulthard & Alfred, 2014). Turner as quoted in Coulthard and Alfred (2014), describes that this action makes consistent Native peoples’ declarations of nationhood with the state’s one-sided assertion of sovereignty over Indigenous lands and resources.

In the New Zealand context, Treaty settlements, including the Whanganui River Claims Settlement (Ruruku Whakatupua), is also not without criticism. Salmond (2018), for example, writes that excluding the four Tupua te Kawa within the Act, an underlying anthropocentric model in which Man stands separate from and above nature, remains unchallenged. Furthermore, the Act does not transfer any proprietary interests in water or life forms in the Awa despite the 1999 Waitangi Tribunal findings that iwi of the Whanganui River could legally claim ownership of the ancestral River. The Tribunal stated that this way of understanding the River as a tupuna (ancestor) and what the Whanganui Iwi possessed could be equated with ownership for the purposes of New Zealand or English law (Salmond, 2018). Te Aho (2012) believes that this Settlement, along with all other freshwater settlements so far, deliberately sidesteps fundamental questions regarding ownership of water. As a result, Māori have instead used these as opportunities to seek stronger voices in decision-making, commonly to restore the physical health and spiritual wellbeing of the water bodies. When striving to achieve a greater role within resource management, it is crucial that Māori planning is provided with a conceptual space that is perceived as legitimate and where mātauranga Māori<sup>5</sup> is seen as parallel to Western forms of knowledge (Matunga, 2013). This type of space is described in the next section.

## **2.6 Creating a ‘third space’**

Matunga (2013) and Barry and Porter (2016) discuss the issues that continually occur in the ‘contact zone’. The contact zone is the space where Indigenous communities and non-Indigenous planning bodies meet and where “the struggle for co-existence” of Natives and the state government rights

---

<sup>5</sup> Māori knowledge

occurs (Porter & Barry, 2016, p. 7). In Aotearoa New Zealand, Jolly and Thompson-Fawcett (2021) outline how this contact zone is where Tāngata Whenua respond to and interact with largely non-Indigenous proponents, project managers, technical experts, council planners, consultant planners and decision-makers. Jolly and Thompson-Fawcett (2021) further detail that success in terms of procedures and outcomes that reflect Indigenous planning aspirations, thus is highly reliant upon the steps taken in this contact zone. To transform this contested contact zone, Matunga (2017) informs us that the co-existence of Indigenous knowledge must be embraced instead of integration, thus creating a shared 'third space'. Patrick (2017) further supports the creation of a 'third space' where belonging and inclusion are sought for Indigenous peoples.

Using a range of literature, including Bhabha (1994), Soja (1996) and Matunga (2017), Jolly and Thompson-Fawcett (2021) developed outcomes they believe to be indications for the application of Indigenous Impact Assessment (IA) that are key for enabling the creation of this third shared space. Some of these include:

- *A platform for engagement between proponents and communities to be transformational rather than transactional*
- *The use of both Indigenous and non-Indigenous knowledges, templates, and methods*
- *The enhancement of Indigenous rights to decision-making in traditional territories*
- *Improvements in the overall outcomes and justice of IA; procedural and substantive*
- *Outcomes that reflect the extent of investment by Indigenous communities in IA*
- *The adjustment of power imbalances in proponent-led IA*
- *The sharing of the burden of action across communities and proponents*
- *Increased competency and capability of proponents (and their project managers, planners and technical experts) and decision-makers who have to work with Indigenous IA information.*

Jolly and Thompson-Fawcett (2021, p. 7 & 8)

Failure to meet these criteria may suggest that the contact space has been limited to an exercise that uses Indigenous peoples as mere information sources with minimal engagement throughout the project and little impact to influence decision-making. Planning carried out this way can misrepresent and inappropriately apply Indigenous knowledge (Baker & Westman, 2018). Furthermore, planning that performs weakly regarding these criteria represents the persistence of unequal power dynamics and nonreciprocal forms of recognition, as discussed with reference to Coulthard and Alfred (2014) earlier in this chapter.

Overall, it is clear that the health of lands and waterways is essential for Indigenous peoples' survival. Therefore, creating a third space and enabling the self-determination of Indigenous peoples to make decisions about their own lands and resources also entails the protection and sustainable management

of the natural environment in that local area. In turn, this will have benefits to the wider community. While Indigenous planning and decision-making have their roots in kinship and place-based values, some other motivations and factors contribute to environmental decision-making among different actors in the community. These factors and the link between values, behaviour, and decision-making for the environment are discussed below.

## **2.7 The link between values, behaviour, and decision-making for the environment**

This dissertation is interested in finding out whether TATA is having a tangible difference to the way planning is being carried out. This question implies an assumption that this legal status might impact decision-makers' values and beliefs, which may influence their actions and decisions.

Dietz et al. (2005) give an extensive review of environmental values and examine how values are related to the treatment of the biophysical environment. Dietz et al. (2005) detail that a vast amount of literature discusses values across the disciplines of philosophy, economics, social psychology, and social science. Overall, the positive correlation between values, especially altruism, and environmentalism appears to be well established. Dietz et al. (p. 339, 2005) rely on the New Shorter Oxford English Dictionary definition of values as:

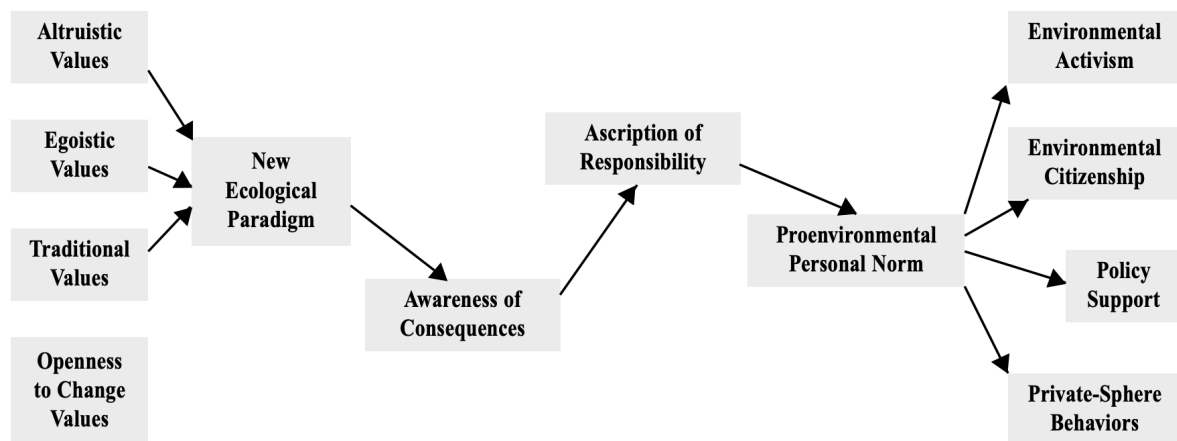
*“a. The worth, usefulness, or importance of a thing; relative merit or status according to the estimated desirability or utility of a thing,  
b. Estimate or opinion of, regard or liking for, a person or thing,  
c. The principles or moral standards of a person or social groups, the generally accepted or personally held judgment of what is valuable and important in life.”*

Dietz et al. (2005) agree that we use values in all three of these ways in our everyday language: what something is worth, opinions about that worth, and moral standard (p. 339).

The role of values in decision making is often conceptualised in economics to assess how individuals make choices. The rational actor model assumes that individuals form decisions via weighing alternatives in comparison with one's preferences and that one would then choose the option that best suits their preferences. When we move from the individual to the group, the concept of utilitarianism is often deployed, which states that the best decision is the one that will produce the greatest good to the greatest number (maximum utility). Dietz et al. (2005) critique this economic theory, however, for emphasis on preferences to explain how decisions are made, as this concept does not detail why people prefer what they prefer. Klain et al. (2017) also include references from cognitive psychology that support the idea that humans frequently make decisions and act based on

“affective responses to situations” (p. 17) instead of mental calculations of utility-related to different outcomes.

Dietz et al. (2005), Nilsson et al. (2004), and Klain et al. (2017) draw on the ‘values – beliefs-norms’ (VBN) theory – which recognises the generality and abstractness of values and imply that values **do not act alone** and may not have a direct influence on all decisions made regarding the environment. Instead, Dietz describes the theory as suggesting that values influence our worldviews about nature, which in turn influences our beliefs about the consequences of environmental change on things we value, which subsequently impacts our perceptions of our ability to reduce threats to things we value. This finally influences our norms about taking action. Nilsson et al. (2004) summarise this theory as assuming that “the effect of values on behaviour is mediated via beliefs through pro-environmental personal norms” (p. 268). Stern et al. (1999) also support this concept as they discuss the VBN theory as a basis for environmental movements, believing that both values, beliefs, and personal norms (feelings of personal obligation associated with one’s self-expectations) all work together to compel individuals to carry out actions that support movement goals. Therefore, Stern et al. (1999) propose that the success of environmental movements depends upon activists and organisations growing support via reshaping or activating personal norms to develop feelings of obligation. These linkages are demonstrated in a flow diagram below, containing other important factors contributing to environmentalism.



**Figure 1** Flow-chart of variables in the Value-Belief-Norm theory highlighting direct causal relationships between factors at adjacent causal levels in the contribution to environmentalism (from Stern et al. 1999)

### 2.7.1 Personal and social factors

Research by Gifford and Nilsson (2014) also comment on the VBN theory, remarking that it represents a succinct model of pro-environmental behaviour. Kollmuss and Agyeman (2002) describe pro-environmental as “*behaviour that consciously seeks to minimise the negative impacts of one’s actions on the natural and built world (e.g., minimise resource and energy consumption, use of non-toxic substances, reduce waste production)* (p.240)”. Notably, however, Gifford and Nilsson (2014) also state that this model could be broadened to include other personal and social influences. Gifford and Nilsson (2014) acknowledge that pro-environmental behaviour is influenced by **many** factors and that efforts to fully account for the variation in pro-environmental behaviour are a considerably complex task.

Despite this complex task, they uphold that attempts to predict whether a person will behave pro-environmentally should include a broad range of personal and social factors. These factors were grouped by Gifford and Nilsson (2014) into **personal factors** such as knowledge and education, values, political and worldviews, felt responsibility, and place attachment, and **social factors** such as religion, norms, and cultural and ethnic variations. These findings link with earlier sections of this chapter which demonstrate the influence of culture on peoples’ worldviews about nature and the idea of ‘citizenship’ which embodies the concept of human obligation and felt responsibility toward non-human entities.

While these are all factors believed to have the ability to influence environmentally friendly behaviour, Gifford and Nilsson (2014) hone in on research conducted by Hines et al. (1986-87) that analysed 315 relevant studies which found that the strongest predictors of pro-environmental intention are “*knowledge of issues, knowledge of action strategies, locus of control, attitudes, verbal commitment and an individual’s sense of responsibility*” (p. 151). Bamberg and Möser (2007) support these results but add that problem awareness is a significant indirect contributor to environmental behaviour.

### 2.7.2 Societal awareness and social learning

Along the same lines as problem awareness, Lyver et al. (2019) discuss societal awareness and understanding of biocultural approaches to conservation in Aotearoa, New Zealand, and their effectiveness in gaining wider public support and improving implementation of such approaches. Morishige et al. (2018) also supply evidence of the importance of community participation in generating greater social awareness and systematic change. For example, their study focused on the outcomes of an indigenous-based framework implemented through Na Kilo’ Aina (NKA) programmes

(community engagement camps) to collaboratively address social and cultural behaviours to improve the health and wellbeing of the biocultural landscapes and seascapes in Hawaii. Results found that after ten years of implementing NKA programmes, which included community engagement, biocultural monitoring, and capacity building, these initiatives were key contributors in creating innovative management plans and establishing partnerships with state agencies and communities to restore social and ecological ecosystems.

These programmes, which foster participation and societal awareness between different actors in the community, are also significant hubs for social learning. Carr (2015) defines social learning as a process where social interactions between people lead to a shift in an individual's understanding of an issue, further bringing about changes to a wider group of people. Additional outcomes of social learning include the co-production of knowledge, values and beliefs and new human capital, which can promote the identification or development of different and more creative plans and strategies. Another accrued benefit of undertaking social learning is the development of trust between participants (as mentioned by Te Aho (2019) when discussing co-management benefits) and the growth of societal commitment toward tackling the problem and the facilitation of implementation (Carr, 2015).

Increasing social awareness and social learning also helps to add to the social and cultural licence of the management approach to the environment. Referring back to Lyver et al. (2019), they express that even though under Te Tiriti o Waitangi, Māori have a constitutional right to practice kaitiakitanga, it is important that the wider community have confidence that Tāngata Whenua are working sustainably. By building their social licence, Tāngata Whenua are less likely to be criticised by previous un-educated sections of society for their undertaking of kaitiakitanga and, consequently, increase the legitimacy of their actions and decision-making (Lyver et al., 2019). The Te Awa Tupua Act 2017 represents a significant step by Whanganui Iwi to implement their right to act as guardians of the Whanganui River, but it is currently unknown how the wider community and other corporate or government bodies are engaging with this legislative mechanism. For example, there may be varying levels of recognition, societal awareness, and effort to implement Te Awa Tupua. The following section provides additional factors that also contribute to decision-making and the subsequent level of implementation of a new environmental policy or regulation.

### **2.7.3 Additional factors**

This review would not be complete if it did not acknowledge factors such as time and resources constraints that can also impact on decision-making and planning processes. For example,

corporations and local government authorities may face resource constraints that limit their ability to implement a new policy or government mandate. For instance, Kirk et al. (2020) argued that in addition to having limited time and resources to carry out policy, implementors could become stuck between the demands of decision-makers and the needs of the public. Consequently, implementors develop their own tactic for implementing the policy in light of these constraints.

Furthermore, research has shown that corporations often choose profit over reducing their negative environmental impact (Xepapadeas, 1992). In line with this, Gunningham et al. (2004) also found that paper mill firms did not strive to recycle paper, use fewer bleaching chemicals, or undertake other costly environmental measures to reduce their environmental effect unless government mandates assured that the firm's other competitors would also have to invest in the same measures.

Moreover, many other factors have been put forward by academics that impact decision-making to implement environmental statutes or policies. For example, Wang et al. (2012) argue that the effectiveness of environmental legislation is subjective to the context within which the legislation is understood and implemented. Furthermore, H. Rennie (personal communication, August 30<sup>th</sup>, 2021)<sup>6</sup> states that the way many planning professionals make decisions and implement legislation is often influenced by their previous experience and by precedent in case law.

In addition, Barbosa et al. (2016) identified governance, political, financial and technical issues as reasons for the weak implementation of water policies.

## **2.8 Chapter summary**

This chapter identified many theories and concepts relating to a variety of topics relevant to this research dissertation. Firstly, it is apparent that a variety of factors can influence one's relationship with nature and their perceptions of it. These include cultural factors that impact a person's or groups' worldviews regarding how they see themselves in relation to the natural world and ideas about citizenship within a state, which denotes personal rights and obligations, which may also create feelings of responsibility toward non-human entities. While these worldviews and relationships with nature are often categorised into two main paradigms, anthropocentrism and ecocentrism, this research shows that a traditional Māori worldview is separate from both framings. A Māori worldview perceives themselves as neither above nor separate from nature, but as an integral part of it, and that the natural order of an ecosystem is so complex that humans are incapable of fully comprehending it.

---

<sup>6</sup> Associate Professor of Planning at Lincoln University in a Teams meeting for this dissertation with Emily Ireland

This chapter touched on the systematic marginalisation experienced by Māori as a result of colonial conquest and the subsequent exclusion from planning and decision-making over lands and resources. In contemporary society, however, a resurgence is occurring, one that is transforming systems towards self-determination of Indigenous peoples. While the central goal for this resurgence is to achieve reclamation of traditional land and resources, this journey is also leading to opportunities for collaboration and co-management with settler governments. TATA is regarded as providing one of those opportunities for collaboration between Māori and the Crown, where Whanganui Iwi are provided with a governance role for the protection and restoration of the Whanganui Awa.

The literature reviewed suggests that when striving to achieve a greater role within resource management, it is crucial that Tāngata Whenua, including Whanganui Iwi, are provided with a conceptual space in which their knowledge and input are considered parallel to Western forms of knowledge. Moreover, the outcomes of implementing TATA should enhance Whanganui Iwi rights to decision-making, reflect the extent of investment of Whanganui Iwi in TATA, and adjust power imbalances within the planning system.

While the outcomes of decision-making for Whanganui Iwi under TATA regarding the Whanganui Awa are of interest, this chapter also discussed the many different factors believed to impact pro-environmental behaviour, which in turn, can affect one's actions and decision-making. Emphasis was given to factors such as societal awareness and social learning. Processes that have proven to increase understanding, promote partnership, and engender cultural and social license. As it stands, no research has been undertaken regarding the effects of the Te Awa Tupua Act 2017 on the ground. Little is known about how the wider community, such as individuals, corporate bodies or local government entities, perceive this legislation and whether this is having an effect on their own framings and conceptualisations of the Whanganui Awa. Furthermore, there has been no research on societal awareness, understanding, participation and learning about TATA since its enactment in 2017. This research seeks to identify any potential changes that have occurred and **how these changes may be impacting the overall decision-making processes for activities that affect the Whanganui River for individual business owners, corporate entities, government bodies, and Crown entities.**

# Chapter 3

## Statutory Context

### 3.1 Introduction

As mentioned in Chapter 2, the Resource Management Act 1991 (RMA) represents a significant step in providing a role for the voice of Māori within environmental management in Aotearoa, New Zealand. Although the RMA contains provisions to enable this, these have currently remained poorly utilised. The following chapter sets out these provisions for Māori interests and the provisions relating to resource consenting, a key process under the RMA for the regulation and control of environmental effects from activities (Environment Guide, 2021). The chapter then discusses the Te Pā Auroa Framework, the new legal framework for the Whanganui River centered on Te Awa Tupua, and its overarching purposes. An analysis of how TATA should affect the decision-making process for resource consent applications is provided. However, due to the lack of any case law on this topic, this is a challenging endeavor. Nonetheless, TATA contains provisions for how the Te Awa Tupua legal status and the Tupua te Kawa should be considered by decision-makers under the RMA. The chapter ends with a discussion on the regulatory effectiveness of TATA.

### 3.2 The Resource Management Act 1991

The Resource Management Act 1991 is the main legislation that governs how people interact with natural resources in Aotearoa, New Zealand (Ministry for the Environment, n.d.). The RMA is founded upon the principle of 'sustainable management' which promotes an integrative approach for managing natural and physical resources. This integrative approach means that decision-makers must take into account economic, ecological and social and cultural values (Resource Management Review Panel, 2020). Part 2 of the Act sets out the framework against which all powers, functions and duties of the RMA are to be exercised in order to give effect to the Act (Palmer, 2014). Within Part 2, the purpose of the RMA is stated, which is to promote the sustainable management of natural and physical resources (s5(1)).

### 3.3 Provision for Māori interests in the RMA

As mentioned earlier when discussing the involvement of Māori within planning in New Zealand, the RMA contains specific provisions and instruments to recognise Māori (Environmental Defence Society, 2016). These provisions require decisions makers, such as regional councils, to recognise and provide for or take the interests of Māori into account, representing a significant step in promoting a stronger voice for Māori in environmental governance and management (Te Aho, 2012). While there

are around twenty-two provisions for Māori interest within the RMA, only provisions that are of relevancy for this dissertation are given, such as those provisions that come into play for decision-makers when implementing TATA.

Under the RMA, it is the regional councils who have the prime responsibility for the management of freshwater, as well as the control of the use of land for the purposes of soil conservation and the avoidance or mitigation of natural hazards (s30 (1)(c)). Territorial authorities such as district councils also have the function of controlling the use, development, or protection of land for the purpose of mitigating any adverse effects of the development, subdivision, and the control of effects in relation to the surface of water in rivers and lakes, among other purposes (s31).

