

NGĀ TĀNGATA TIAKI O WHANGANUI

for and on behalf of

WHANGANUI IWI

and

THE CROWN

RURUKU WHAKATUPUA - TE TĀNEKAHA

SUPPLEMENTARY DEED

27 April 2016

*Ngā wai inuina o Ruatipua ēnā
Ngā manga iti, ngā manga nui e honohono kau ana
Ka hono, ka tupu, hei awa
Hei Awa Tupua*

*Those are the drinking fonts of Ruatipua
The small and large streams which flow into one another
And continue to link, and swell, until a river is formed
Te Awa Tupua*

*E rere kau mai te Awa nui
Mai i te Kāhui Maunga ki Tangaroa
Ko au te Awa, ko te Awa ko au*

*The Great River flows
From the Mountains to the Sea
I am the River and the River is me*

RURUKU WHAKATUPUA - TE TĀNEKAHA

SUPPLEMENTARY DEED

THIS DEED is made between

NGĀ TĀNGATA TIAKI O WHANGANUI for and on behalf of **WHANGANUI IWI**

and

THE CROWN

Te tānekaha o te waka

Tightening the lashings of the waka

This document, Ruruku Whakatupua - Te Tānekaha, contains agreed amendments to certain provisions in Ruruku Whakatupua – Te Mana o Te Awa Tupua and Ruruku Whakatupua – Te Mana o Te Iwi o Whanganui to enable the key elements of Ruruku Whakatupua to be given legal effect through the Te Awa Tupua Legislation.

1. NGĀ KUPU WHAKATAKI

Background

- 1.1 Ruruku Whakatupua was signed on 5 August 2014 and is the deed of settlement between the Whanganui Iwi and the Crown comprising:
 - 1.1.1 Ruruku Whakatupua - Te Mana o Te Iwi o Whanganui; and
 - 1.1.2 Ruruku Whakatupua - Te Mana o Te Awa Tupua.
- 1.2 The purpose of Ruruku Whakatupua is to:
 - 1.2.1 provide a new framework for Te Awa Tupua; and
 - 1.2.2 settle the historical Treaty of Waitangi claims of Whanganui Iwi in relation to the Whanganui River.
- 1.3 Ngā Tāngata Tiaki o Whanganui was established by deed of trust dated 4 August 2014 as the post-settlement governance entity for Whanganui Iwi for the purpose of the settlement encompassed by Ruruku Whakatupua.
- 1.4 By deed of covenant dated 5 August 2014, Ngā Tāngata Tiaki o Whanganui covenanted with the Crown that from the date of that deed Ngā Tāngata Tiaki o Whanganui:
 - 1.4.1 is a party to Ruruku Whakatupua as if it had been named as a party to Ruruku Whakatupua and had executed it;
 - 1.4.2 will observe and perform all the obligations of Ngā Tāngata Tiaki o Whanganui under Ruruku Whakatupua; and
 - 1.4.3 is bound by the terms of Ruruku Whakatupua.
- 1.5 It was agreed and reflected in Ruruku Whakatupua that, following the signing of Ruruku Whakatupua:
 - 1.5.1 the parties would continue to work together in relation to implementation of Ruruku Whakatupua;
 - 1.5.2 a draft Te Awa Tupua bill providing for all matters for which legislation is required to give effect to Ruruku Whakatupua would be prepared for introduction;
 - 1.5.3 the draft Te Awa Tupua bill would be agreed by Ngā Tāngata Tiaki o Whanganui and the Crown.