### 3.3.1 Purpose and principles

When conducting their functions, these local authorities are required to achieve the purpose of the RMA. Within Part 2 of the RMA, the purpose is provided in s5(1) below:

*(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.*

*(2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*

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

Also within Part 2, matters of national importance are set out in s6 which also provides for Māori (e) (f) and (g):

*“In achieving the purpose of the RMA, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall ...*

***recognise and provide for the following matters of national importance:***

*(e) ... the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.*

*(f) ...the protection of historic heritage [as defined in section 2 to include sites of significance to Māori, including wāhi tapu] from inappropriate subdivision, use and development*

*(g) ...the protection of protected customary rights.”*

Furthermore, the ethic of kaitiakitanga<sup>7</sup> and Te Tiriti o Waitangi are also incorporated into the RMA as:

*“all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall ...*  
**have particular regard to kaitiakitanga (s7 (a)) and ... take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).” (s8)**

### 3.3.2 Resource consenting

Resource consenting is a key process under the RMA for the regulation and control of environmental effects of activities (Environment Guide, 2021). Under section 88 of the RMA, a person may apply for a resource consent with a relevant consent authority such as a regional council or a territorial authority. Under section 87, activities are classified into six primary categories: permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited. Each activity category denotes aspects such as whether a resource consent is needed before undertaking the activity, what the considerations will be for decision-makers, and whether the resource consent must, may or may not be granted (Environment Guide, 2021). Rules in regional and district plans determine into which category the application falls.

An activity is permitted if the application complies with requirements specified in the RMA, a plan or proposed plan, and therefore, does not require an assessment of environmental effects (AEE) of the activity on the environment. All other activities require an AEE to be included in the consent application and address the matters specified in Schedule 4 of the Act. When preparing an AEE, applicants should identify the magnitude of each effect of the proposal such as having no effect, minor effect or significant adverse effect (Ministry for the Environment, n.d). Once this has been done, the applicant may then need to modify the proposal or create measures to reduce significant effects. This process is referred to as avoiding, remedying or mitigating adverse effects. Under s 17(1): *“Every person has a duty to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity”*.

Furthermore, matters that must be assessed in an AEE include, the effect of those in the neighbourhood and the wider community, including economic, social, or cultural effects, as well as any effect on natural and physical resources having recreational, aesthetic, scientific, historical, cultural, spiritual or other special value, for present or future generations (Schedule 4). At present, in

---

<sup>7</sup> The exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources.

practice it is this mechanism which **most regularly** provides the opportunity for mana whenua<sup>8</sup> to have a role in the resource management process (Resource Management Review Panel, 2020). Under section 36A, neither an applicant nor a local authority has a duty to consult any person (including Māori) regarding a resource consent (Resource Management Review Panel, 2020). However, there is a requirement that the AEE must include information on the identification of the persons affected by the activity and any consultation undertaken (s 6 (f)).

Despite **no formal mandate** in the RMA to consult with iwi or hapū, before the resource consent application is lodged, applicants are expected by many councils to consult with iwi authorities if a proposed development has potential to impact on mana whenua values (Auckland City Council, 2021). These include activities such as development on sites with historic Māori heritage, significance and statutory acknowledgements (Auckland City Council, 2021).

### 3.3.3 Decision-making on resource consents

Section 104(1) of the RMA requires that when considering an application for a resource consent, subject to Part 2, the consent authority must:

***have regard to—***

- (a) any actual and potential effects on the environment of allowing the activity; and*
- (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity;*
- and (b) any relevant provisions of—*
  - (i) a national environmental standard;*
  - (ii) other regulations;*
  - (iii) a national policy statement;*
  - (iv) a New Zealand coastal policy statement;*
  - (v) a regional policy statement or proposed regional policy statement;*
  - [and] (vi) a plan or proposed plan; and*
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

When making a decision on an application, a council may grant or refuse a consent with reference to the category of activity for which the consent is sought. Councils may also decline an application on the grounds that they have inadequate information to determine the application (s104(6)). Section 104A to 104D set out the manner of any grant or refusal. For example, discretionary and non-complying activities, a council may grant or refuse an application and can impose conditions if the consent is granted. Conditions may require the applicant to carry out numerous actions such as

---

<sup>8</sup> Customary authority exercised by an iwi or hapū in an identified area.

record measurements, undertake inspections and surveys in a specified manner, and provide information to a consent authority (s108(4)).

The statutory procedures established within the resource consenting process, including assessing the environmental impacts, consultation with iwi authorities (not mandatory) and modifying applications to avoid, remedy or mitigate adverse effects to the environment by the applicant, is a **key** focus for this research dissertation. As is the process of considering applications and making a decision to grant or deny a resource consent by a consent authority. TATA is expected to alter, among other statutory functions, the way in which RMA resource consent decisions are made in respect of activities that affect the Whanganui River and its catchment (s 15, TATA). This following section discusses the statutory provisions and legal guidance under TATA, and further details how TATA might affect resource consenting and other planning decisions.

### **3.4 Te Pā Auroa nā Te Awa Tupua— the Te Awa Tupua framework**

The Te Awa Tupua Act 2017 creates a new legal framework for the Whanganui River, derived from Ruruku Whakatupua. This Te Pā Auroa Framework provides for the legal recognition of Te Awa Tupua TAT *“as 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”* (s 12, TATA). In addition to the legal recognition of TAT, the overarching purpose of this framework is also to provide for the legal recognition in and effect on decision-making generally of Tupua te Kawa (the four intrinsic values), the development and effect of Te Heke Ngahuru ki Te Awa Tupua (the strategy document), and the protection and promotion of the health and wellbeing of Te Awa Tupua (Ruruku Whakatupua, 2014, p.4).

#### **3.4.1 Decision making under the Te Awa Tupua Act 2017**

One of the fundamental intentions of the TATA is to change the way people view and relate to Te Awa Tupua, the Whanganui River and its catchment (Ruruku Whakatupua – the Whanganui River Deed of Settlement 2014, p. 5). Thus, TATA is expected to change the RMA resource consent process via the assessment of effects of a consent application and the final decision to grant the resource consent (and any conditions and monitoring) (Poipoia Ltd, 2019). This requires a new catchment-wide approach by resource consent applicants and RMA decision-makers to understand that all of the waterways that join together to create the Whanganui River, should be managed not in isolation from each other, but as part of the River and as an interconnected whole (Rāwiri, 2020).

Due to the lack of case law regarding the interpretation and implementation of TATA on the ground so far, providing detail on the correct decision-making process of TATA under the RMA, is difficult. Nonetheless, legal guidance is provided in TATA on how the framework should be given effect to, in other legislation, during the undertaking of statutory functions. For example, councils must have regard to the requirements of TATA when considering a resource application in accordance with s104(1)(b) of the RMA. Furthermore, in the exercise of statutory functions, powers and duties under the RMA, such as considering a resource consent application, a council must demonstrate relevant consideration of the Te Pā Auroa Framework in relation to the Whanganui River or to activities in its catchment that affect the Whanganui River (s 11, TATA). Under TATA, this consideration must be exercised in a manner that is consistent with the purpose of the RMA which is sustainable management (s 15(4), TATA). The council also must interpret the Te Pā Auroa Framework in a manner that best furthers the intent of the Framework, which in its entirety, is to provide a new legal framework for the Whanganui River that is centered on Te Awa Tupua, the Tupua te Kawa, Whanganui Iwi values, interests and relationships in the management of the Whanganui Catchment, and to protect and promote the health and wellbeing of the Whanganui River (Poipoia Ltd, 2019).

Thus, TATA applies to councils when performing a function under the RMA such as a decision on a resource consent if the council determines that in the exercise of that function, it relates to the Whanganui River or to an activity in its catchment that **affects** the Whanganui River (s 15, TATA).

If the TAT status is determined as applicable, under the RMA, the council as a decision-maker must have **particular regard to** —

*(a) the Te Awa Tupua status and*

*(b) Tupua te Kawa (s15(3)).*

Decision-makers working under other specified Acts – the Heritage New Zealand Pouhere Taonga Act 2014 and the Public Works Act 1981 – must also have particular regard to s15(3) (Schedule 2, TATA). On the other hand, decision-makers under 25 other Acts including the Conservation Act 1987, National Parks Act 1980, and the Reserves Act 1977, must **recognise and provide for** — (a) the Te Awa Tupua status and (b) Tupua te Kawa (s15(2)). Decision-makers under the RMA must also recognise and provide for these two aspects during the process of preparing or changing a regional policy statement, regional plan, or district plan (s.15(2)).

When determining if the TAT status is applicable when considering a resource consent, the council must decide if the activity for which the resource consent is for relates to the Whanganui River or to activities in the catchment. To help this determination, the council may look to the definition of the

Whanganui River (s7, TATA) and the definition of the Whanganui River Catchment in Ruruku Whakatupua (the Whanganui River Deed of Settlement):

***The Whanganui River:***

- (a) the body of water known as the Whanganui River that flows continuously or intermittently from its headwaters to the mouth of the Whanganui River on the Tasman Sea and is located within the Whanganui River catchment; and*
- (b) all tributaries, streams, and other natural watercourses that flow continuously or intermittently into the body of water described in paragraph (a) and are located within the Whanganui River catchment; and*
- (c) all lakes and wetlands connected continuously or intermittently with the bodies of water referred to in paragraphs (a) and (b) and all tributaries, streams, and other natural watercourses flowing into those lakes and wetlands; and*
- (d) the beds of the bodies of water described in paragraphs (a) to (c)*  
*(s 7, TATA)*

The Whanganui River Catchment is defined as the area shown on the Whanganui River catchment map contained in Te Tiripou as part of Ruruku Whakatupua (Figure 2).

If the resource consent application relates to the Whanganui River or to an activity in the Whanganui Catchment, then the council must determine if the application will **affect** the Whanganui River. If this is decided, then ways in which the council have particular regard to the TAT status and the Tupua te Kawa, need to be demonstrated (s 15(3), TATA). The Tupua te Kawa (the intrinsic values) represent the essence of TATA (s13, TATA) and therefore, should stand as a guide for the design of proposals that protect and promote the health and wellbeing of the Whanganui River and its catchment.

**TE TIRIPOU**  
**Schedule - Whanganui River Catchment Map**



**Figure 2 Whanganui River Catchment Map. Source: Ruruku Whakatupua**

### 3.5 Te Pou Tupua

As described in Chapter 1, Te Pou Tupua (TPT) is a single role comprised of 2 persons with the purpose of representing the human face of the River (s18). Turama Hawira and Dame Tariana Turia were appointed as Te Pou Tupua in November 2017 (Ngā Tāngata Tiaki o Whanganui, n.d). Functions of TPT are to act and speak on behalf of TATA, uphold the status of TATA and Tupua te Kawa, and to promote and protect the health and wellbeing of TATA, among other purposes (s 19, TATA). TPT in performing their functions may engage with any relevant agency or decision-maker to help it to understand and implement TATA and Tupua te Kawa. If agreed by both TPT and the decision-maker, together they may develop or review relevant guidelines or policies (s19(2)(d), TATA). In relation to the RMA, a consent authority must not disregard any effect to the Whanganui River if a consent authority determines that TPT is an affected person in association with a resource consent application that relates to the Whanganui River or activities within the catchment that affect the River and if TPT has given written consent to the application (s 63, TATA). This provision ensures that even with written consent by TPT, the effects to the River and its catchment

are still relevant considerations. It is not apparent if a consent authority in the area has determined TPT as an affected person at the date of writing (November 2021). They may have done so but have not formally made that decision public.

### **3.6 Other regulatory changes to activities under TATA**

This section describes the possible regulatory changes to activities that relate to the Whanganui River that could occur under TATA. These include changes to activities on the surface of water, regulations regarding the management of mahinga kai, and the adoption of Te Heke Ngahuru (the strategy document) within regional policy statements, regional plans or district plans.

#### **3.6.1 Activities on the surface of water**

Possible regulatory changes to activities that relate to the Whanganui River under TATA, include activities on surface of Whanganui River. For example, 64(1) of TATA states that as soon as practicable after the date of settlement, a collaborative group including members of Iwi, DOC, Maritime New Zealand, and relevant authorities, must collectively review how surface water activities on the River are being regulated, and (2); consider ways to improve and co-ordinate the management of those activities. During this review, the collaborative group must consider the existing regulatory provisions for controlling surface water activities on the River such as regulations, standards, and policy statements and plans (s 64(3)(b), TATA).

The collaborative group must then consult Te Pou Tupua and report to the relevant Ministers once completing their work (s 64(4), TATA). This report then has the power to make regulations for activities on the water surface (approved by the Governor-General). However, this only occurs if the relevant Ministers are satisfied that the existing regulatory methods are inadequate in providing for public health and safety, and the health and wellbeing of Te Awa Tupua, and any other matter relevant to the management of those activities (s 65, TATA).

#### **3.6.2 Customary food gathering**

Furthermore, under TATA there is a provision for the power to make regulations regarding the management of customary food gathering (s 67, TATA). Whanganui Iwi and the Minister for Primary Industries must collaboratively develop mahinga kai regulations for Iwi with interests in the Whanganui River under the Fisheries Act 1996. The Governor-General, on the recommendation of the Minister of Primary Industries, may then make regulations that provide for this customary food gathering (67(2), TATA).

At the date of writing this dissertation (November 2021), no regulations for activities on the surface of water and for food gathering have been put in place yet for the Whanganui River catchment (Parliamentary Counsel Office, n.d).

### **3.6.3 Te Heke Ngahuru ki Te Awa Tupua (Te Heke Ngahuru)**

Te Heke Ngahuru (THN) is the strategy document that is to be created under TATA (s 36, TATA). The purpose of THN is to bring together persons with interests in the Whanganui River where they will work collaboratively to address and enhance the health and wellbeing of TAT (Ruruku Whakatupua – the Whanganui River Deed of Settlement 2014, p. 17). THN is to be developed and approved by Te Kōpuka (s 30(2), TATA). THN must identify issues relevant to the health and wellbeing of TATA, provide a strategy and recommendations to deal with those issues (s 36, TATA). This strategy must be given particular regard to by local government authorities, for example, under s 37 of TATA:

*“Persons exercising or performing functions, powers, or duties under any of the Acts referred to in subsection (2) must have **particular regard to Te Heke Ngahuru.**”*

The RMA is one of these Acts. Moreover, a person exercising a function, power or duty that relates to the Whanganui River, or an activity within its catchment that affects the Whanganui River, may *“in his or her discretion, adopt or implement Te Heke Ngahuru, wholly or in part, including as part of an RMA planning document”* (s 37(5) TATA). An RMA planning document means a regional policy statement, a regional plan or district plan (s 37(6), TATA). There has been some substantial momentum towards the development of THN so far (see Ngā Tāngata Tiaki o Whanganui, 2020, July), but the draft THN is yet to be completed or publicly notified.

## **3.7 Limitations in regulatory effectiveness of TATA**

As demonstrated, there are numerous provisions in TATA that require a variety of decision-makers under other Acts to recognise, provide for, and have regard to the Te Awa Tupua legal personhood status, and its intrinsic values. As mentioned, in the exercise of statutory functions, powers and duties under the RMA, such as considering a resource consent application, a council must demonstrate relevant consideration of the Te Pā Auroa Framework in relation to the Whanganui River. However, this consideration of the Te Pā Auroa Framework must be exercised in a manner that is consistent with the purpose of the RMA which is sustainable management (s 15(4), TATA).

TATA has no impact on existing public rights of use and access to the River, fishing rights, existing private property rights, existing rights of state-owned enterprises, and existing resource consents

such as water use permits of the River (s 46(2), TATA). These provisions **weaken** the power of the Act and thus, the rights of the River (O'Donnell & Macpherson, 2019).

Additionally, the agency of Te Pou Tupua over the resource consent process appears to be somewhat restricted. For example, after the settlement date, the Crown owned parts of the bed of the Whanganui River were vested in TATA (s 41, TATA). Regardless of these vestings, s46 states that the consent of TPT *may* be required in relation to the use of the bed of the River. Furthermore, the consent of TPT to use water is not required. However, a consent authority may determine under the RMA, that TPT is an affected person for the purpose of applications for resource consents relating to water (s 46(a), TATA). These confined powers of TATA within the resource consenting process, go against the proposals recommended by the Waitangi Tribunal in Wai 167 in 1999 (Barraclough, 2013). These proposals, supported by the majority in the Tribunal, recommended that any resource consent in relation to the Whanganui River should require **the approval** of the iwi governance entity (the Whanganui River Māori Trust Board) (Te Aho, 2012).

### 3.8 Conclusion

This analysis demonstrates that TATA operates largely within the confines of the Resource Management Act 1991. The risk of this confinement is that it creates an opportunity for TATA to be limited in practice where the Te Awa Tupua status may conflict with other development conditions or interests under the RMA (Barraclough, 2013). The use of the term “must have particular regard” to the Te Awa Tupua status and to Tupua te Kawa (s 15(3), TATA) as part of the resource consent decision by consent authorities for an activity that affects the River, is rather weak terminology of low legal weighting (Te Aho, 2012). Such terminology may be subject to “political maneuvering” and the discretion of decision-makers (Barraclough, 2013, p. 26). The same can also be said for Te Heke Ngahuru that is currently being developed, where under other legislations, people must have “particular regard” to THN.

Despite this, THN does have opportunity to create change and increase recognition for the protection and promotion of the health and wellbeing of TAT and for the role of Whanganui iwi claimants within the system. This is if consent authorities effectively adopt THN into their regional policy statement or regional or district plans. This was the case for the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, the result of the settlement between the Crown and Waikato-Tainui iwi (Te Aho, 2012). One of the main objectives for this settlement includes achieving an integrated and coordinated management approach of the natural, physical and cultural resources of the Waikato River. To achieve this, a Vision and Strategy was created that now forms part of the Waikato Regional Policy Statement, which sets a health baseline for the River drawn upon mātauranga Māori and the latest scientific data and technologies (Te Aho, 2019).

Therefore, once THN has been produced and finalised by Te Kōpuka, this will serve as an additional aspect of the relevant considerations as part of the Te Pā Auroa Framework and may also set protocols and limits that guide RMA processes for the management of the Awa, similar to the Waikato-Tainui Vision and Strategy. Currently, the regulatory and procedural effectiveness of TATA appears to have the greatest opportunity for impact within already established RMA processes, such as the resource consent process. In addition, while making a resource consent decision, the consent authority must make considerations that are also subject to Part 2, purpose and principles of the RMA (s 104(1), RMA). As provided earlier in this chapter, Part 2 contains strong provisions for Māori interest such as the recognition and provision for the relationship of Māori and their culture and traditions with ancestral water (s6(e), RMA) and the protection of historic heritage including sites of significance to Māori from inappropriate use and development (s6(f), RMA). Thus, there exists already strong statutory directives within the RMA to provide for Māori in general. The effect of these provisions within Part 2 of the RMA, alongside the TATA provisions for decision-makers under the RMA and other legislations, should create change for the way RMA decisions are made regarding the Whanganui River and its catchment. Broadly, decision-making should benefit the health and wellbeing of the Whanganui River and the interests and values of Whanganui iwi.

# Chapter 4

## Methodology

### 4.1 Research methodology

A qualitative research approach was undertaken for this dissertation to investigate the extent to which individual business owners, corporate entities, government bodies, and Crown entities believe the Te Awa Tupua Act 2017 has influenced their decision-making for activities that affect the Whanganui River. Qualitative research methods are useful as they shed light on individuals' subjective meanings to their experience, which can consequently influence their attitudes, perspectives, and behaviours (Banyard & Miller, 1998; Wilson, 2013). Thus, using a qualitative research approach was deemed appropriate for this research as it would help identify any changes (or lack of) in worldviews and perspectives of the Whanganui Awa. Moreover, qualitative research methods are also beneficial as they allow the researcher to explore an issue in-depth and access meaning in context, without the application of predetermined analytic groupings that could limit a researcher's investigation or an interviewees response (Riger & Sigurvinsdottir, 2016).

### 4.2 Case-study

For this dissertation, a case-study approach was chosen due to the ability to closely investigate real-life experiences and test perspectives directly with phenomena as they play out in practice (Flyvbjerg, 2006). Moreover, Gerring (2004) defines a case study as "an intensive study of a single unit for the purpose of understanding a larger class of (similar) units" (p.342). While critics of a case-study approach believe that one cannot generalise on the basis of a single case, Gerring (2004) states that knowledge gained from case-studies are still able to contribute and provide value in a given field and forge a path toward "scientific innovation" (p.227). As mentioned, the implications of granting legal personhood to natural entities are of significant international interest (Clark et al., 2018).

While I could have chosen the Te Urewera Act 2014 as a case study in order to analyse the implications of legal personhood on planning processes, I chose the legal personhood of the Whanganui Awa as the issue relates to the increasingly global and national concern for freshwater degradation as a result of interrelated pressures such as urbanisation, agricultural intensification, climate change, and the ineffectiveness of command and control mechanisms to improve environmental outcomes (Kirk et al., 2020).

It is expected that the results of this research will contribute to improving the implementation of legal personhood of natural entities by revealing some of the outcomes and constraints so far in TATAs application. Furthermore, this dissertation will provide recommendations to help improve the implementation of TATA and ultimately protect and enhance our freshwater in Aotearoa, New Zealand, for present and future generations.

### **4.3 Semi-structured interviews**

Face-to-face interviews were carried out at an agreed place with participants in the Whanganui region across one week. Due to the type of data sought, for example, thoughts, feelings and values regarding a culturally loaded topic, face-to-face interviews were chosen as the most appropriate method. Interviews were semi-structured in nature to create a more relaxed conversational tone compared to structured interviews. They allowed participants' ideas to flow freely and for me to gauge the emotions and meaning behind the participants' words.

For this research, a wide range of participants representing various interests and roles were sought in order to capture a breadth of perspectives that reflect the diversity of interests and positions in society. A second criterion for chosen participants was the regular interaction with the Whanganui Awa and decision-making for activities that may affect the River based on their occupation. Participants such as tour operators and the public sector planner were initially contacted by email or phone calls. Two other participants were recruited with the help of a local council who knew of potential individuals and then sent their contact details via email to me with the participants' permission. A further two participants were recruited by walking into company offices in person. In total, seven participants were interviewed over six semi-structured interviews. These participants included: two local tour business operators, a local farm consultant, a Department of Conservation member, two members from a private planning company and one public sector planner.

Participants were briefed about the research and given a research information sheet (RIS) that detailed the research objectives, the nature of the interview, three central questions that would be asked, and were assured anonymity of data collected. All participants consented to be recorded (Appendix B). The initial time frame for interviews was 30 minutes. However, this was just a guide and participants with a lot of information to share were encouraged to do so, even if that meant going over 30 minutes. A couple of interviews went over 30 minutes (36 minutes and 42 minutes). As well as the three main questions that were sent before the interview, additional prompt questions were asked during the interview (see Appendix C for interview questions).

## 4.4 Data analysis

After interviews had taken place, recordings were then transcribed, and thematic analysis was undertaken. During thematic analysis, interview transcripts were analysed, and common ideas were identified and placed under theme headings to categorise and compare the different perspectives found. These interviews were my primary source of data; however, during the interviews, some participants provided documents as evidence or identified further case studies and examples relevant to this research. These documents were used as secondary data, which added credibility to my research results as they provided different methods and forms of understanding relating to the issue at hand, a process known as triangulation (Babbie, 2001).

Due to time constraints, other case studies mentioned by participants could not be included in the Results Chapter with a complete analysis. However, the case studies were given a quick google search, which helped inform a more comprehensive understanding of TATA.

## 4.5 Ethics

It is paramount that all necessary measures are carried out to avoid any situations that may pose a risk to participants as a consequence of participating in the research. Lincoln University recognises this importance and the need for consistency, impartiality, and the maintenance of high ethical standards. Therefore, under the Lincoln University Human Ethics Policy, all research that involves human participants must be approved by the Human Ethics Committee (HEC) before beginning any fieldwork.

On the 19<sup>th</sup> of July, 2021, I received approval from HEC to conduct interviews (see Appendix A for approval letter).

## 4.6 Limitations

A significant limitation in my research was not having the opportunity to have an *official* interview with any member from Ngā Tāngata Tiaki o Whanganui (NTT) regarding TATA and how they believe TATA has been achieving its purposes on the ground. Having no personal connections up in Whanganui, and less than 12 months to complete this dissertation, were factors that made it difficult to establish a long-lasting relationship with these members. However, I *was* able to have an informal conversation with a planner within NTT that was off the record but helped to inform my understanding of TATA.

Furthermore, my initial intention was only to interview members of Te Kōpuka (TK), the collaborative group established under the Act. However, after communication with the administration office of NTT, it was discovered that an application could take up to three months before a reply on whether

or not TK would agree to an interview. Due to the long wait and uncertainty, I changed my focus to interviewing business owners, planning agencies and government bodies instead of TK members. This switch was also thought to provide more relevant answers to my dissertation question regarding any procedural or substantive changes to the decision-making process, as interviews would now be with individuals and organisations directly involved in the implementation of TATA within the planning system.

Finally, a further limitation was not securing an interview with a member from the other significant public sector planning body. TATA is in their jurisdiction, and by now, it was expected that they would have had experience implementing TATA, especially via the resource consenting process. The reasons given from members from this public body not wanting to participate was due to the sensitivity of the topic and that it was a new space in which they were still learning how to implement. Despite this, their team was very helpful, and they provided me with contacts of local business owners (with their permission) to interview instead.

Two other smaller public sector bodies, with members on the TK committee, were also contacted for an interview. However, both felt they did not possess any relevant information for my research because they had not worked with anyone requiring a resource consent relating to the Awa. One of these public sector planners also stated that even though their office was an hour and a half from the Awa, they had still been placed on the TK committee. However, much of their work did not interface with the Awa and suggested I contact the more prominent public sector body mentioned above, which had declined to be interviewed.

Not being able to secure an interview with these three planning bodies still provides me with results, however. As mentioned, for two of the public sector bodies contacted, even though they were based a significant geographical distance from the Awa, they were still considered by NTT as important members to include on the TK committee. This fact demonstrates the commitment of TK towards inclusion, support, and collaboration to enhance the health and well-being of TAT. Furthermore, the reluctance to be interviewed by the larger public sector body that sits mainly in the jurisdiction of TATA highlights a risk-averse approach towards TATA. It perhaps reflects minimal changes to their decision-making and planning processes. However, this hypothesis cannot be confirmed without an interview or further evidence.

# Chapter 5

## Measuring Decision-Making

### 5.1 Introduction

The Dissertation research question is “*to what extent has the Te Awa Tupua Act influenced decision-making for activities that affect the Whanganui River?*”. As already discussed, decision-making is a key focus for this dissertation. The ability to influence and make decisions within the urban and environmental planning system represents the level of agency of an individual or group to determine one’s future (Matunga, 2013). Historically, and until recently, Māori have been systematically excluded from determining their future as a result of Crown actions which undermined Tāngata Whenua’s rights and responsibilities in the management and use of their lands and resources (Te Aho, 2019). One of the primary intentions for creating TATA is to strengthen the voice of Whanganui Iwi within the planning system through decision-making (Rāwiri, 2020). This section describes how the decision-making process for participants will be measured for this research and demonstrates the steps taken to create an evaluative framework.

### 5.2 Measuring processes and outcomes of the decision-making process

In order to effectively address how this legislation has had an effect on decision making, the first step is to identify how to *measure* processes and outcomes of decision-making. The theoretical topic of assessing environmental impact assessment (EIA) effectiveness provides some insight into how to do this. One of the primary goals of the EIA instrument is “*improving decision-making by raising decision-makers’ awareness of a proposed action’s environmental consequences*” (Glasson et al., 2012, p. 53). Since the establishment of the use of EIA within environmental management processes, there have been substantial scholarly reviews of its impact on decision making (Hapuarachchi, 2014). These reviews involve an evaluation of EIA’s **procedural** and **substantive** effectiveness (van Doren et al., 2013).

As defined by Wang et al. (2012), procedural effectiveness refers to whether the environmental assessment is undertaken according to established expectations and principles. In terms of EIA expectations and principles from a procedural aspect, this includes; the extent to which the EIA provides **legal basis and guidance**. Indicators of legal basis include provisions for the assessment of a range of impacts of all significant proposals, consideration of alternatives, opportunities for the

public to participate in the EIA process, the ability to appeal the process or decision, and guidance to support compliance monitoring (Glasson et al., 2012; Hapuarachchi, 2014).

Substantive effectiveness can be measured on how well legislation (or an instrument such as EIA) achieves the purpose for which it is designed (Wang et al., 2012). Thus, this measure of effectiveness relies on the purpose and expected outcomes as defined by the instrument. Consequently, substantive measures represent a high level of subjectivity as there are many interpretations of effectiveness (van Doren et al., 2013). However, examples of substantive effects can be observed in the form of policy and proposal adjustments and mitigation measures designed early on to improve the chance of meeting objectives in the future (Hapuarachchi, 2014). The level of influence of an instrument on proposal approval and final project design is often measured to identify substantive effectiveness also (Cashmore et al., 2004).

The above examples provide valid methods of detecting changes in the decision-making process. In terms of determining procedural changes resulting from TATA, these can be best witnessed through legal requirements and guidance within established RMA processes, such as provisions for resource consenting and provisions relating to the development and update of regional policy statements, regional plans, and district plans. This is because, as highlighted in the analysis in Chapter 3, TATA operates mainly within the confines of the RMA. Under the RMA, resource consenting is a crucial process for regulating and managing adverse effects on the natural and physical environment, such as potential effects to a river. TATA is expected to permeate and alter the ways decisions for resource consent applications are considered and made (Poipoia Ltd, 2019). As part of the resource consenting process, provisions under the RMA set out the procedural requirements for consultation by an applicant or a local authority. As detailed in Chapter 3, consultation with the relevant iwi early on in the resource consenting stage by applicants (or by private planners on behalf of applicants) is encouraged; however, is not mandatory (s 36A, RMA).

In saying this, there is a requirement that the AEE must include information on the identification of the persons affected by the activity and any consultation undertaken (s6 (f), RMA). Thus, any changes to the occurrence and how applicants, private consultants, and consent authorities engage with Whanganui Iwi was of interest, such as: were iwi consulted for the proposal/application, and timing of engagement in relation to the application (before or after the application was lodged), and amount of times Iwi were consulted. It is expected that TATA should influence this consultation process as if the resource application relates to an activity in the Whanganui catchment that affects the Whanganui River, then the local authority must have particular regard to the Tupua te Kawa. One of these relates to collaboration and the value of partnering with others to achieve a common goal

(s13(d), TATA): “*Ko Te Kawa Tuawhā: Te Awa Tupua is a singular entity comprised of many elements and communities, working collaboratively for the common purpose of the health and wellbeing of Te Awa Tupua.*”

Furthermore, another procedural requirement for resource consenting is that within an AEE that is submitted alongside the application, the effect of those in the neighbourhood and the wider community must be assessed. These effects include any economic, social or cultural effect and any effect on natural and physical resources having value, such as cultural or spiritual value (Schedule 4, RMA). This procedure is expected to be influenced and enhanced by TATA, as the Whanganui Awa and its catchment, as described in the first Tupua te Kawa, is a spiritual and physical entity that supports and sustains the health and wellbeing of iwi, hapū and other communities of the River (s13(a), TATA). This Tupua te Kawa highlights the interconnectedness between Whanganui Iwi and the Whanganui Awa and the importance of acknowledging that activities that adversely affect the Whanganui Awa, also adversely affect iwi (Waitangi Tribunal, 1999). As a result, TATA might also influence other procedural changes such as greater emphasis on alternatives to mitigate the adverse effects of proposals in the AEE, thus influencing decisions to grant or refuse a consent and or place conditions on the resource consent, such as monitoring and mitigation conditions.

To summarise, in practice, TATA is expected to influence processes and procedures already established within the RMA, such as increasing the level of consultation of applicants for resource consents with Whanganui Iwi, placing greater emphasis on assessing the effects of an activity to those in the wider community, and the effects on the Whanganui River that impacts its ability to provide cultural and spiritual value for the Whanganui iwi. If results show that TATA has strongly influenced these processes, then it can be said that TATA provides for significant procedural effectiveness within the RMA.

In regard to identifying the substantive effectiveness of TATA, this may be measured by how well TATA achieves the purpose for which it is designed (Wang et al., 2012). Caveats exist in this approach because, as mentioned in Chapter 3, TATA mainly works within the limits of the RMA. However, the overarching purposes of TATA appear to want to go beyond its mere provisions in the RMA, through which it is primarily implemented. One of the overarching purposes of the Te Pā Auroa Framework is to provide for the legal recognition of Te Awa Tupua as an indivisible and living whole and the recognition and effect of Tupua te Kawa the four intrinsic values (Ruruku Whakatupua – the Whanganui River Deed of Settlement 2014, p. 4). However, the low legal weighting via the use of the provision “*must have particular regard*” to the Te Awa Tupua status and the Tupua te Kawa (s15(3), TATA), as part of the resource consent decision by consent authorities for an activity that affects

the River, seems to take away and limit the ability for TATA to fully achieve the purposes for which it was designed. Therefore, I argue that the level of regard given to the TAT legal status and to the TtK by decision-makers is a substantive matter. For example, the ways in which decision-makers under the RMA are demonstrating their regard for the TAT legal status and the Tupua te Kawa may vary according to their recognition and understanding of TATA. For example, some consent authorities may go further than “having particular regard” in order to achieve the purpose of TATA better. In addition, an action undertaken by a decision-maker for which there are no specific legal provisions for or the action is not mandatory, is also classified as a substantive effect.

TATA could have substantive effects in the form of influencing the design of proposal projects and or the design process. This concept inevitably interrelates with procedural changes as discussed previously, such as increasing the implementation of technologies to mitigate adverse effects or placing conditions on the proposal to ensure adverse effects are maintained below a certain threshold. For example, contaminants such as petroleum hydrocarbons in a stormwater discharge are not to exceed a concentration of 15 grams per cubic metre (Environment Canterbury, 2017). However, the level at which TATA is able to influence project design depends on factors such as a decision-maker’s understanding of TATA and awareness around the implications of specific effects to the Awa.

In addition to the substantive effects identified above, other literature shows that substantive effectiveness could also be measured by other variables (Cashmore, 2004; Bartlett & Kurian, 1999). For example, EIA has been found to affect the ‘knowledge base’ of decision-makers concerning the environmental effects of an activity (Cashmore, 2004). In other research by Cashmore et al. (2004), evidence also highlighted that the application of EIA impacted on several modes of learning, such as the influence of institutional and corporate values, attitudes and actions. These indirect changes have been termed “alternative causal processes” (Cashmore, 2004, p. 419). Where instruments such as EIA have the ability to shape impacts in the form of “creative political symbolism” (Bartlett & Kurian, 1999, p. 418). These impacts include creating meaning, conjuring emotional responses, and re-affirming moral commitment (Bartlett & Kurian, 1999).

Additionally, a key intention of the Te Pā Auroa Framework is to change the way persons view and relate to Te Awa Tupua, the Whanganui River, and its catchment (Ruruku Whakatupua – the Whanganui River Deed of Settlement 2014, p. 5). For example, the purpose of Te Pā Auroa Framework is to promote the perception of Te Awa Tupua as “an indivisible and living whole from the mountains to the sea” (s13(b), TATA). However, there may also be other ways people relate to or perceive the Whanganui River due to TATA. For example, this new personhood status

could create new meanings or affect the values and beliefs previously held by an individual or organisation regarding the River.

Due to this analysis, it is predicted that TATA may have more than procedural effects on the RMA resource consenting process and that substantive changes could occur, such as the influence on the design process of a project. There is also a chance that substantive changes in the form of effects to the knowledge base of decision-makers may present themselves. Effects on institutional and corporate values, attitudes and actions that may occur due to the indirect influence of TATA would demonstrate the existence of alternative causal processes.

### **5.3 Creating an evaluative framework**

To measure possible procedural and substantive effects to the decision-making process, an evaluative framework was created. While methods to assess both procedural and substantive effectiveness of TATA on decision-making have been identified, evaluations of 'effectiveness' can have plural interpretations and is a relative concept (van Doren et al., 2013). Thus, it was decided that TATA's procedural and substantive outcomes on the decision-making process would be evaluated through an environmental justice lens.

One of the intentions for the creation of TATA includes the desire to change the way people relate to the Whanganui River. For example, Ngā Tāngata Tiaki state that TATA is about re-affirming the obligations and duties to place oneself "within nature's scheme and ensure that we work with nature rather than against it" (Ngā Tāngata Tiaki o Whanganui, n.d.). As demonstrated within the literature, another significant driver for the creation of TATA is that it provides the space for local iwi to design a new governance system, one that upholds kaitiakitanga (guardianship) and rangatiratanga (absolute authority). This concept fits within the broader movement for 'environmental justice' in which Indigenous communities are demanding to have the ability to continue and reproduce the practices, traditions, cosmologies, and relationships with nature that link Indigenous people to their ancestral lands (Schlosberg & Carruthers, 2010). As Matunga (2013) explains, Indigenous planning is a political strategy that seeks to improve both the lives and environments of Indigenous people; thus, dedication to political, environmental, social and economic change is necessary. Environmental justice, therefore, advocates for the defence and the very functioning of indigenous communities through facets of equity, participation and recognition (Schlosberg & Carruthers, 2010).

Facets of environmental justice that this research applies to evaluate the decision-making process are equity, partnership, and recognition. An evaluative framework was created using these facets of

environmental justice. Firstly, notions and indicators of equity, partnership and recognition are described.

### 5.3.1 Equity

Notions of equity in terms of environmental justice should include the consideration of effects to both people and communities and the equal distribution of environmental benefits and burdens (Shrader-Frechette, 2005; Walker, 2010). For example, Walker (2010) states that *“equity considerations should be a fundamental element of impact assessment and of development planning”* (p.315). Countless examples of impact assessments and project approvals by authorities demonstrate a tendency for decision-makers to limit their focus to ‘economic development’ over the community good and other values (Schlosberg & Carruthers, 2010; Te Aho, 2019). Furthermore, Te Aho (2019) demonstrates that while the RMA allows for two distinctive voices in planning – both Pākehā and Māori – Tāngata Whenua claim that decision-makers have often chosen economic growth over other ‘earth-centred’ values when balancing numerous interests (p. 1617). The consideration of effects to the natural environment and people are an integral part of Te Awa Tupua and the Tupua te Kawa. For example, Tupua te Kawa (a) states that: *“Ko te Awa te mātāpuna o te ora: the River is the source of spiritual and physical sustenance that supports both the natural resources within the Awa, as well as the health and wellbeing of iwi and other **communities** of the River”* (s 13 (a)).

The above has shown the importance of considering the effects on people and communities when making environmental decisions. In addition, the distribution of environmental benefits and burdens for society need to be considered when making decisions (Holifield, 2001; Walker, 2010). This consideration is necessary because history has shown that various cultures and minorities have been at the receiving end of distributional injustice. A case study of this injustice was first brought to attention in 1982 in Warren Country, North Carolina. The community in this area was prevented from receiving equal distribution of hazardous waste and an equal voice in the decision to locate this waste (Shrader-Frechette, 2005). For example, authorities had placed a PCB landfill in a predominantly black community. A nationwide study was conducted, which found that in these communities with commercial hazardous waste facilities, the proportion of minorities was more than twice that of communities without such facilities (Mohai & Bryant, 1992).