- 1.6 Since the signing of Ruruku Whakatupua, the parties have continued to work together in relation to implementation matters and the preparation of the Te Awa Tupua bill.
- 1.7 During this process, some issues have been identified which have required certain aspects of the agreements reached in Ruruku Whakatupua to be refined, supplemented and varied in order to be able to give full effect to the underlying intention of the parties.
- 1.8 Further, as contemplated in Ruruku Whakatupua, the wording in the Te Awa Tupua legislation necessarily varies in places from the express wording of Ruruku Whakatupua in order to comply with relevant drafting conventions for a government bill.
- 1.9 The Te Awa Tupua (Whanganui River Claims Settlement) Bill has now been finalised for introduction to Parliament.
- 1.10 Ngā Tāngata Tiaki o Whanganui and the Minister for Treaty of Waitangi Negotiations on behalf of the Crown have confirmed their respective agreement to the terms of the Bill.
- 1.11 This supplementary deed, Ruruku Whakatupua - Te Tānekaha, records the further agreements that have been reached between the parties during that process of preparing and finalising the Bill insofar as they modify or vary the terms of Ruruku Whakatupua.
- 1.12 The parties acknowledge that other variations between the Bill and Ruruku Whakatupua that reflect matters of legislation drafting convention only are not recorded in this supplementary deed.

2. RURUKU WHAKATUPUA – TE MANA O TE AWA TUPUA

Amendments to Ruruku Whakatupua – Te Mana o Te Awa Tupua

- 2.1 This part of the supplementary deed sets out the further agreements that have been reached to those contained in Ruruku Whakatupua – Te Mana o Te Awa Tupua.

TE AWA TUPUA

- 2.2 Certain issues were identified regarding the legal effect of the status of Te Awa Tupua and Tupua te Kawa on relevant decision-making.

- 2.3 In this respect, the parties have agreed that:

- 2.3.1 the obligations under clauses 2.9 to 2.13 of Ruruku Whakatupua - Te Mana o Te Awa Tupua:

- (a) do not remove, or prevent the exercise of, any discretion that a decision maker has in exercising or performing a relevant function, power or duty; but
- (b) permit a decision maker to consider the Te Awa Tupua status and Tupua te Kawa as determining factors when exercising or performing a relevant function, power or duty; and

- 2.3.2 as a corollary to matters concerning the Public Works Act 1981 addressed in clause 2.7.1 of this supplementary deed, the Public Works Act 1981 will be added to the statutes listed in clause 2.12 of Ruruku Whakatupua - Te Mana o Te Awa Tupua.

TE POU TUPUA

- 2.4 In relation to the role and responsibilities of Te Pou Tupua under Part 3 of Ruruku Whakatupua - Te Mana o Te Awa Tupua, the parties have agreed that:

- 2.4.1 the functions of Te Pou Tupua in clause 3.3 of Ruruku Whakatupua - Te Mana o Te Awa Tupua should also include entering into the relationship instruments referred to clause 3.36 to 3.42 of Ruruku Whakatupua - Te Mana o Te Awa Tupua; and

- 2.4.2 in addition to the relationship agreements provided for in clauses 3.36 to 3.42 of Ruruku Whakatupua - Te Mana o Te Awa Tupua, and as a corollary to the matters concerning the Public Works Act 1981 addressed in clause 2.7.1 of this supplementary deed, the following amendments will be made Ruruku Whakatupua - Te Mana o Te Awa Tupua:

- (a) insert, immediately after clause 3.37:

“3.37A The Chief Executive of Land Information New Zealand will enter into a relationship document with Te Pou Tupua regarding the operation of Part 2 of the Public Works Act 1981.

3.37B The Chief Executive of Land Information New Zealand will commence discussions with Te Pou Tupua for that purpose within 12 months of the commencement date.”

(b) insert, immediately after clause 3.41.3(b):

“(c) public works relating to the Whanganui River; and”

TAX TREATMENT OF TE AWA TUPUA AND TE POU TUPUA

2.5 In relation to the tax treatment of Te Awa Tupua and Te Pou Tupua, the parties have agreed that:

2.5.1 Te Awa Tupua and Te Pou Tupua will be deemed to be the same person for tax purposes and for the purposes of relevant tax legislation;

2.5.2 Te Awa Tupua and Te Pou Tupua to be granted a specific tax exemption for the purposes of the Income Tax Act 2007;

2.5.3 Te Pou Tupua will be a public entity as defined in the Public Audit Act 2001 and the Auditor-General will be its auditor; and

2.5.4 Te Pou Tupua must publish, and provide to Ngā Tāngata Tiaki and the Minister, an annual report which contains the following information for the financial year to which it relates:

(a) a report on the exercise by Te Pou Tupua of its functions and powers and its progress in achieving its purposes; and

(b) financial statements in respect of Te Pou Tupua and Te Awa Tupua (including Te Korotete) prepared in accordance with generally accepted accounting practice; and

(c) a statement of responsibility for the financial statements; and

(d) an audit report:

(i) by the Auditor-General in respect of Te Pou Tupua; and

(ii) by an auditor appointed by Te Pou Tupua in respect of Te Awa Tupua (including Te Korotete).