Walker (2010) believes that those who are to benefit and those who are to be burdened from a development are rarely assessed in environmental aspects. However, research has shown that one-way distributional injustice can be addressed is through procedural processes such as alternatives to a proposed project, mitigation measures and negotiated agreements (Walker, 2010). In terms of the RMA, indicators that demonstrate equity in decision-making would see a greater emphasis on assessing the effects of an activity on those in the community and effects on the Whanganui River

and its ability to provide cultural and spiritual value. This action would then be expected to give rise to alternatives of proposals or conditions on resource consents so that the applicant must mitigate any adverse effects. This increased focus on assessment of effects to Whanganui Iwi, may in some cases, even lead to the refusal to grant a resource consent for an activity.

### 5.3.2 Partnership

The second facet of environmental justice that should be applied within the decision-making process is partnership. Notions of partnership include opportunities for participation and collaboration with Indigenous communities, as well as provision for self-determination (Kāhui Wai Māori, 2019; Marques et al., 2015). Shrader-Frechette (2005) notes that to correct issues of environmental justice, it is necessary to improve the principles and practices of participative justice and to ensure “*equal rights to self-determination in societal decision-making*” (Shrader-Frechette, 2005, p.24). Rosen (1997 as quoted in Shrader-Frechette, 2005) states that if all people do not receive equal opportunity for consideration within decision-making, then these people have a greater chance of experiencing “*exploitation, marginalisation, powerlessness, and violence*” (p. 28). As continuously highlighted throughout this dissertation, partnership and collaboration between all members in the community are core aspirations of Indigenous planning. This aspiration is also embodied in TATA; for example, one of the four Tupua te Kawa is:

*“Ngā manga iti, ngā manga nui e honohono kau ana,  
ka tupu hei Awa Tupua: Te Awa Tupua is a singular entity comprised of  
many elements and communities, working collaboratively for the common  
purpose of the health and wellbeing of Te Awa Tupua” (s 13(d), TATA).*

Within Aotearoa, New Zealand, Te Tiriti o Waitangi promises partnership as it presumes that Māori and Pākehā will work together (Oliver, 1994). While collaboration between community members is sought after, partnership, as interpreted under the Treaty, also includes the right for self-determination of Māori over their lands and resources. Thus, co-governance is in fact, a minimum requirement under its principles (Kāhui Wai Māori, 2019). Self-determination regarding decision-making would see iwi and hapū making decisions as they see pertinent to their relationship with the natural environment without being limited by government or ministerial oversight (Lyver et al., 2019). Decision-making that provides for self-determination should acknowledge that Indigenous communities, such as Māori, have all along been undertaking their own planning. Therefore, planning systems should allow for a dual nature to planning, in which both Indigenous heritage and settler government knowledge is recognised and provided for (Matunga, 2013).

Furthermore, Kāhui Wai Māori (2019) details what partnership should look like regarding the implementation of Te Mana o te Wai. Te Mana o Te Wai describes the innate relationship between the health and wellbeing of the water and the wider environment, which influences the community's health and wellbeing of the community. After strong lobbying from Tāngata Whenua, the concept of Te Mana o Te Wai was incorporated into the National Policy Statement for Freshwater Management 2017 (NPSFM) issued by the central Government (Te Aho, 2019). Partnership under Te Mana o te Wai requires that iwi and hapū are enabled to work at multiple levels, including infrastructure, governance, and management, such as co-designing planning and policy, environmental regulation, management, monitoring, compliance and enforcement. Thus, collaboration at multiple levels in the planning process can also be used as relevant indicators during the evaluation of partnership for participants.

### **5.3.3 Recognition**

Recognition is the final facet of environmental justice that will be measured within the decision-making process. While the requirement for provisions for Indigenous self-determination, as discussed above, is interlinked with recognition, this next section describes just some of the substantive benefits achieved from enabling this recognition of Indigenous values and worldviews.

Indigenous communities' role in environmental planning and decision-making are important because they provide alternative perspectives and beliefs built upon the quality of the human-nature relationship (Lyver et al., 2019). As discussed in Chapter 2, the central principles of Indigenous planning can be narrowed down to kinship and place-based (Matunga, 2013). Therefore, the promotion and recognition of diverse worldviews and values can consequently enhance the understanding of the intrinsic connection between nature, place, and the culture of Indigenous communities, and the need to undertake planning at a specific place and "with the people of that place" (Matunga, 2013, p. 5). Importantly, recognition and implementation of Indigenous worldviews within environmental planning systems have also proven to have symbolic effect on people's ideas and conceptions of the natural environment. This finding also links with "alternative causal processes" as described earlier, about EIA leading to substantive changes in the form of "creative political symbolism" (Bartlett & Kurian, 1999, p. 418). Evidence of this has been demonstrated in research conducted by Wesche (2021) on the impacts of the decision to recognise the Altrato River in Colombia as a legal subject. Wesche (2021) found that educational and socialisation activities undertaken by community guardians to promote understanding around the new ruling led to enhanced awareness of the environment among communities in the region.

Therefore, indicators of recognition should include awareness, support, and implementation of Indigenous worldviews and values. In terms of the Te Awa Tupua Act 2017, the implementation of

Māori notions of kinship could present itself in the form of decision-makers changing how they perceive themselves in regard to nature (Salmond, 2018). For example, decision-makers may speak about the relationship between themselves and rivers, springs, aquifers and lakes, with the goal to enhance the wellbeing of the community and the waterways. As discussed earlier in this Chapter, other symbolic and substantive indicators could be changes in participants' beliefs and attitudes. For example, an applicant for a resource consent may have a greater or renewed understanding of their obligations and duties toward caring for nature, perhaps drawing on their own notions of kaitiakitanga. For consistency, these “alternative causal processes” and “creative political symbolisms” will be referred to and used within the evaluative framework as simply “substantive effects”.

## 5.4 The evaluative framework

This chapter has defined both procedural and substantive effectiveness and identified examples of possible procedural and substantive changes to decision-making processes due to implementing TATA. This discussion has focused specifically on the RMA resource consenting process, as this is where key decisions are made to grant, regulate, or refuse an activity that has effects on the environment (varying levels of effects, both positive and negative). The effectiveness of TATA to produce these procedural and substantive outcomes will be assessed through an environmental justice lens using indicators as discussed above, such as:

**Equity:** Quality of assessment of effects of an activity to communities in the area, choice of alternatives, and conditions on activities.

**Partnership:** Opportunities for participation and collaboration, the influence of TATA on project design such as the co-design of solutions, monitoring provisions for iwi, and project approval. To the highest tier, provisions for iwi and hapū to set their own priorities and regulations over their lands and resources (rangatiratanga).

**Recognition:** Awareness, support, and implementation of Whanganui Iwi worldviews and values.

## 5.5 Limitations

It is acknowledged that these indicators of equity, partnership and recognition represent limited definitions of each concept. A more extensive array of indicators could be developed to test the existence of these facets within the decision-making process. However, due to the short time frame to complete this research, these indicators have been chosen as the most relevant for this dissertation and are able to produce a robust analysis.

Furthermore, while emphasis has been given to the resource consenting process under the RMA, these indicators also apply to processes and outcomes involved in decision-making for activities that affect the Whanganui River, in general. For example, how tour operators undertake planning activities and make decisions for their business related to the Whanganui River. Thus, the following evaluation frameworks apply to these kinds of decisions and planning activities too.

Table 1 sets out an evaluation framework created to demonstrate the three main facets of environmental justice as conceptualised within this dissertation, including the criteria and procedural and substantive indicators through which to assess the decision-making and planning process.

**Table 1 Facets of environmental justice**

<b>Facets of environmental justice</b>	<b>Criteria</b>	<b>Indicators within the decision-making process</b>
Equity	Consideration of effects to people and communities of the activity	Assessment of effects of activity to communities, and to the environment as a whole  Choice of alternatives to proposal. Mitigation measures. Conditions to the activity
Partnership	Participation and collaboration  Self-determination	Opportunities for participation and/or collaboration. Building relationships  Influence of TATA on project design e.g., co-design of solutions, monitoring provisions for iwi, and project approval.  Iwi and hapū setting their own objectives and regulations
Recognition	Awareness, support, and implementation of Whanganui Iwi worldviews and values	Substantive effects: Change of perspectives, attitudes, and beliefs of decision-makers in relation to the Whanganui River and TATA

Table 2 is an evaluation framework that assesses levels of equity within the decision-making and planning process. The criterion for equity is also assessed in conjunction with the Tupua te Kawa, which stand as a guide for the design of projects and proposals. The far-right hand column gives examples of observable indicators that can be identified within the decision-making process and

defines them as either procedural effects, substantive effects, or both (procedural and substantive). The next tables, Table 3 and 4, are of the same format, with Table 3 measuring partnership and Table 4 measuring recognition.

**Table 2 Measurement of equity in the decision-making process**

<b>Criteria</b>	<b>In relation to TATA</b>	<b>Type of effect: Procedural/Substantive</b>
Consideration of effect to people and communities	<i>This is where the Tupua te Kawa (the intrinsic values that make up the essence of Te Aw Tupua) that are relevant to the promotion of equity, will be placed.</i>	Procedural - Assessment of effects of proposal to communities, and the environment as a whole  Procedural and Substantive - Choice of alternatives, mitigation measures, conditions.

**Table 3 Measurement of partnership in the decision-making process**

<b>Criteria</b>	<b>In relation to TATA</b>	<b>Type of effect: Procedural/substantive</b>
Participation and collaboration	<i>This is where the Tupua te Kawa, that are relevant to the promotion of partnership, will be placed.</i>	Procedural - Opportunities for participation  Substantive - Building relationships
Self-determination		Procedural and Substantive - Influence on project design and project approval  Procedural - Whanganui Iwi setting their own objectives and regulations



# Chapter 6

## Results

### 6.1 Introduction

This chapter presents the results collected via methods set out in detail in Chapter 3. Two local tour operators and landowners, a local farm consultant, a Department of Conservation member, two members from a private planning company and a public sector planner were interviewed regarding how they think TATA has affected the way they or their organization makes decisions for activities that affect the Whanganui River. This chapter begins with an evaluation of interview results through the three evaluation frameworks created in the previous chapter. Summaries of each three evaluation frameworks are provided. Interview data that was outside the scope of the evaluative frameworks but was deemed relevant for this dissertation, is then presented. The interview results are also supplemented by analysis of documents provided by participants. This chapter concludes with a summary of all results found.

The first table (Table 5) provides an evaluation of the level of equity within the decision-making and planning process of participants and how TATA may have influenced (or not) this level.

**Table 5 Evaluation of equity in the decision-making process**

Criteria	In relation to TATA	Example of type of effect: Procedural/substantive
Consideration of effects of the activity on Whanganui Iwi and other communities of the River	The consideration of impacts to the natural environment as well as people and the communities are an integral part of Te Awa Tupua, as seen in the Tupua te Kawa " <i>Ko Te Kawa Tuatahi : Ko te Awa te mātāpuna o te ora</i> " which states that " <i>the River is the source of spiritual and physical sustenance that <b>supports</b> both the natural resources within the River as well as the <b>health and wellbeing of iwi and other communities of the River</b></i> " (s 13(a), TATA).	Procedural - Assessment of effects of proposal to Whanganui Iwi, and the environment as a whole  Procedural and Substantive - Choice of alternatives, mitigation measures, conditions on activities
<b>Interview Data</b>		<b>Evaluation -</b> What level of influence has TATA had on this process: low, medium or high
<b>Interviewees</b> Tour Operator 1 (TO1)	<b>Consideration of effects from activity on people and river communities:</b> <i>"Lots of people come because they have heard about the River, and you do get a very different perspective when you are on the River. People are buzzing when they get off because they have just gone through this beautiful scenery. It's interesting because</i>	

	<p><i>some people really feel that connection, other people just think "oh yes that's beautiful" and that's it."</i></p> <p><i>"Part of taking people on the Awa is it to share some of the stories, both European and Māori (stories) in terms of how this River came to be and really how this valley used to be...I think that should be a requirement If you are operating a commercial tour business then you have an obligation to share with every person."</i></p>	<p><b>Medium influence</b></p>
Tour Operator 2 (TO2)	<p><b>Consideration of effects from activity on people and river communities</b></p> <p><b>Mitigation measures:</b> <i>"With our experience in forestry, the amount of slash is heart-breaking when you see it, you know the slippage and the wash down from the trees. So we have put in some sediment dams and that sort of thing for the wet areas. This then catches the sediment so the water is cleaner when filtered through. We have also planted a lot of grasses and things because we don't have any stock. That makes the big difference."</i></p>	<p><b>Hard to judge</b></p>
Farm Consultant (FC)	<p><b>Consideration of effects from activity on people and river communities</b> <i>If you look after the land around you, then the River will be healthy, and the community will benefit as well."</i></p>	<p><b>Hard to judge</b></p>
Department of Conservation member (DOC)	<p><b>Consideration of effects from activity on people and river communities</b> <i>"DOC must install a back-peg in the river which designates that people can't fish upstream of that. Its marking the tidal area. It does not affect customary fishing rights. But of course, DOC is having conversations here and well actually, you can't just go and put that peg in the ground in Whanganui. DOC have to talk to people such as NTT."</i></p>	<p><b>High influence</b></p>
Private Planning Consultants (two in same interview) (PPC)	<p><b>Consideration of effects from activity on people and river communities</b> <i>"In a normal consenting process, the people affected are considered at the end. What this process creates from TATA and really what the RMA intended is here is a problem, now before they design any sort of solution, we need to be engaging with the River people particularly on issues where there is water, or the ecological values."</i></p>	<p><b>High influence</b></p>
Public Sector Planner (PSP)	<p><b>Consideration of effects from activity on people and river communities:</b></p> <p>The other important consideration when making a final decision is: What are people capable of dealing with onsite? Previously this would have been assumed. Now they ask an applicant <i>"What is your stormwater catchment? Where does it go? What are you near? What are you capable of dealing with on-site?"</i>. So, TATA has changed the beginning conversations and how staff deal with proposals and the <i>"criteria we would talk about with people"</i>.</p>	<p><b>Medium influence</b></p>

The next table (Table 6), provides an evaluation of the level of partnership within the decision-making and planning process of participants and how TATA may have influenced (or not) this level.

**Table 6 Evaluation of partnership in the decision-making process**

Criteria	In relation to TATA	Type of effect: Procedural/substantive
Participation and collaboration	<p><i>Ko Te Kawa Tuawhā:</i>  <i>Ngā manga iti, ngā manga nui e honohono kau ana, ka tupu hei Awa Tupua: the small and large streams that flow into one another form one River: Te Awa Tupua is a singular entity comprised of many elements and communities, <b>working collaboratively</b> for the common purpose of the health and well-being of Te Awa Tupua” (s 13(d), TATA).</i></p>	Procedural – Opportunities for participation
Self-determination		Substantive – Building relationships
<b>Data</b>		<b>Evaluation</b>
Tour Operator 1 (TO1)	<p><b>Opportunities for engagement</b> “I guess any change that we would make that would have an effect on the Awa, we would just go talk to people and say “Hey, we are thinking of doing this, can you see anything as to why that would not be a good idea?”. As soon as my partner set up the business or wants to do anything slightly different, they will go and talk to people from different parts of the River, and the three different hapū.”</p> <p><b>Influence of TATA on activity approval and activity design:</b>  <i>“So, DOC grant concessions for tourism operators to operate on the River. That is not always a very consistent process. Businesses get bought and sold but often the concession has been given to them by the previous owner rather than them having to go through the concession process, which is quite detailed and it requires the people to engage with people from the local area that you want to operate on and see if they are ok with that and what you plan to do and that you respect them and the River and the wider national park which it sits in.</i>  <i>So often when a business is bought and sold and a concession just gets passed over as an asset, as some people would consider the River an asset that goes with the business. Often if a person has bought a business, they just don’t understand any of that stuff they just go “Oh, here is my ticket away I go.” I think they think “Oh, it’s beautiful and wonderful” but I don’t think they are aware of some of the stories that go with it. I guess they’re <b>not</b> required to stop and go through that process and actually engage with people and ask their permission about things.”</i></p>	<p><b>Medium influence</b></p> <p><b>Low influence</b></p>
Tour Operator 2 (TO2)	<p><b>Building relationships:</b> “It just sort of compounds and grows the more involved you get, the more things come up. We were invited by the local iwi to a freshwater conference. And we ended up doing monitoring of eels here. Through that, DOC got interested in the fact that there were several inanga sites. So, we’ve established a spawning site, just along here. Both my partner and I have done te reo, and things like that. You just sort of grow culturally with that immersion.”</p>	<p><b>Medium influence</b></p>
Farm Consultant (FC)	<p><b>Opportunities for participation:</b> “I am involved in a sustainable land management group. This group has been going since 2002, its completely self-funded. We try to define and understand sustainability and try to actually implement it through sustainable land management within the community and on a wider basis. It’s a community group of 20 members made up of mostly farmers, sheep, cattle, farmers, Regional Council, District Council, MPI, and Ag research. DOC used to be but they’re not now. We don’t specifically invite iwi but we have Māori farmers. ”</p>	<p><b>Low influence</b></p> <p><b>Low influence</b></p>

	<p><b>Influence of TATA on changes to decision-making process in general:</b> <i>“Not as a result of the legislation. Because of this group I am involved we are already pretty heavily into protecting the environment and we have been doing it on our farm for 35 years. Planting trees and looking after the waterways etc”.</i></p>	
Department of Conservation member (DOC)	<p><b>Building relationships</b> <i>“Basically, my role is to work on restoration projects but its working with others to improve the health and wellbeing of TATA. At the moment, we are working on restoring inanga habitats and spawning habitats, riparian planting and fencing. We also will potentially be involved in surface water activities group which is involved in the legislation, and the fisheries coordination group.”</i></p> <p><b>Direct influence of TATA on changes to decision-making processes in general</b> <i>“I can only speak from my role, but a lot of things haven’t changed a lot yet, but we know we have to do things differently. So we are just kind of getting ourselves ready for that and building capacity. There is a lot more partnership as a focus rather than engagement”</i></p> <p><b>Influence of TATA on project approval and design</b> <i>“We haven’t done it yet, but we want to put some signage in a park in an inanga spawning site. However, we know we just can’t go and put a sign up there. It must be co-designed you know. So, in the past we would have just spoken to the council and if they were ok with it, we would have just probably gone and put the sign up. But now it becomes bigger, and we ask what are we actually trying to achieve? Things are taking more time, but I think they end up being better decisions. People feel more involved. “</i></p> <p><i>“DOC have to install a back peg in the River which designates that people can’t fish upstream of that. It marks the tidal area but does not affect customary fishing rights. DOC is mandated by the government to put this peg in. But ofcourse, DOC is having conversations here and well actually, you can’t just go and put that peg in the ground in Whanganui. DOC must talk to people such as NTT in the first instance, so it becomes bigger. DOC don’t feel as though is it their place to just go and put the peg in the river without having conversations.”</i></p>	<p><b>High Influence</b></p> <p><b>Mixed Influence- hasn’t been enough time</b></p> <p><b>High influence for these two activities</b></p>
Private Planning Consultants (two in same interview) (PPC)	<p><b>Influence of TATA on project design and building relationships</b> <i>“What this process creates from TATA and really what the RMA intended – here is a problem before they design any sort of solution, we need to be engaging with the River people and that usually involves particularly on issues where there is water or ecological values.</i></p> <p><b>Collaboration</b> <i>By the time the consultants are applying for resource consents on behalf of a client for the council, hapū or NTT on behalf of hapū, have already provided feedback to say that the TtK “have been appropriately assessed” as that is a requirement before decision-makers can make their decision under TATA.</i></p> <p><i>“So that is how the two things work together. The hapū are not getting involved as part of the RMA process, they are getting involved before that, that is the idea, and outside of the RMA, not as an affected party submitter but as Tāngata Whenua. Then their feedback and support are a piece of information that feeds in to help the district or regional council to make its decisions.”</i></p> <p><b>Monitoring procedures</b> <i>Allowing the iwi/hapū to go on site so they can observe the process. So that when the two have conversations “...they’re talking the same language. What that is doing is building a trust in our Team and building knowledge. For example, the first bundle of consents that we did was about enabling the hapū to monitor the installation of erosion and sediment control measures or fish salvage.”</i></p>	<p><b>High Influence</b></p> <p><b>High Influence</b></p>
Public Sector Planner (PSP)	<p><b>Influence of TATA on project approval:</b></p> <p><i>When making a final decision, the main consideration is “Is what I'm looking at going to have an effect such that the nature of the River is somehow changed?” For example, there could be changes to the nature of the River e.g., the proposal might stop gross pollutants from ending up in the River and a different arrangement is arrived at, “Then that’s an effect but on the positive side of the legislation. There are of course positive and negative effects, and these are documented within standard reports and templates for every single proposal that requires permission.”</i></p>	<p><b>Medium Influence</b></p>

Table 7 below provides an evaluation of the level of recognition within the decision-making and planning process of participants, and how TATA may have influenced (or not) this level.

**Table 7 Evaluation of recognition in the decision-making process**

Criteria	In relation to TATA	Type of effect: Procedural/substantive
Awareness, support, and implementation of Whanganui Iwi worldviews and values	<p><i>“Ko Te Kawa Tuarua E rere kau mai i te Awa nui mai i te Kahui Maunga ki Tangaroa: the great River flows from the mountains to the sea: Te Awa Tupua is an <b>indivisible and living whole</b> from the mountains to the sea, incorporating the Whanganui River and all of its physical and <b>metaphysical elements</b>” (s 13(b), TATA).</i></p> <p><i>“Ko Te Kawa Tuatoru Ko au te Awa, ko te Awa ko au: I am the River and the River is me: The iwi and hapū of the Whanganui River have an <b>inalienable connection</b> with, and <b>responsibility to</b>, Te Awa Tupua and its health and well-being” (s 13(c), TATA).</i></p>	Substantive effects: Change of perspectives, feelings and beliefs of decision-makers
<b>Data</b>		<b>Evaluation</b>
Tour Operator 1 (TO1)	<p><b>Own worldview:</b> <i>“Our philosophy is we’ll just work with nature. So, we have no physical structures, like you would never know what we do here.”</i></p> <p><b>Relationship with the River since granting:</b> <i>“The Awa is not a physical entity. It’s very much a spiritual entity and possesses spiritual connection. I mean the business does not make great money, but we do it for the passion, for the River and the passion for the area and showing it to people and sharing the stories and the legends of the place, so we definitely don’t assume the River is a physical entity at all. So my partner and I have quite a deep connection to the River in various different forms.”</i></p> <p><b>Change in perspective/relationship with River since granting:</b> <i>“It probably doesn’t actually change the way I feel about the River. Because we have always had that view beforehand, and I think it’s completely educated and influenced by the wider community and learning from them in terms of their people who have been here for thousands and thousands of years and that has been passed on and my partner has lived with it all their life. They are Pākehā but anyone from any of these communities would consider us whānau. So I don’t think the granting of the legal status for the Awa changes the way I feel about it. I am proud that it happened. We don’t treat the Awa any differently”.</i></p>	<b>No influence</b>
Tour Operator 2 (TO2)	<p><b>Own worldview:</b> <i>“Working with the land and feeling it, it’s a progressive thing. You don’t wake up one day, and you think, “Oh, now I’m going to be a conservationist” it’s over time and you start to see what feels good and if you see or hear a problem, you go look, you’ve got to be there. You can’t just read about it. You can’t fix a problem without going and seeing and feeling and really understanding.”</i></p> <p><i>“Not that I’ll be here to benefit but I’ll try and install that dream into my kids. You know, they’re all very much all for it, and they all identify with this place, and they grew up here.”</i></p> <p><b>Change in perspective/relationship with the River:</b> <i>“I think we grew together. Yeah, the river in me or us, we became more aware of it, you became more involved in it. You looked at it differently. And completely. You know, there’s that saying the I am the River, the River is me. But it is actually true, you know, you start to look at it differently. And you grow with it. And you start to think, if I was that River, how would I like to be treated? So, we just started planting and thinking what sort of trees might the river like, what sort of flora and fauna?”</i></p>	<b>High influence</b>



Public Sector Planner (PSP)	<p><b>Increased consideration for environmental impacts:</b>  <i>“Because so many things that have happened in the past, even simple things such as putting a pedestrian access or a bike path along the frontage of the River, have just been done, because “Oh that’s public land. That’s okay. That bit there, nothing to worry about”. Now, we have to deal with the fact of “well, is it actually?” And does that mean that there’s additional work to do? Do we need to do dredging to form a platform, for example? Do we need to do additional bits and pieces to tidy up along the way? Now we must think; What’s the consequences of that work? is there more than just a safety and convenience aspect to it? Is there a wider purpose that it might or might not serve?”</i></p> <p><i>“What that’s made us realise is with particularly development and subdivision and changing boundaries, it can be that that the stormwater catchment that is the interface, even if you’re 900 meters away. You may be going that way because the River is the low point. Therefore, what you are doing over here does actually have an interface with the River.”</i></p> <p><b>Implementation of TATA values/principles:</b> <i>This is a society which, for better or worse, probably worse, lives and dies by a very scientific Western way of thinking. Measurement, cause, effect, consequence. In the absence of that, and just big picture, good intentions and good holistic instructions, people feel lost. They don’t know what to do, because there’s not a satisfactory method such as: First implement method A, if you implement method A then you’re safe. So that creates natural conservative reactions in people who say, “Maybe not, that’s too hard”. But we’re not saying things are hard. We’re simply saying “how do you do this? What does it mean?”</i></p>	<p><b>High Influence</b></p> <p><b>Low Influence- still working out how to implement</b></p>
-----------------------------	---	--

## 6.2 Summary of equity within the decision-making process (Table 5)

### *The consideration of effects on Whanganui Iwi, hapū, and other communities of the River*

For TOR1, TOR2 and the FC, it was hard to judge the level of influence the enactment of TATA had on equity within the decision-making process. This was because it appeared that considerations of effects to the community, such as implementing mitigation measures for adverse effects, were already part of their everyday practices for their business before the enactment of TATA.

For TOR1, the high profile of the Whanganui River and its personhood status influenced greater tourist numbers for their business. Thus, TOR1 felt an obligation to share the story behind TATA and the Awa with these customers.

The DOC member stated that when installing a back peg for the new inanga spawning site rules, that this process would not be undertaken without the consideration to or conversation with Tāngata Whenua, such as NTT. For the PPCs, TATA had a similar influence as DOC, in which the consideration of the potential effect of a project on iwi was said to be put at the very front of the project process.

The PSP discussed a greater consideration for resource consent applicants and what they can deal with in terms of environmental impacts. Any further monitoring or mitigation measures put in place for a consent would be considered through the usual AEE process under the RMA. Thus, TATA was given medium influence for the consideration to effects to iwi and other communities of the River.

It is acknowledged that further questions on how all participants ensure equal distribution of environmental benefits and burdens from their activity or project, would represent a more rigorous analysis of equity. However, this aspect was not considered an area of interest at the time of interviews.

### **6.3 Summary of partnership within the decision-making process (Table 6)**

#### *Opportunities for participation, building relationships, influence on project design and approval*

For TOR2, the participant mentioned how engagement with iwi and river communities through restoration projects has helped them to grow culturally. TATA may have caused a greater need, funding and occurrence of river restoration projects, although this participant had taken part in these kinds of projects before TATA. Thus, TATA was thought to have medium influence on increasing collaboration for this participant.

For the FC, TATA appeared to have low effect on encouraging collaboration as this participant was already part of projects that worked with the community and iwi members before the enactment of TATA, and did not mention ways in which TATA promoted their need to collaborate with iwi or hapū.

For DOC, the influence of TATA was mixed as it appeared to have had **not** a lot of change in the way they are required to undertake activities and projects as of yet, but TATA has had a high influence on encouraging the need for collaboration for river restoration activities. However, as brought up by TOR1, the influence of TATA on increasing collaboration and partnership within the DOC concession process for handing over businesses that operate on the River, is believed to have had a low influence.

The PPCs discussed how TATA has had a high influence on encouraging collaboration and building relationships with iwi as they are now ensuring conversations with the iwi and hapū are occurring prior to the RMA resource consent process. This relationship is continuous throughout the project cycle such as through monitoring installations.

For the PSP, the influence of TATA on final resource consent approval is medium, with a main consideration now being “if the activity will have an effect in such a way that the nature of the River will change”. In terms of increasing engagement opportunities with iwi and hapū for the PSP, this was not mentioned and was also not asked during the interview.

Overall, it appears that the influence of TATA on facets of partnership was mixed. The individual business owners (TOR2 and FC) appeared to already be part of projects that were collaborative in nature. However for the FC, this did not specifically promote partnership with iwi. TATA has had the highest influence on promoting the recognition of the need to partnership and form continued relationships with NTT and hapū (DOC and the PPCs). However, only the PPCs allowed for engagement with iwi to impact their project design and solution processes. In terms of allowing iwi and hapū to set their own regulations and conditions for resource consents that may affect the Whanganui River, more research is needed on this topic. However, it seemed that only the PPCs let this partially occur.

#### **6.4 Summary of recognition within the decision-making process (Table 7)**

##### *Awareness, support, and implementation of Whanganui Iwi and hapū worldviews and values*

TOR1 has always perceived the Whanganui River as possessing spiritual and cultural value. Therefore, the enactment of TATA has had no influence on changing the relationship of the River for this participant.

On the other hand, TOR2 stated that they became more aware of the River since TATA, and they started to ask themselves how they thought the River would like to be treated. This demonstrates a high influence of TATA on their perception of the Awa.

Changes to the understanding of the relationship of Māori with the Awa was found in the case of the FC. However, they also mentioned an increased appreciation for their own spiritual connection with the River because of TATA.

For the DOC member, TATA has influenced the belief that slowing the decision-making process down and talking to the right people has led to better decision-making. TATA has also helped to change the approach of former activities by putting the health and wellbeing of the River at the forefront of their work.

One of the greatest changes resulting from discussions between the PPCs and NTT, was a change in the corporations understanding that the legal personhood status is a mechanism used by the Whanganui Iwi to create a way for Pākehā to conceptualise their relationship with the Awa. This resulted in the company taking care to perceive and promote the River in this way.

Finally, TATA had triggered an increase in environmental awareness for activities with possible effects to the River by the PSP. They are now starting to think deeper about the wider purpose of activities and proposed works. In terms of implementing the Tupua te Kawa within TATA, the planner

is still in the process of understanding and finding a method to implement these values within their role.

Overall, the enactment of TATA and granting legal personhood to the Whanganui Awa, has impacted on the way many participants' now conceptualise the Awa, has improved their understanding of the relationship between Whanganui Iwi and the Awa, or increased their environmental awareness for activities. For one participant however, the granting of legal personhood had no effect to their perception of the Awa because they had always recognised the Awa as an ancestor. This perception was influenced by the wider community around them.

## **6.5 Further interview results**

The following section contains results from interviews that were outside of the scope of the evaluative frameworks but were deemed relevant for this dissertation and thus are included below.

### **6.5.1 Constraints to implementing TATA**

In addition to findings within the evaluation frameworks, data was also collected from participants regarding the perceived constraints to implementing the River's new legal status.

#### **Time since enactment**

There were a couple of comments made by participants regarding insufficient time for change within the decision-making processes to occur. Te Heke Ngahuru, the strategy document, which must identify relevant issues in relation to the health and wellbeing of TATA, and provide a strategy and recommendations to deal with those issues, is yet to be developed and approved by Te Kōpuka. Once this strategy document has been released, participants part of DOC and PSP, believe that this will aid in providing a method and a clear role for them regarding the implementation of TATA. However, both also acknowledged the time and care taken to reach this Deed of Settlement, the creation of Te Awa Tupua and its governance entities, and that this process cannot be rushed:

*“One constraint for me is waiting for the strategy document. So once that is done, it might be a bit clearer about how it applies to what we are doing. However, it's been a hundred years in the making and I think generally, we are well aware that we need to do things differently.” – DOC*

*“It's the combination of many generations of work, litigation and lobbying, and so much more. So, there is a lot of expectation in those individuals from aspects of Māori society of “Great, now don't mess it up.” And this is just the beginning. That pressure is keenly felt. But we can't make that happen suddenly. We haven't had enough time yet to really know: Are their things that need to be added? Are there things that need to be understood differently? Are there things that don't need a focus?” – PSP*

## **The importance of education and understanding**

A prevalent theme among participants was the belief that the lack of education and awareness regarding the purpose and meaning behind TATA, are major constraints for its implementation. If people such as the public and tour operators can become better educated on TATA and its objectives, then this will result in an improved understanding about what activities are and are not okay to undertake. This improved understanding is thought to also encourage compliance with TATA. TOR 1 commented on this by saying:

*“I suppose ignorance, lack of education and awareness around why TATA was enacted, are some constraints. If there is no education and awareness around that, it's harder to get people to “buy in” or to comply. Therefore, they need to understand why and actually the reasons behind what is and what isn't ok.”*

Difficulties in knowing who the right people to gain more knowledge about TATA was also mentioned by the Tour Operator: *“...And going back to the lack of education, I think that is really necessary to improve so people understand. And not make it so easy for them to understand but make it not difficult for them to find out. Because sometimes it is, if you don't know the right people to talk to and the right avenues to go down then it can be really difficult.”*

The PPCs also discussed the challenges in knowing who the appropriate contact for the various hapū is, and how to get these details. However, this was acknowledged as part of the learning process for their company and this would continue to develop in conjunction with the rising growth and independence of the individual hapū.

*“Even today I was trying to get the contact person for each marae and their details are just not readily available. If the Runanga won't provide these details, we've been instructed to go directly to the hapū. It's those political difficulties that still exist which in the big picture, don't matter. But it's very easy to do it wrong and pretty much every time we do get it wrong, it's because its evolving and so personal to each hapū what their focus and priority and capacity is, it's so different.” – PPC*

*“More laterally, we have been exposed to the growing independence and strength of the individual hapū and the desire to be directly engaging on RMA matters and they do that not through an affected party submitter but as Tāngata Whenua and Tupua te Kawa assessment process.”- PPC*

## **Resistance to change**

Many participants think that a lack of education and understanding regarding TATA, are grounds for resistance to change in personal perspectives and business practices. Farming practices in the area

were given as an example. It was also noted that public resistance is not uncommon for any new type of environmental regulations:

*“I think from a farming perspective, there is likely to be resistance around ‘Well why can’t I? I have always done that, I didn’t think there was any sort of problem with that.’ I mean that is not exclusive to TATA, objection is also wider to RMA mandates or other environmental protection regulations such as when the rules relating to grazing livestock by rivers were first implemented.”- TOR 1*

*“Some farmers that have stayed on the farm for generations can become entrenched in a certain way of thinking. And so the resistance may come from these richer farmers. It's going to be a generational thing. I would like to think that it will be a different atmosphere in 30 years where the Treaty is being upheld, when we are actually in a partnership –TOR 2*

The Farm Consultant also brought up the need for education in the community, as well as a need to see relevancy for the community to adopt TATA in the future:

*“It's got to mean something for the people in the community, they've got to understand it. So, education is the first thing. But the need to most importantly encourage the community to see that there is relevance in it for them. Because if they don't see any relevance of TATA, they're not going to adopt it on a sustainable basis.” - FC*

*“My view is that the committee has to look forward and say right ‘How can we get everyone within the catchment to understand it and want to go with it?’” - FC*

## **6.6 Document analysis**

To provide further evidence for this research, document analysis was undertaken. During the joint interview with the two private planning consultants they provided me with an application for a resource consent they had prepared. An analysis of this application and how TATA was included, is given below. Due to confidentiality reasons, the entire resource consent application document was unable to be attached as an appendix.

### **6.6.1 Resource consent relating to TATA**

The resource consent prepared by the private planning company on behalf of a New Zealand Crown entity (the proponent), sought a land-use consent for a Discretionary Activity to replace a culvert on a state highway that been affected by a washout. Evidence of consultation was provided in the application in which the proponent had “engaged directly” with NTT and recognised that the iwi and hapū have an inalienable right to care for the River. This right was demonstrated through a relationship agreement between parties that promoted a collaborative process to firstly ensure that the wellbeing of TAT was protected whilst allowing for the repair of the culvert washout.

The proponent had invited NTT and hapū representatives to undertake site visits to allow the hapū to assess the project against the intrinsic values, as required by TATA. These members were named and dates of their onsite visits were given in the application. Furthermore, it was stated in the application that discussions on site regarding the design, methodology, monitoring, and ecology were positive and that the key concern from the hapū was to install the culvert as soon as possible to prevent further sedimentation and adverse effects to TAT from occurring. It was noted however, that despite these positive conversations onsite, the private planning company had not received any formal written approval from the hapū for the proposed works.

Moreover, within the application it was recognised that the council must “have regard” to the requirements of TATA, in accordance with s 104(1)(b) of the RMA. As the proposal occurred above a stream located within the Whanganui River Catchment, TATA was said to apply. To aid the council in their role to “have regard” to TATA when considering the resource consent, the application provided an assessment of the TtK to demonstrate how the proposal aligns (Figure 3).

Despite the private planning firm conducting this assessment, in the comments section of the application it was noted that NTT were clear that only the hapū can assess the proposal against the TtK, not the applicant. The parties proposed that either this assessment be carried out **outside** of the RMA resource consent process by NTT, or that the resource consent may only be approved on the condition that at the completion of the works, NTT or hapū provide a statement.

**Figure 3 An assessment of Tupua te Kawa and how the proposal aligns with them**

Tupua Te Kawa Principles	Assessment
<p>Tupua te Kawa is the natural law and value system of Te Awa Tupua and the principles in which Te Kōpuka will uphold and operate within.</p> <ol style="list-style-type: none"> <li>1. Te Awa Tupua is a spiritual and physical entity that supports and sustains both the life and natural resources within the River and the health and wellbeing of the iwi, hapū and other communities of the River.</li> <li>2. Te Awa Tupua is an indivisible and living whole from the mountains to the sea, incorporating the River and all of its physical and metaphysical elements.</li> <li>3. The iwi and hapū of the River have an inalienable interconnection with, and responsibility to, Te Awa Tupua and its health and wellbeing.</li> <li>4. Te Awa Tupua is a singular entity comprised of many elements and communities, working together for the common purpose of the health and wellbeing of Te Awa Tupua.</li> </ol>	<p>The applicant acknowledges the concern of iwi and hapū of the Whanganui River and respects the need to consider any potential effects on the River itself.</p> <p>The proposed works will better support and sustain life within the River, rather than taking no action. The works will improve the existing situation by replacing the existing damaged culvert with a new culvert that would provide for the passage of fish, reinstate and stabilise the road shoulder that is currently releasing loose sediment into the waterway.</p> <p>The works will better sustain and support the health and well-being of the iwi, hapū and other communities of the River by repairing the road at this location on SH43 and protecting the state highways continued road access for those people. Without the works the existing culvert will fail in time and have further adverse effects on Te Awa Tupua.</p> <p>Measures are proposed to ensure minimise adverse effects as far as practical on the stream during the construction works.</p> <p>This project will enable fish passage in a location where it is obstructed currently. This will tangibly benefit Te Awa Tupua connections from mountain to sea.</p> <p>Recognising the inalienable interconnection and responsibility of iwi and hapū to the River, the works as proposed will benefit people who use the road, as well as benefit fish passage on the River. Potential effects such as erosion and discharges will be managed to avoid or mitigate such adverse effects. The project outcomes include ensuring the continued connection of the River to its tributaries, including the health of the river (water), ensuring sustainability of the whole system.</p> <p>Recognising Te Awa Tupua, the singular entity comprising many elements and communities working together for a common purpose, the applicant has commissioned NTT to complete engagement and assessment of impacts on Tupua te Kawa with iwi and</p>
	<p>hapū and then to liaise with ██████████ to confirm a project process that will benefit Te Awa Tupua within the context of being a single interconnected system.</p>

The works will better support and sustain life within the River, rather than taking no action. Without the works the existing culvert will fail in time and have adverse effects on Te Awa Tupua.