KIA MATARA RAWA

2.6 Certain issues were identified regarding the effectiveness and clarity of the vesting provisions within Part 6 of Ruruku Whakatupua - Te Mana o Te Awa Tupua.

2.7 In this respect, the parties have agreed on the following matters to ensure that the vesting provisions are workable and will complement provisions within other relevant statutes:

2.7.1 in relation to the application of the Public Works Act 1981 to the land vested in Te Awa Tupua, that:

- (a) there will be a tailored application of the Public Works Act 1981 to the land vested in Te Awa Tupua and, in particular, the limits on alienation will not preclude the taking or acquisition under Part 2 of the Public Works Act 1981 of an interest in land less than a fee simple estate;
- (b) there will be a process of early discussion with, and involvement of, Te Pou Tupua should a matter arise that may lead to a proposal to acquire or take an interest in land less than a fee simple estate under Part 2 of the Public Works Act 1981, involving the Crown or relevant local authority, as the case may be:
 - (i) fully informing Te Pou Tupua of the matter that has arisen; and
 - (ii) engaging with Te Pou Tupua on the development of the proposal, including the nature and terms of any proposed taking or acquisition of an interest in land less than a fee simple estate;
- (c) when land that is part of the bed of the Whanganui River and currently held by the Crown under the Public Works Act 1981 is no longer required:
 - (i) the Chief Executive of Land Information New Zealand must notify Te Pou Tupua and comply with the processes within sections 40 and 41 of the Public Works Act 1981; and
 - (ii) the Public Works Act 1981 disposal process will be halted by an automatic vesting in Te Awa Tupua once the section 40 offer back obligations are discharged.

2.7.2 a process for land transfer or vesting in Te Awa Tupua from others that:

- (a) requires the agreement of Te Pou Tupua and the owner of the land;
- (b) includes fee simple and Maori freehold land, but not customary Maori land; and
- (c) has a reverse process;

- 2.7.3 obligations on the Registrar-General of Land in respect of cancelling existing titles to land vested in Te Awa Tupua and reconstituting title;
- 2.7.4 processes within the Te Ture Whenua Maori Land Act 1993, including mandatory registration of orders and status change requirements to enable land to be vested;
- 2.7.5 that land that is part of the bed of the Whanganui River and vested in or acquired by Te Awa Tupua will be fully non-rateable land for the purposes of the Local Government (Rating) Act 2002; and
- 2.7.6 certain other technical amendments and additional definitions that vary aspects of the vesting provisions within Part 6 of Ruruku Whakatupua - Te Mana o Te Awa Tupua.

NGĀ RITENGA WHAKAŪ

- 2.8 Certain legal issues were identified regarding the application and clarity of the name protection provisions within clause 8.1 of Ruruku Whakatupua - Te Mana o Te Awa Tupua.
- 2.9 In this respect, the parties have agreed that clause 8.1 of Ruruku Whakatupua - Te Mana o Te Awa Tupua will be substituted with the following clause:

“PROTECTION OF THE NAME 'TE AWA TUPUA'

8.1 The Te Awa Tupua legislation will provide that:

8.1.1 The Crown acknowledges that:

- (a) the relationship between Whanganui Iwi and Te Awa Tupua is a taonga of Whanganui Iwi;
- (b) the recognition of Te Awa Tupua is based on the tikanga and mātauranga of Whanganui Iwi;
- (c) Whanganui Iwi has responsibilities as tangata tiaki in relation to:
 - (i) the mana and mouri of Te Awa Tupua; and
 - (ii) the mātauranga that underpins that mana and mouri.