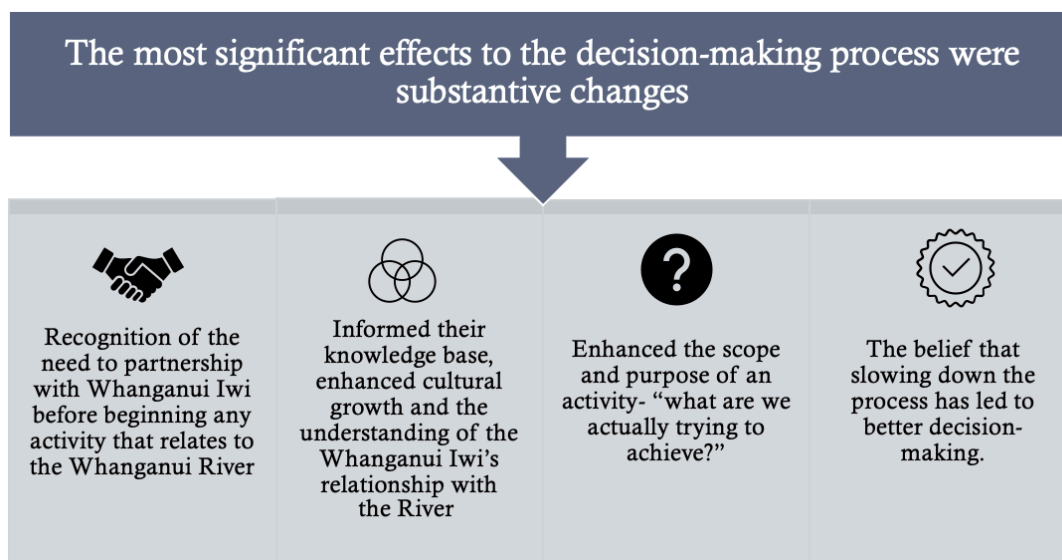
## 6.7 Summary of entire results

Overall, it was difficult to gauge how much TATA has had an influence for individuals’ decision-making, rather than for people representing companies and government entities because while one mentioned that the Act made them think of the River as a person and themselves as a guardian, data highlighted that for the participants interviewed, they have not been required by statutory regulations to do anything differently for their businesses yet. Analysis of their worldviews demonstrated that these individuals showed general concern for the environment, or a need to work with nature and the community, a view that they possessed irrelevant of the enactment of TATA.

It was also difficult to determine the perspective and relationship with the Whanganui River of an organisation as 1) there was a spectrum of significance for individuals within the organisation (DOC) and 2) they don't see themselves as having a relationship with the River as such (PSP). However, for the organisations, it was clearer to gauge the influence of TATA on substantive and procedural outcomes to the decision-making process as participants were able to compare any changes to previous established processes and requirements within the organisation, before the enactment of TATA. For example, DOC now ensure engagement with NTT before undertaking river projects such as installing a fishing back peg, whereas before they would have just consulted the council.

To summarise, the largest changes to the decision-making process as a consequence of TATA have presented themselves in the form of substantive changes (summarised in Table 5 below). As explained in Chapter 5, substantive effects are when decision-makers take it upon themselves to better meet the purposes of a tool or statute. In terms of substantive changes found as a result of trying to meet the purposes of TATA, these include; the recognition of the need to partnership with Whanganui Iwi before beginning any activity that relates to the Whanganui River. This was taken furthest by the PPCs who gave examples in which they showed a commitment to forming relationships with the iwi and hapū, and involving the hapū beyond the requirements of the RMA resource consent process, which currently treats Whanganui iwi as "affected persons". Substantive effects were found as many participants discussed changes to their knowledge base as TATA helped them to grow culturally and understand the Māori relationship with the River, as well as their own spiritual connection with the River. TATA also enhanced greater environmental awareness for some participants as it caused a deeper analysis into the types of effects to the River from an activity. Other substantive effects were demonstrated such as informing the belief that slowing down the decision-making process led to better decision-making (DOC).

**Figure 4 Summary of substantive changes to the decision-making process**



Results also highlight that there has **not** been enough time yet for effects to play out. Te Heke Ngahuru which will provide further guidance for decision-makers and will be incorporated within regional policy statements and regional and district plans, is still in its development phase. Furthermore, a common perception held by participants was the importance of educating the public on the meaning behind TATA in order to increase understanding so that TATA can be implemented on a sustainable basis.

# Chapter 7

## Discussion

### 7.1 Introduction

This chapter interprets and analyses the results from Chapter 6 and provides the theoretical implications by discussing these results in relation to the literature presented in Chapter 2. Key themes and their meaning regarding this research dissertation are discussed in this Chapter. These key themes are the tension between different worldviews and methods to managing the natural environment, the contributing factors towards pro-environmental behaviour, and the importance of creating social awareness through community education to build social and cultural licence. Finally, this chapter discusses the influence of TATA on decision-making processes and whether this points towards self-determination for Whanganui Iwi and hapū.

### 7.2 Differing worldviews regarding resource management methods

The literature demonstrated the various ways of perceiving the natural environment within society, which frames our ways of managing it. One significant paradigm was anthropocentrism which sees nature as a bare resource, able to be utilised to fulfil private interests and desires (Youatt, 2014). An anthropocentric model also perpetuates the idea that man stands separate from and above nature (Sanders, 2018; White, 2004). A Māori worldview, however, embodies a holistic, historical and cultural association with land and waterways. The Whanganui Iwi perceive themselves as having an inalienable connection with and responsibility to the Whanganui River, their tupuna awa (river ancestor), which possesses physical and metaphysical elements. The literature also showed that these different conceptualisations and worldviews regarding nature and people's relationships with it, can cause tensions and difficulties when implementing ways to manage it. Evidence of this tension was highlighted in the interview results.

For example, the Public Sector Planner recognised how New Zealand society commonly lives by a very scientific Western mode of thinking in which a linear system of measurement, cause, effect and consequence is applied. Therefore, when it comes to environmental approaches that apply holistic, big picture ways of thinking, people feel lost. This sentiment can cause natural conservative reactions in people who believe that implementing these methods are "too hard". Regarding their role as a public sector planner, they do not think these approaches are unachievable. Still, instead, they seek further guidance and a method on how to implement Te Awa Tupua.

Moreover, it was mentioned by Tour Operator 1 that the process of granting concessions by the Department of Conservation to allow tourism operators to operate on the Whanganui Awa is carried out in a way that can create tensions within the local community. TOR1 further explained that when a tourism business gets bought and sold, a concession often just gets passed over to the new owner as an asset as some people perceive the Awa as simply an asset that comes with the business. Furthermore, when passed on in this way, the new owners are not made to go through the same detailed concession process, which would normally require owners to engage with the people in the local area in which they wish to operate. Therefore, they believe this allows concessions to get passed onto people that do not understand the cultural significance of the Awa. This is an interesting finding and is a process that DOC may wish to re-evaluate if it is serious about creating a partnership with local iwi and upholding the fourth Tupua te Kawa within TATA – *Ko Te Kawa Tuawha* – which promotes the collaboration of all the elements and communities that make up TAT in order to enhance the health and wellbeing of TAT.

There were, however, several actions taken by participants who owned businesses that sought to protect or restore the Awa and the surrounding land, which indicated the prevalence of pro-environmental behaviour. Evidence of this is discussed below.

### **7.3 Pro-environmental behaviour**

Three individual participants who owned their own businesses demonstrated pro-environmental behaviour by expressing environmental concern or taking action to protect or restore the natural environment around them. For example, the Farm Consultant was part of a local community sustainable land management group that had been going since 2002. Tour Operator 2 was part of joint co-management activities with DOC and local iwi to monitor eels and establish īnanga spawning sites along the River. TOR2 also demonstrated a concern for the environment, expressing that the amount of slippage and wash down from the forestry industry is *“heartbreaking when you see it”*. This perception spurred them to install sediment dams to reduce these adverse sedimentation effects.

Some of the factors that influenced these actions and behaviours appear to be multifaceted, just as the literature suggested. While it is not within the scope of this dissertation to try identify and explain all the reasons which led individuals to make these decisions or behave the way they did, it is possible to identify some of the factors that may have influenced this pro-environmental behaviour. As the literature highlighted (Gifford & Nilsson, 2014), place attachment, values, worldviews and felt responsibility are just some of the social and personal factors that are thought to contribute to environmentally friendly behaviour. Analysing interview results, part of what influenced participants

behaviour stemmed from their values and their obligation for what they owe future generations. For example, TOR2 mentioned their goal to install the same dream of protecting and enhancing the natural environment by planting trees, into their children who also identify with the Awa. Furthermore, the Farm Consultant was motivated by the worldview that looking after the land around them will ensure that the Awa is healthy, which in turn means that the communities will also be healthy.

Another noteworthy finding was that for TOR1, the enactment of TATA did not cause a substantive change in how they perceived or felt about the Whanganui River because they had always understood and possessed a unique relationship with the Awa beforehand. TOR1 believed that this perception was *“completely educated and influenced by the wider community and learning from the people who have been here for thousands and thousands of years and possess knowledge that has been passed on”*. This perception is a clear indicator of social learning taking place. Some of the benefits of social learning suggested in the literature, namely by Carr (2015) and Lyver et al. (2019), is the sharing of knowledge and human capital, a rise in societal commitment toward tackling environmental problems and a contribution to the cultural license of a worldview or environmental management approach. The need for and importance of public education and societal awareness of TATA was discussed by almost all participants. For some, public education was seen as a mechanism to create change among resistant individuals. This concept emphasises the power behind building and achieving cultural license for the successful implementation of TATA, which is further discussed below.

#### **7.4 Achieving social and cultural licence**

As literature has already stressed, Māori have always undertaken their own planning, which pre-dates the colonization of Aotearoa, New Zealand (Matunga, 2013). The constitutional right to plan and practice rangatiratanga (absolute authority) and kaitiakitanga (guardianship) over their lands and resources is prescribed under the Treaty of Waitangi (Hudson & Russell, 2008; Huygens et al., 2012). However, even given this right, Lyver et al. (2019) demonstrate the importance of building cultural licence by Tāngata Whenua to establish confidence in the wider community that they are operating and monitoring the environment in a sustainable way. By building social and cultural licence, this will help remove the grounds for part of society that may make uninformed judgments and critique the kaitiakitanga approach of Māori.

Critique and resistance are not exclusive to regulations created by Tāngata Whenua, but to all types of new environmental interventions and regulations due to the often competing values and interests regarding the environment and the various ecosystem services it provides that may be affected

(Gómez-Baggethun & Ruiz-Pérez, 2011). This idea was discussed by TOR1 and TOR2, who believed that the implementation of TATA and any potential change in regulations might cause resistance among those with farming perspectives who, if affected may ask, *“Well, why can’t I? I have always done that, I didn’t think there was any sort of problem with that...”* (TOR1). TOR1 believed that these kinds of reactions are not limited to just TATA but also toward any type of new environmental protection regulation and gave resistance to the introduction of rules regarding fencing off livestock next to rivers, as an example.

As discussed earlier, many participants believed that creating awareness and undertaking public education programmes or workshops would help reduce these types of reactions and ensure collaboration of the wider community with TATA that would continue into the future. For example, the farm consultant stated that *“It’s got to mean something for the people in the communities; they’ve got to understand it. So, there’s education, that is the first thing. But the most important need is to encourage the communities to see that there is relevance in it for them. Because if they don’t see any relevance, they’re not going to adopt that on a sustainable basis”*. This concept ties in with the causal relationship between personal norms (feelings of personal obligation) and action towards environmentalism (Stern et al., 1999). Suppose groups such as Te Kōpuka or Ngā Tāngata Tiaki can re-shape personal norms of individuals in the broader community to realise their obligation to support the implementation of TATA. In that case, this will improve the capability of TATA to achieve one of its prime purposes, the enhancement of the health and wellbeing of the Awa.

## **7.5 Towards self-determination for Whanganui Iwi?**

The literature stresses how the reclamation of ownership, control and management of the Whanganui Awa is still the primary objective for Whanganui Iwi, who were stripped of this as a consequence of colonization (Matunga, 2013; Te Aho, 2019). The creation of TATA, while not transferring ownership back to Iwi, is still perceived by Ngā Tāngata Tiaki as an opportunity for collaboration with the settler government and to gain a stronger voice within the decision-making and planning process concerning the Whanganui Awa. A further intention for the creation of TATA is that it will lead to a change in the way people view and relate to the Whanganui River – as Te Awa Tupua – a legal person. The Act also requires that community individuals and organisations understand and make decisions that promote the four intrinsic values, Tupua te Kawa. Promoting the Tupua te Kawa entails perceiving the Awa as an indivisible whole, possessing both physical and metaphysical elements, and working collaboratively with others to promote the health and wellbeing of TAT. Ngā Tāngata Tiaki (n.d) also state that TATA is about re-affirming the obligations and duties to place oneself within nature to ensure decisions work with nature instead of against it.

In terms of changing the way people relate and conceptualise the River, a workshop undertaken by NTT about the meaning behind TATA helped to form a better understanding of the relationship between the Whanganui Iwi and the River for the Private Planning Consultants. Post-workshop, the PPCs no longer had the perception that the legal personhood of the Awa was about the “rights of nature activism” concept but was used as a mechanism for Whanganui Iwi to find a way to express their relationship with the Awa in a way that Pākehā could understand. Moreover, the enactment of TATA for TOR2 and FC influenced their social awareness of the importance of the Awa for the Iwi, which enabled them to grow culturally. The FC said that it helped them not only to become educated about the Māori perspectives of the Awa, but TATA also helped them understand their own spiritual connection with it further. Furthermore, environmental awareness was a factor that was also impacted for decision-makers as the PSP discussed how, when making a decision on a resource consent, they now think deeper about the types of effects to the River that could occur from the activity, and whether the “nature of the River” could become negatively impacted.

In regard to promoting collaboration and partnership for the River’s management to enhance the health and wellbeing of the River, this was acknowledged by the DOC member who stated that for river restoration activities, there is more of a partnership focus rather than just ‘engagement’ with Iwi members and gave the example of installing future signage in an īnanga spawning site which will have to be co-designed with Iwi. However, besides this example, the DOC member admitted that not much had changed so far in terms of their river restoration role. Other examples of partnership were demonstrated by the PPCs, in which they showed a commitment to forming relationships with the Iwi and hapū throughout the solution design and implementation process.

Thus, given all of these findings, the question remains on whether or not these results indicate increasing self-determination for the Whanganui Iwi regarding decision-making for the Whanganui Awa. Within the literature, Matunga (2013) expressed the need to create a ‘third’ space during the contact spaces between Tāngata Whenua and planning agencies, in which decision-makers recognise the centrality and validity of place-based Indigenous experiences and see Tāngata Whenua knowledge as autonomous and in parallel with other forms of Western knowledge. Furthermore, to help achieve this ‘third’ space and create room for a dual planning system to establish Jolly and Thompson-Fawcett (2021) developed key outcomes for the application of Indigenous planning. Outcomes included the augmentation of Indigenous rights to decision-making in traditional areas, results that reflect the level of investment by Indigenous communities, the adjustment of unequal power dynamics in proponent driven impact assessment, increased capability and competency of proponents (and their planners, engineers and project managers) and decision-makers who work with Indigenous planning information, and improvements in both the procedural and substantive justice and outcomes of planning.

Given that the interview questions did not specifically target these outcomes created by Jolly and Thompson-Fawcett, it is hard to judge the performance of the decision-making processes for participants against these criteria. However, one outcome that TATA has highly influenced is the increased competency and capability of proponents and planners in recognizing the knowledge and beliefs held by the Whanganui Iwi, as discussed above. Moreover, TATA has provided a platform for engagement between proponents, planning experts and the Whanganui Iwi. For DOC and the PPCs, engagement was sought to be a transformational rather than a transactional process, in which relationship forming and co-design of solutions were crucial objectives. These outcomes are in line with the Tupua te Kawa about acting collaboratively with one another. Whether planning outcomes so far have reflected the level of investment by Whanganui Iwi to develop TATA and whether power imbalances have been fully adjusted in decision-making processes, requires further investigation. This type of research, including whether TATA is being given effect to in the way that Whanganui Iwi intended, would be more suitably addressed by research more substantial than was possible with a Master of Planning dissertation and by a Māori researcher.

## **7.6 Tension with the RMA planning process**

While making conclusions around whether TATA has so far been implemented in the way that Whanganui Iwi intended, is outside the scope of this dissertation, one major finding was the want of NTT and Tāngata Whenua to be involved in a project outside of the RMA resource consenting process. This research dissertation focused on identifying procedural and substantive changes to the RMA resource consenting process, as this was believed to be where the greatest interface between the Te Awa Tupua Act 2017 and resource management decisions would occur. However, as brought up by the PPCs, it was the wish of NTT and the hapū that they be involved in a proposal outside of the RMA consenting process. Therefore, searching for changes only to the RMA process as a result of the Te Awa Tupua Act may ignore key effects and intentions of the Act. Interestingly, in the resource consent application provided by the PPCs, it was mentioned that despite positive discussions between the proponent and the hapū, no formal written approval for the proposal was given by the hapū.

The reasons for this may be explored by further research that involves NTT and hapū. However, PPCs believed that not providing written feedback may have been because Tikanga Māori communication is strongly oral so getting something written down is less of a priority. On the other hand, this reluctance to provide written approval could also be because the hapū still wish to have the effects caused to them and their relationship with the Awa considered by the council, who make the final decision on the consent application. For example, under the RMA, the consent authority must not

have regard to any effect on a person **who has given written approval** on an application (s 106(3)(a)(ii), RMA).

I believe that the results from this research dissertation reveal the tension that NTT and hapū have in terms of wanting to establish relationships, make their own resource decisions and essentially create their own environmental governance system outside of the confines of the RMA planning process. However, as it has only just been four years since the enactment of the Te Awa Tupua Act, it appears that this movement is still in a transitional phase. At present, NTT and the hapū of the Whanganui Awa are still having to largely conform to the RMA planning process in order to be heard.

## **7.7 Summary**

To summarise, this chapter discussed many key findings and their significance with the literature regarding how TATA is impacting decision-making processes within planning. For example, the tensions between different management processes were highlighted. At present, TATA has had a low influence on the concession process in which a business owner can pass on their concession to operate on the surface water of the Awa to the next owner. This concession process projects the Awa as an 'asset' and does not require engagement with local hapū. Furthermore, many of the factors behind the pro-environmental behaviour of participants were discussed, which included variables such as participants own worldviews, obligation and moral commitment for what they owe the future, and social learning from the wider community. It was also demonstrated that through implementing TATA, decision-makers have increased their capability to recognise the knowledge and values of NTT and local hapū. However, identifying whether TATA has, or will have, the ability to provide for self-determination is uncertain and cannot be concluded without engagement with Tāngata Whenua themselves.

The knowledge found in this chapter is drawn on in the following conclusion chapter to develop future recommendations to improve the implementation of TATA and essentially lead to better outcomes in the health and wellbeing of the Whanganui Awa and its catchment.

## Chapter 8

### Conclusion

#### 8.1 Introduction

This dissertation has identified and drawn upon substantial literature addressing the legal concepts and the significance of granting legal personhood to natural entities. However, there is a lack of research and knowledge regarding the implementation of these legal personhood mechanisms. This dissertation sought to bridge this knowledge gap and investigate whether this type of legal mechanism can have a tangible difference on the planning process. Specifically, this dissertation investigated how the implementation of the Te Awa Tupua Act 2017 (TATA) has influenced the decision-making process for activities that affect the Whanganui River. For this research, the decision-making processes of two tour operators, a farm consultant, a Department of Conservation member, two private planning consultants, and one public sector planner were examined.

This dissertation found that the greatest changes to the decision-making and planning process for participants as a result of implementing TATA, was the recognition of the need to partnership with NTT and hapū before beginning any activity that could affect the Whanganui River and adding to participants' knowledge base' of TATA through cultural growth and immersion. In addition, by attempting to implement TATA, this enhanced environmental awareness for some participants, as it caused a deeper analysis into the types of effects that may impact the River from an activity, as well as participants broadening the scope for their activity, asking themselves "*what are we actually trying to achieve by undertaking this project?*".

Furthermore, it seemed that all of the individual participants interviewed conceptualised the Awa in a way that either supported or was in line with the essence of the Tupua te Kawa. Regarding TATA leading to both substantive and procedural outcomes within the decision-making process, however, it was found that procedural outcomes are lacking. Many participants stated that they had not been legally required to do anything differently in terms of making decisions for their business or as part of their role relating to the Whanganui River. This finding suggests that there is a risk that the recognition of the River as a living person could become simply a 'tick-box' exercise. This concept and future recommendations to overcome this issue are discussed further in the following section.

## 8.2 Substantive effects vs symbolic effects

As explained in Chapter 3, the legal provision within TATA when deciding to allow or reject an activity to occur that may have an adverse effect on the Awa, operates primarily through the RMA via the phrase “to have particular regard”. Thus, any major procedural changes are up to the discretion of the decision-maker. Both the DOC member and the PSP stated that they were waiting for Te Heke Ngahuru to be developed to provide further guidance on how to implement TATA best.

Ren et al. (2019) argue that it is important to distinguish between substantive and symbolic effects. Ren et al. (2019) give the example of corporations undertaking process-oriented pro-environmental behaviour compared to outcome-oriented pro-environmental behaviour to improve their corporations’ environmental performance. Corporations implementing **process-orientated** pro-environmental activities such as management principles or environmental policies reflect a ‘soft’ approach to improving environmental performance. Firms that attempt to improve their environmental **operational** performance through **outcome-oriented** activities such as investing in emission reduction and energy conservation projects, represent a ‘hard’ approach to improving overall environmental performance.

Ren et al. (2019) further state that firms who apply process-oriented environmental activities instead of outcome-oriented activities are unable to achieve substantive outcomes towards environmental protection, and they relate this approach to ‘greenwashing’. Greenwashing refers to firms that purposely participate in “symbolic communications without substantively addressing them in actions” (Walker & Wan, 2012, as quoted in Ren et al., 2019, p. 1151). Thus, for TATA, does the recognition of the Awa as a person in the planning process also reflect a similar greenwashing tick-box process?

Distinguishing between soft process-orientated and hard outcome-oriented activities taken by decision-makers to improve the implementation of TATA is a challenge. Differentiating between these two outcomes is difficult because the essence of the Act itself embodies a holistic and symbolic approach to environmental governance. Moreover, TATA also establishes a set of management (process) principles to enhance collaboration and the recognition of Whanganui Iwi values (the Tupua te Kawa and provisions discussed in Chapter 3). Therefore, in the case of TATA, outcomes that are ‘symbolic’ and process-orientated should not be seen as a limitation toward achieving effective implementation of TATA.

Furthermore, reference to Cashmore et al. (2004) and Bartlett and Kurian (1999) in Chapter 5 was given, who demonstrated the benefits of “creative political symbolism” in which indirect changes as a result of implementing a legal mechanism (EIA), can create meaning, conjure emotional responses,

and reaffirm moral commitments. These impacts, in turn, can influence institutional and corporate values, attitudes and actions. This research has found that TATA has also had similar symbolic outcomes by influencing individual and corporate moral commitments, perspectives, and planning actions.

In saying this, undertaking hard outcome-oriented activities by decision-makers would only add to the success toward achieving the purposes of TATA. Therefore, Te Heke Ngahuru that is currently in development, should call for the implementation of outcome-orientated activities to enhance the health and wellbeing of the Awa. For example, THN may provide 'hard' objectives or bottom lines which will stand as indicators of the health of the River. This would be similar to the Vision and Strategy document of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, which was incorporated into the Waikato Regional Policy Statement and set a health baseline for the Awa drawn from mātauranga Māori and the latest scientific data and technologies. The following section discusses further recommendations to improve the implementation of TATA.

### **8.3 Future recommendations**

In addition to the Whanganui Iwi striving for social and cultural licence to increase confidence from the wider community to implement TATA, businesses and corporations are also continually trying to maintain their own social licence to operate in the local community (Gunningham et al., 2004). Results from interviews demonstrated that individuals within corporations, government and Crown bodies felt differently about the Whanganui Awa, and each employee had their own values and personal relationship with it. However, it was difficult to determine the corporate or Crown entity's relationship toward the Whanganui River – another legal entity – as a whole.

This difficulty in determining the relationship between entity to entity is an interesting finding, which suggests that to improve the interactions of corporations and government entities toward the River that support and respect it as TAT – another entity with legal rights and responsibilities – there needs to be some form of Code of Practice developed by these corporations and government entities. As it stands, corporations are perceived as possessing citizenship that compares with that of humans (Solaiman, 2016). Thus, corporations bear social responsibility because they are granted rights which in exchange for these rights, warrant their moral agency and reciprocity (Solaiman, 2016). Therefore, just as each human being is subject to legal rights and duties towards other human beings, corporations have an ethical duty to listen to the needs and interests of those impacted by their decisions and operations (Balmer et al., 2007). This should include the needs and interests of other non-human legal entities. Consequently, it is recommended that the Code of Practice contains principles that acknowledge the ethical responsibility of the corporation or government entity to act

toward other entities with legal rights, such as the Whanganui River. Just as the Tupua te Kawa in TATA were created by the Whanganui Iwi, the face and guardians of the Awa, the principles in the Code of Practice should be created by the face and 'mind' of the corporation or government entity, such as by members on the corporation's board.

Additionally, Donaldson (1982) believes that for a corporation to qualify as a 'moral' agent, it must undertake moral decision-making. Moral decision-making by corporations is the process of moral reasoning and reflection of the decision-making process, and receiving the consent of the parties that the corporation represents (Blair, 2015). Therefore, these Code of Practice principles should also receive the consent of other staff and parties that the corporation represents. This inclusion will also ensure the incorporation of the different values and relationships held by these individuals toward the River. Moreover, the corporation's creation of a code of behaviour that recognises the rights granted to a natural entity and how to interact with it, in turn, increases the social licence of the natural entity itself. This action would reflect an acceptance by the corporation or government entity of the legal personhood status of the Whanganui Awa as legitimate and having a right to exist.

Furthermore, it is recommended that the Code of Practice include outcome-oriented measures and process-oriented measures to demonstrate the corporation's procedural, substantive, and symbolic commitment towards achieving TATA principles. These measures will provide transparency and increase trust for the Whanganui Iwi and other stakeholders that decision-making processes are fair and 'moral' and seek to give effect to TATA. Increasing trust and transparency are important characteristics that enable a corporation or government entity to achieve an 'ethical identity' in the community, as this ethical identity cannot be attained by simply stating principles or a code of ethics (Balmer et al., 2007). Instead, corporations or government entities can be classed as being ethical through their openness, social connectedness, responsiveness, and critical reflexivity (Balmer et al., 2007).

## **8.4 Conclusion**

This dissertation has found evidence of symbolic effects through TATA affirming moral commitments by decision-makers to protect and enhance the health and wellbeing of the Whanganui Awa. Furthermore, the Act has helped to shape the understanding of the relationship with the Whanganui Iwi with the Awa for decision-makers. There was evidence of procedural changes by the private planning consultants, who, to give effect to TATA, allowed results from the engagement process with NTT and the hapū to inform the project design and implementation of solutions. However, as this action is not a legal requirement of TATA, the 'procedural effectiveness' of the Act is still identified as being low.

While this research has found results that appear to be positive and a step towards providing a stronger voice for Whanganui Iwi in the management of the Awa, whether power dynamics within the decision-making process have been adjusted in a way that allows for rangatiratanga (self-determination) for Whanganui Iwi, requires further research. Furthermore, the clear preference of Ngā Tāngata Tiaki and the hapū to engage with resource consent applicants before the RMA consent process begins, as well as their hesitancy to provide written approval on resource consent proposals, seems to highlight their fight towards rangatiratanga and the drive to make their own resource decisions outside of the confines of the RMA planning process. To research this area further, including whether TATA is being given effect to in the way that Whanganui Iwi intended, would be more suitably addressed by research more substantial than is possible with a Master of Planning dissertation and by a Māori researcher.

Not being able to officially interview a member of Ngā Tāngata Tiaki or hapū of the Awa was a severe limitation of this research dissertation. A further limitation was not securing an interview with more public sector planners who have experience implementing TATA, as only one agreed to be interviewed. Nonetheless, the methods used to collect and analyse both primary and secondary data were rigorous, and I have confidence in the validity of the results. Hence, this dissertation has provided valuable knowledge on the changes (or lack of) to the planning and decision-making process that have occurred since the enactment of TATA in 2017. Evidence shows that genuine relationships between proponents, decision-makers, and Whanganui Iwi in the planning process, are being sought. However, care should be taken, by corporations, government entities and Crown entities (especially DOC concessions holders), that implementing TATA does not simply become a tick-box exercise.

This dissertation provides recommendations to prevent any form of tick-box or trivial implementation of TATA, including setting hard objectives within Te Heke Ngahuru by Te Kōpuka. These hard objectives include bottom-line health indicators that use both mātauranga Māori knowledge and the latest Western scientific technologies. However, the ability for these hard objectives within Te Heke Ngahuru to have procedural power will depend upon the level in which the local authority adopts Te Heke Ngahuru into their regional policy statement and regional plan or district plan.

It is also advised that Ngā Tāngata Tiaki continue to conduct educational workshops about TATA, thus engendering a path towards social awareness in the wider community and building cultural licence. However, undertaking education to create change in the community is not solely the responsibility of Ngā Tāngata Tiaki or the hapū. Hence, this dissertation also recommends that other corporations, government entities and Crown entities in the community that regularly engage with Ngā Tāngata

Tiaki and TATA, create a Code of Practice that contains principles that establish ethical behaviour toward the Awa as another legal entity. These Codes of Practice should promote procedural, substantive, and symbolic commitment of the corporation or government entity towards achieving the purposes of TATA. All in all, while TATA has shown to have some positive influence over the decision-making and planning process in the Whanganui region, only time will tell whether granting legal rights to the natural entity will lead to better protection and enhancement of the Whanganui River.

## References

- Argyrou, A., & Hummels, H. (2019). Legal personality and economic livelihood of the Whanganui River: A call for community entrepreneurship. *Water International*, 44(6-7), 752-768.
- Auckland City Council. (2021). *Engaging with mana whenua*.  
<https://www.aucklandcouncil.govt.nz/building-and-consents/resource-consents/prepare-resource-consent-application/Pages/engaging-with-mana-whenua.aspx>
- Babbie, E. (2001). *The practice of social research* (9th ed.). Wadsworth/Thomson Learning.
- Baker, J. M., & Westman, C. N. (2018). Extracting knowledge: Social science, environmental impact assessment, and Indigenous consultation in the oil sands of Alberta, Canada. *The extractive industries and society*, 5(1), 144-153. <https://doi.org/10.1016/j.exis.2017.12.008>
- Balmer, J. M. T., Fukukawa, K., & Gray, E. R. (2007). The nature and management of ethical corporate identity: A commentary on corporate identity, corporate social responsibility and ethics. *Journal of business ethics*, 76(1), 7-15. <https://doi.org/10.1007/s10551-006-9278-z>
- Bamberg, S., & Möser, G. (2007). Twenty years after Hines, Hungerford, and Tomera: A new meta-analysis of psycho-social determinants of pro-environmental behaviour. *Journal of environmental psychology*, 27(1), 14-25. <https://doi.org/10.1016/j.jenvp.2006.12.002>
- Banyard, V. L., & Miller, K. E. (1998). The powerful potential of qualitative research for community psychology. *American Journal of Community Psychology*, 26(4), 485-505.
- Barbosa, M. C., Alam, K., & Mushtaq, S. (2016). Water policy implementation in the state of São Paulo, Brazil: Key challenges and opportunities. *Environmental science & policy*, 60, 11-18. <https://doi.org/10.1016/j.envsci.2016.02.017>
- Barraclough, T. (2013). *How far can the Te Awa Tupua (Whanganui River) proposal be said to reflect the rights of nature in New Zealand?* [Honours Dissertation Otago University], <https://www.otago.ac.nz/law/research/journals/otago065278.pdf>
- Bartlett, R. V., & Kurian, P. A. (1999). The Theory of Environmental Impact Assessment: Implicit models of policy making. *Policy and politics*, 27(4), 415-433. <https://doi.org/10.1332/030557399782218371>
- Berkes, F. (2009). Evolution of co-management: Role of knowledge generation, bridging organizations and social learning. *J Environ Manage*, 90(5), 1692-1702. <https://doi.org/10.1016/j.jenvman.2008.12.001>
- Blair, M. M. (2015). Of corporations, courts, personhood, and morality. *Business ethics quarterly*, 25(4), 415-431. <https://doi.org/10.1017/beq.2015.32>
- Carr, G. (2015). Stakeholder and public participation in river basin management—an introduction. *WIREs Water*, 2(4), 393-405. <https://doi.org/10.1002/wat2.1086>

- Cashmore, M. (2004). The role of science in environmental impact assessment: process and procedure versus purpose in the development of theory. *Environmental impact assessment review*, 24(4), 403-426. <https://doi.org/10.1016/j.eiar.2003.12.002>
- Cashmore, M., Gwilliam, R., Morgan, R., Cobb, D., & Bond, A. (2004, 2004/12/01). The interminable issue of effectiveness: substantive purposes, outcomes and research challenges in the advancement of environmental impact assessment theory. *Impact Assessment and Project Appraisal*, 22(4), 295-310. <https://doi.org/10.3152/147154604781765860>
- Catalinac, A. L. (2004). The establishment and subsequent expansion of the Waitangi Tribunal: the politics of agenda setting. *Treaty of Waitangi (1840 February 6)*, 56(1), 5-22. <https://doi.org/10.1177/003231870405600102>
- Christoff, P. (1996). Ecological citizens and ecologically guided democracy. *Democracy and green political thought: Sustainability, rights and citizenship*, 151-169.
- Clark, B. (2018). *Picking what persists: Sociocultural natural capital and intergenerational justice* [Masters Thesis, University of Otago], <https://ourarchive.otago.ac.nz/handle/10523/8216>
- Clark, C., Emmanouil, N., Page, J., & Pelizzon, A. (2018). Can you hear the rivers sing: legal personhood, ontology, and the nitty-gritty of governance. *Ecology LQ*, 45, 787.
- Coulthard, G. S., & Alfred, T. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. University of Minnesota Press. <https://doi.org/10.5749/j.ctt9qh3cv>
- De-Shalit, A. (1995). Is liberalism environment-friendly? *Social theory and practice*, 21(2), 287-314.
- Dencer-Brown, A. M., Alfaro, A. C., Milne, S., & Perrott, J. (2018). A review on biodiversity, ecosystem services, and perceptions of New Zealand's mangroves: Can we make informed decisions about their removal? *Resources (Basel)*, 7(1), 23. <https://doi.org/10.3390/resources7010023>
- Donaldson, T. (1982). *Corporations and morality*. Prentice-Hall.
- Eckstein, G., D'Andrea, A., Marshall, V., O'Donnell, E., Talbot-Jones, J., Curran, D., & O'Bryan, K. (2019). Conferring legal personality on the world's rivers: A brief intellectual assessment. *Water International*, 44(6-7), 804-829.
- Environment Canterbury. (2017). *CRC174395. To discharge stormwater to land*. <https://www.ecan.govt.nz/data/consent-search/consentdetails/CRC174395>
- Environment Guide. (2021). *Resource consents and processing*. <https://www.environmentguide.org.nz/rma/resource-consents-and-processes/>
- Environmental Defence Society. (2016). *Evaluating the environmental outcomes of the RMA*. <https://www.eds.org.nz/assets/Publications/Evaluating%20the%20Environmental%20Outcomes%20of%20the%20RMA%20Report%20Final.pdf?k=cpcb980c81>
- Flyvbjerg, B. (2006). Five misunderstandings about case-study research. *Qualitative inquiry*, 12(2), 219-245. <https://doi.org/10.1177/1077800405284363>
- Gabrielson, T. (2008, 2008/08/01). Green citizenship: A review and critique. *Citizenship Studies*, 12(4), 429-446. <https://doi.org/10.1080/13621020802184275>

- Gerring, J. (2004). What is a case study and what is it good for? *Am Polit Sci Rev*, 98(2), 341-354. <https://doi.org/10.1017/S0003055404001182>
- Gifford, R., & Nilsson, A. (2014). Personal and social factors that influence pro-environmental concern and behaviour: A review. *Int J Psychol*, 49(3), 141-157. <https://doi.org/10.1002/ijop.12034>
- Glasson, J., Therivel, R., & Chadwick, A. (2012). *Introduction to Environmental Impact Assessment*. London: Routledge.
- Gómez-Baggethun, E., & Ruiz-Pérez, M. (2011). Economic valuation and the commodification of ecosystem services. *Progress in physical geography*, 35(5), 613-628. <https://doi.org/10.1177/0309133311421708>
- Grear, A. (2021). Decolonizing rights: Strategies and directions. *Journal of Human Rights and the Environment*, 12(2), 143-146. <https://doi.org/https://doi.org/10.4337/jhre.2021.02.00>
- Gunningham, N., Kagan, R. A., & Thornton, D. (2004). Social License and Environmental Protection: Why Businesses Go beyond Compliance. *Law & social inquiry*, 29(2), 307-341. <https://doi.org/10.1086/423681>
- Hapuarachchi, A. B. (2014). *Effectiveness of Environmental Impact Assessment (EIA) in addressing development-induced disasters: a comparison of the EIA processes of Sri Lanka and New Zealand* [Doctoral Thesis, Lincoln University]. <https://researcharchive.lincoln.ac.nz/handle/10182/6532>
- Hibbard, M., Lane, M. B., & Rasmussen, K. (2008). The Split Personality of Planning: Indigenous Peoples and Planning for Land and Resource Management. *Journal of planning literature*, 23(2), 136-151. <https://doi.org/10.1177/0885412208322922>
- Holifield, R. (2001, 2001/02/01). Defining environmental justice and environmental racism. *Urban Geography*, 22(1), 78-90. <https://doi.org/10.2747/0272-3638.22.1.78>
- Hudson, M. L., & Russell, K. (2008). The Treaty of Waitangi and research ethics in Aotearoa. *Treaty of Waitangi*, 6(1), 61-68. <https://doi.org/10.1007/s11673-008-9127-0>
- Huygens, I., Murphy, T., & Healy, S. (2012). Ngāpuhi speaks. *Network Waitangi Whangarei, Te Kawariki*.
- Jolly, D., & Thompson-Fawcett, M. (2021). Enhancing Indigenous impact assessment: Lessons from Indigenous planning theory. *Environmental impact assessment review*, 87. <https://doi.org/10.1016/j.eiar.2020.106541>
- Joseph, R., Rakena, M., Te Kuini Jones, M., Sterling, R., & Rakena, C. (2019). *The Treaty, Tikanga Māori, Ecosystem-Based Management, Mainstream Law and Power Sharing for Environmental Integrity in Aotearoa New Zealand – Possible Ways Forward*. <https://www.sustainableseaschallenge.co.nz/assets/dms/The-Treaty-tikanga-Maori-ecosystem-based-management-mainstream-law-and-power-sharing-for-environmental-integrity-in-Aotearoa-New-Zealand-possible-ways-forward/MAIN20TuhonohonoSSeas20Final20Report20Nov202019.pdf>
- Kāhui Wai Māori. (2019). *Kāhui Wai Māori Report: Te Mana o te Wai*. Ministry for the Environment. <https://environment.govt.nz/assets/Publications/Files/kahui-wai-maori-report.pdf>

- Kauffman, C. M. (2020). Managing people for the benefit of the land: practicing earth jurisprudence in Te Urewera, New Zealand. *ISLE: Interdisciplinary Studies in Literature and Environment*, 27(3), 578-595.
- Kirk, N., Robson-Williams, M., Fenemor, A., & Heath, N. (2020). Exploring the barriers to freshwater policy implementation in New Zealand. *Australasian Journal of Water Resources*, 24(2), 91-104.
- Kōkiri. (2016). Kōkiri 33 – Te Awa Tupua. <https://www.tpk.govt.nz/en/mo-te-puni-kokiri/kokiri-magazine/kokiri-33-2016/te-awa-tupua>
- Kollmuss, A., & Agyeman, J. (2002). Mind the Gap: Why do people act environmentally and what are the barriers to pro-environmental behavior? *Environmental education research*, 8(3), 239-260. <https://doi.org/10.1080/13504620220145401>
- Lyver, P. O. B., Ruru, J., Scott, N., Tylianakis, J. M., Arnold, J., Malinen, S. K., Bataille, C. Y., Herse, M. R., Jones, C. J., & Gormley, A. M. (2019). Building biocultural approaches into Aotearoa–New Zealand’s conservation future. *Journal of the Royal Society of New Zealand*, 49(3), 394-411.
- Marques, S., Lima, M. L., Moreira, S., & Reis, J. (2015). Local identity as an amplifier: Procedural justice, local identity and attitudes towards new dam projects. *Journal of environmental psychology*, 44, 63-73. <https://doi.org/10.1016/j.jenvp.2015.09.007>
- Matunga, H. (2013). *Theorizing indigenous planning* (R. Walker, T. Jojola, & D. Natcher, Eds. Vol. 153). Montreal: MQUP.
- Matunga, H. (2017). A Revolutionary Pedagogy of/for Indigenous Planning. *Planning theory & practice*, 18(4), 640-644.
- Mead, H. (2016). *Tikanga Maori (Revised Edition): Living By Maori Values*. Wellington: Huia (NZ) Ltd.
- Meinert, C. (2013). *Nature, Environment and Culture in East Asia : The Challenge of Climate Change*. Leiden : Brill.
- Ministry for the Environment. (n.d). *A Guide to Preparing a Basic Assessment of Environmental Effects* <https://environment.govt.nz/assets/Publications/Files/ae-guide-aug06.pdf>
- Ministry for the Environment. (n.d.). *What the Government is doing about the Resource Management System*. <https://environment.govt.nz/what-government-is-doing/areas-of-work/rma/>
- Mohai, P., & Bryant, B. (1992). Race, poverty, and the environment. *EPA Journal*, 18(1), 6.
- Morishige, K. u., Andrade, P., Pascua, P. a., Steward, K., Cadiz, E., Kapono, L., & Chong, U. (2018). Na Kilo 'Aina: visions of biocultural restoration through Indigenous relationships between people and place. *Sustainability (Basel, Switzerland)*, 10(10), 3368. <https://doi.org/10.3390/su10103368>
- Naess, A. (1973). The shallow and the deep, long-range ecology movement. A summary. *inquiry*, 16(1-4), 95-100.
- New Zealand Government. (2020, November). *Whanganui Iwi (Whanganui River) Deed of Settlement Summary*. <https://www.govt.nz/browse/history-culture-and-heritage/treaty->

[settlements/find-a-treaty-settlement/whanganui-iwi/whanganui-iwi-whanganui-river-deed-of-settlement-summary/](#)

Ngā Tāngata Tiaki o Whanganui. (2020, July). *Annual report 2019-2020*.

<https://www.ngatangatatiaki.co.nz/assets/Annual-Report-NTTW-FINAL-Digital-final.pdf>

Ngā Tāngata Tiaki o Whanganui. (n.d). *Te Pou Tupua*. <https://www.ngatangatatiaki.co.nz/our-story/ruruku-whakatupua/te-pou-tupua/>

Ngā Tāngata Tiaki o Whanganui. (n.d.). *Frequently asked questions*.

<https://www.ngatangatatiaki.co.nz/for-your-information/faqs/>

O'Bryan, K. (2017). Giving a voice to the river and the role of Indigenous people. *Australian Indigenous Law Review*, 20, 48-77.

O'Donnell, E., & Macpherson, E. (2019). Voice, power and legitimacy: the role of the legal person in river management in New Zealand, Chile and Australia. *Australasian Journal of Water Resources*, 23(1), 35-44.

Oksanen, M. (2012). Should trees have standing? Law, morality, and the environment. . 21, 174-175.

<https://doi.org/10.1080/09644016.2011.643378>

Oliver, E. F. (1994). *Bicultural resource management in an Aotearoa New Zealand*

*context - Me Aka Whakamua* [Master's Dissertation, Lincoln University,

[https://researcharchive.lincoln.ac.nz/bitstream/handle/10182/2555/oliver\\_brs.pdf?sequence=1&isAllowed=y](https://researcharchive.lincoln.ac.nz/bitstream/handle/10182/2555/oliver_brs.pdf?sequence=1&isAllowed=y)

Outram, A. S. (2017). Post-colonialism Indigenous power and resource management: does s33 of the Resource Management Act 1991 have its intended effect for iwi authorities? [Master's Dissertation, Lincoln University].

[https://researcharchive.lincoln.ac.nz/bitstream/handle/10182/9093/Outram\\_MPlan.pdf?sequence=4&isAllowed=y](https://researcharchive.lincoln.ac.nz/bitstream/handle/10182/9093/Outram_MPlan.pdf?sequence=4&isAllowed=y)

Palmer, Q. (2014). The Resource Management Act - How we got it and what changes are being made to it. *Victoria University of Wellington Legal Research Paper Series Palmer Paper No.*

83/2015, 32-46. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2604901](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2604901)

Parliamentary Counsel Office. (n.d). *Legislative instruments* <http://www.pco.govt.nz/2020-legislative-instruments/>

Patrick, L. (2017). Indigenist Planning. *Planning theory & practice*, 18(4), 647-650.

Poipoia Ltd. (2019). *Cultural impact assessment- aquifer 182*.

<https://www.horizons.govt.nz/HRC/media/Media/Consent-Documents-Folder/Aquifer-182-Holding-Company/2b.%2020191101%20Combined%20RCA-%20ANZAC%20Bore%20-S92%20requested%20information%20FINAL.pdf>

Porter, L., & Barry, J. (2016). *Planning for coexistence?: Recognizing Indigenous rights through land-use planning in Canada and Australia*. Routledge.

Rāwiri, Ā. H. (2020). *I am the River: Whanganui iwi on the four natural laws that guide them*.

<https://thespinoff.co.nz/atea/17-06-2020/i-am-the-river-whanganui-iwi-on-the-four-principles-that-guide-them/>

- Ren, S., He, D., Zhang, T., & Chen, X. (2019). Symbolic reactions or substantive pro-environmental behaviour? An empirical study of corporate environmental performance under the government's environmental subsidy scheme. *Business strategy and the environment*, 28(6), 1148-1165. <https://doi.org/10.1002/bse.2308>
- Resource Management Review Panel. (2020). *New directions for resource management in New Zealand – report of the resource management review panel*. <https://www.mfe.govt.nz/sites/default/files/media/RMA/rm-panel-review-report-web.pdf>
- Riger, S., & Sigurvinsdottir, R. (2016). Thematic analysis. *Handbook of methodological approaches to community-based research: Qualitative, quantitative, and mixed methods*, 33-41.
- Roberts, M., Norman, W., Minhinnick, N., Wihongi, D., & Kirkwood, C. (1995). Kaitiakitanga: Maori perspectives on conservation. *Pacific Conservation Biology*, 2(1), 7-20.
- Royal, T. A. C. (2018). *Whenua—How the land was shaped—A dramatic landscape*. Te Ara - the Encyclopedia of New Zealand. <https://teara.govt.nz/en/photograph/6718/whanganui-river>
- Ruru, J. (2004). Indigenous peoples' ownership and management of mountains: The Aotearoa/New Zealand experience. *Indigenous LJ*, 3, 111.
- Ruru, J. (2018). The failing modern jurisprudence of the Treaty of Waitangi. In *Indigenous Peoples and the State* (pp. 111-126). Routledge.
- Ruruku Whakatupua – the Whanganui River Deed of Settlement 2014.
- Salmond, A. (2014). Tears of Rangi: water, power, and people in New Zealand. *HAU: Journal of Ethnographic Theory*, 4(3), 285-309.
- Salmond, D. A. (2018). Rivers as ancestors and other realities: Governance of waterways In Aotearoa/New Zealand. In *ResponsAbility* (pp. 183-192). Routledge.
- Sanders, K. (2018). 'Beyond human ownership'? property, power and legal personality for nature in Aotearoa New Zealand. *Journal of Environmental Law*, 30(2), 207-234. <https://doi.org/10.1093/jel/eqx029>
- Schlosberg, D., & Carruthers, D. (2010). Indigenous struggles, environmental justice, and community capabilities. *Global environmental politics*, 10(4), 12-35. [https://doi.org/10.1162/GLEP\\_a\\_00029](https://doi.org/10.1162/GLEP_a_00029)
- Shrader-Frechette, K. (2005). *Environmental justice: creating equality, reclaiming democracy*. Oxford University Press.
- Shrinkhal, R. (2021). "Indigenous sovereignty" and right to self-determination in international law: A critical appraisal. *AlterNative : an international journal of indigenous peoples*, 17(1), 71-82. <https://doi.org/10.1177/1177180121994681>
- Solaiman, S. M. (2016). Legal personality of robots, corporations, idols and chimpanzees: A quest for legitimacy. *Artificial intelligence and law*, 25(2), 155-179. <https://doi.org/10.1007/s10506-016-9192-3>
- Stern, P. C., Dietz, T., Abel, T., Guagnano, G. A., & Kalof, L. (1999). A Value-Belief-Norm theory of support for social movements: The case of environmentalism. *Human ecology review*, 6(2), 81-97.

- Stone, C. D. (2010). *Should trees have standing?: Law, morality, and the environment*. Oxford University Press.
- Te Aho, L. (2012). Ngā Whakataunga Waimāori: Freshwater Settlements. *Treaty of Waitangi settlements*, 102-113.
- Te Aho, L. (2019). Te Mana o te Wai: An indigenous perspective on rivers and river management. *River research and applications*, 35(10), 1615-1621. <https://doi.org/10.1002/rra.3365>
- Te Rūnanga o Tamaupoko & Te Rūnanga o Tūpoho. (n.d). *Ko Tā Whanganui Titiro/Whanganui Hapū/Iwi world view*. <https://www.whanganui.govt.nz/files/assets/public/district-plan-changes/final-onl-with-app-b-reformatted.pdf>
- Te Urewera Act 2014.
- van Doren, D., Driessen, P. P. J., Schijf, B., & Runhaar, H. A. C. (2013). Evaluating the substantive effectiveness of SEA: Towards a better understanding. *Environmental impact assessment review*, 38, 120-130. <https://doi.org/10.1016/j.eiar.2012.07.002>
- Waitangi Tribunal. (1999). *The Whanganui River Report: Wai 167*. G. Publications. [https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_68450539/Whanganui%20River%20Report%201999.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68450539/Whanganui%20River%20Report%201999.pdf)
- Walker, G. (2010). Environmental justice, impact assessment and the politics of knowledge: The implications of assessing the social distribution of environmental outcomes. *Environmental impact assessment review*, 30(5), 312-318. <https://doi.org/10.1016/j.eiar.2010.04.005>
- Walker, R., Jojola, T. S., & Natcher, D. C. (2013). *Reclaiming indigenous planning*. Montreal : McGill-Queen's University Press.
- Wang, H., Bai, H., Liu, J., & Xu, H. (2012). Measurement indicators and an evaluation approach for assessing Strategic Environmental Assessment effectiveness. *Ecological indicators*, 23, 413-420. <https://doi.org/10.1016/j.ecolind.2012.04.021>
- Wesche, P. (2021). Rights of Nature in Practice: A case study on the impacts of the Colombian Atrato River decision. *Journal of Environmental Law*.
- White, L. (2004). The historical roots of our ecological crisis. *This sacred earth: religion, nature, environment*, 192-201.
- Whiteside, K. H. (2006). *Precautionary politics: Principle and practice in confronting environmental risk*. Mit Press.
- Wilson, C. (2013). *Interview techniques for UX practitioners: A user-centered design method*. San Francisco: Elsevier Science & Technology.
- Xepapadeas, A. P. (1992). Environmental policy design and dynamic nonpoint-source pollution. *Journal of environmental economics and management*, 23(1), 22-39. [https://doi.org/10.1016/0095-0696\(92\)90039-Y](https://doi.org/10.1016/0095-0696(92)90039-Y)
- Youatt, R. (2014). Interspecies relations, international relations: Rethinking anthropocentric politics. *Millennium*, 43(1), 207-223.

# Appendix A

## Human Ethics Committee Approval



Research Management Office  
Lincoln University  
PO Box 85084, Lincoln 7647  
Christchurch, New Zealand

T 64 3 423 0583  
E [ethics@lincoln.ac.nz](mailto:ethics@lincoln.ac.nz)  
[www.lincoln.ac.nz](http://www.lincoln.ac.nz)

### HUMAN ETHICS COMMITTEE

**Application:** HEC2021-23

19 July 2021

**Title:** Legal personhood of the Whanganui River: to what extent has this legislation influenced decision-making toward activities that affect the Whanganui River.

**Applicant:** Emily Ireland

---

The Lincoln University Human Ethics Committee has reviewed the above noted application and are pleased to give final approval to your project.

Please note that this approval is valid for three years from today's date at which time you will need to reapply for approval.

Once your field work has finished can you please advise the Human Ethics Secretary, Angela Milner, and confirm that you have complied with the terms of the ethical approval.

May I, on behalf of the Committee, wish you success in your research.

Yours sincerely

Grant Tavinor  
Chair, Human Ethics Committee

**PLEASE NOTE:** The Human Ethics Committee has an audit process in place for applications. Please see 7.3 of the Human Ethics Committee Operating Procedures (ACHE) in the Lincoln University Policies and Procedures Manual for more information.



## Appendix B Consent Form

*To what extent has the legal personhood status influenced decision-making toward activities that affect the Whanganui River.*

More than three years on from the enactment of Te Awa Tupua (Whanganui River Claims Settlement) Act, little is known about the effects this Act is having for people who engage with the Whanganui River. The aim of this research is to understand what effect the new status is having on the decision-making (processes and outcomes) for Te Awa Tupua. Therefore my main focus for these interviews is on the administrative lower-level implementation aspects relevant to a planner, for example how it has affected consent application and processing and associated thinking.

1. I have read and understood the description of the project above.
2. I have been given sufficient time to consider whether or not to participate in the project and to ask questions.
3. I have been given a copy of the Research Information Sheet and the Consent Form to keep.
4. I understand that I may withdraw from the project, including withdrawal of any information I have provided, up to four weeks after the date of interview.

I consent to participate in the project.

I consent to publication of the results (which may include my anonymised information).

I consent to having an audio or video recording made of my interview

I do not consent to having an audio or video recording made of my interview but agree to notes being made.

Name:

Signed:

Date:

## Appendix C

### Interview Questions

#### Public sector planner

- 1) What characteristics of the Whanganui River have significance for your organization?
- 2) Since the granting of the personhood status changed the way the organisation feels about the River?
- 3) As a result of the declaration of personhood, have there been any changes to the way your organization makes decisions regarding activities?
- 4) When it comes to making a final decision, sort of what's the main thing you look at?
- 5) What do you see as the greatest constraints to implementing Te Awa Tupua?
- 6) Te Heke Ngahuru, the strategy document, is being developed, what are your thoughts on this in terms of implementation?
- 7) Besides the Te Awa Tupua Act, has there been anything else that has influenced changes to activities it might affect the river?

#### Farm consultant

- 1) Tell me about your business role
- 2) What characteristics of the Whanganui River have significance for your business?
- 3) Do you think the Te Awa Tupua status has changed the way you feel about the River?
- 4) As a result of the Te Awa Tupua status, have you made any changes to the way you make decisions for activities that might affect the River?
- 5) Has there been anything else besides the Act that has influenced decisions that you make toward activities for the river?
- 6) What do you see as the greatest constraints to implementing Te Awa Tupua?
- 7) Te Heke Ngahuru, the strategy document, is being developed, what are your thoughts on this in terms of implementation?

#### Tour operator 1

- 1) So tell me about your role and what you do here?
- 2) Do you think the Te Awa Tupua status has changed the way you feel about the River?
- 3) Have you applied for any resource consent since TATA was enacted?
- 4) Do you think there'd be any new activities that would be frowned upon under the Act or by the Iwi in a way that wouldn't be allowed to go ahead?
- 5) What do you think are the greatest constraints to implementing Te Awa Tupua?
- 6) What would you hope to see in thirty years, in terms of working with Tāngata Whenua realistically?
- 7) What made you so interested in regenerating this place and caring for the native flora and fauna?
- 8) What are the general feelings from people who use your business? What do you think they feel about with the river?

#### Private planning consultants (joint interview with 2 participants)

- 1) First tell me a bit about your roles at the company and what you each do?
- 2) What characteristics of the Whanganui River have significance for the company?
- 3) How do you engage with the River? Are the physical aspects most significant?
- 4) Has the granting of Te Awa Tupua changed the way your company feels about the Whanganui River?
- 5) What do you see as the greatest constraints to implementing Te Awa Tupua?

- 6) Under the Act it states that decision-makers must “have regard to” the principles of the Act so could a consultant have the initial ‘tick box’ meeting with Iwi and then go away and not necessarily make the changes or conditions to the proposal?
- 7) Do you think Te Awa Tupua could change notification of resource consents?

Department of Conservation member

- 1) Tell me about your role at DOC?
- 2) What characteristics of the Awa have significance for DOC?
- 3) Do you think the granting of Te Awa Tupua has changed the way DOC feel about the River at all?
- 4) Since the granting of Te Awa Tupua, do you think there has been any changes to the way DOC makes decisions regarding activities that might affect the River?
- 5) What do you see as the greatest constraints to implementing Te Awa Tupua?
- 6) Apart from Te Awa Tupua has anything else influenced the way you conduct activities that might affect the Whanganui River?
- 7) Have you ever undertaken a project with the river that has ever had much opposition from Tāngata Whenua or a long process of negotiation?

Tour Operator 2

- 1) So tell me about your role and what you do here?
- 2) What characteristics of the Whanganui River have significant for your business?
- 3) Do you see the awa as a physical entity?
- 4) Since the granting of Te Awa Tupua has it changed the way you feel about the River?
- 5) You have changed the way you do things in relation to your business on the River?
- 6) What do you think would be the greatest constraints for implementing Te Awa Tupua, for all kinds of stakeholders?
- 7) If you were to make any substantial changes to your business what would be the first things you would consider in regard to affecting the River?
- 8) Have you had to apply for any extra resource consents or anything of the sort since 2017?
- 9) What do your customers say after visiting and experiencing your business?
- 10) What would be your future aspirations for the management of Te Awa Tupua?