8.1.2 Subject to clause 8.1.3, no person may without written authorisation from Te Pou Tupua:

- (a) cause an incorporated or unincorporated body to be formed or registered under any name, title, style, or designation that includes 'Te Awa Tupua' or any other name, title, style, or designation that so closely resembles 'Te Awa Tupua' as to be likely to confuse or deceive any person that an association with Te Awa Tupua exists; or

- (b) carry on in trade activities under any name, title, style, or designation that includes 'Te Awa Tupua' or any other name, title, style, or designation that so closely resembles 'Te Awa Tupua' as to be likely to confuse or deceive any person that an association with Te Awa Tupua exists; or
- (c) in relation to any commercial goods or services, display, exhibit or otherwise use a name, title, style, or designation that includes 'Te Awa Tupua' or any other name, title, style, or designation that so closely resembles 'Te Awa Tupua' as to be likely to confuse or deceive any person that an association with Te Awa Tupua exists.

8.1.3 Te Pou Tupua must not unreasonably withhold its consent to any request for an authorisation under clause 8.1.2 if the authorisation sought promotes the health and wellbeing of Te Awa Tupua, is consistent with Tupua te Kawa and:

- (a) is made by an iwi with interests in the Whanganui River; or
- (b) concerns the use of the name 'Te Awa Tupua' for educational or charitable purposes.

8.1.4 If Te Pou Tupua considers that the name 'Te Awa Tupua' is being used in a manner contrary to clause 8.1.2, Te Pou Tupua may:

- (a) have recourse to any relevant statutory objection process in relation to the matters referred to in clause 8.1.2; and
- (b) give notice in writing to any person:
 - (i) stating that the name 'Te Awa Tupua' is being used in a manner contrary to clause 8.1.2; and
 - (ii) requesting that person to cease any further use of that name in that manner; and
- (c) apply to a court for:
 - (i) a declaration that the use of name 'Te Awa Tupua' by the recipient of a notice given under clause 8.1.4(b) is contrary to clause 8.1.2; and
 - (ii) an order that such use must cease.

8.1.5 If Te Pou Tupua considers that the grant of an authorisation adversely affect the mana of Te Awa Tupua, Te Pou Tupua must notify, and obtain and consider the views of Ngā Tāngata Tiaki o Whanganui before making a decision on any request for an authorisation."

2.10 In relation to other matters in Part 8 of Ruruku Whakatupua - Te Mana o Te Awa Tupua, the parties have agreed that:

2.10.1 in addition to the deeming provisions in clause 8.14 of Ruruku Whakatupua - Te Mana o Te Awa Tupua, Te Awa Tupua will be deemed to be a public authority for the purposes of section 33X of the Maritime Transport Act 1994.

TE AWA TUPUA LEGISLATION

2.11 The Te Awa Tupua legislation will provide for the matters set out in clauses 2.3, 2.4.1, 2.5, 2.7, 2.9 and 2.10.

3. RURUKU WHAKATUPUA – TE MANA O TE IWI O WHANGANUI

Amendments to Ruruku Whakatupua – Te Mana o Te Iwi o Whanganui

- 3.1 This part of the supplementary deed sets out the further agreements that have been reached to those contained in Ruruku Whakatupua – Te Mana o Te Iwi o Whanganui.

TE HOEROA

- 3.2 Certain issues were identified regarding the provisions in Part 10 of Ruruku Whakatupua – Te Mana o Te Iwi o Whanganui relating to the transfer of mandated iwi organisation status under the Māori Fisheries Act 2004 in the context of the dissolution of Te Whiringa Muka Trust and the transfer of its assets and liabilities to Ngā Tāngata Tiaki.

- 3.3 In this respect, the parties have agreed that:

3.3.1 Ngā Tāngata Tiaki o Whanganui will become the mandated iwi organisation for Whanganui iwi for the purposes of the Māori Fisheries Act 2004;

3.3.2 Whanganui Iwi Fisheries Limited will become the asset holding company of Ngā Tāngata Tiaki o Whanganui (as the new mandated iwi organisation);

3.3.3 in the event that the constitutional documents for Ngā Tāngata Tiaki o Whanganui or Whanganui Iwi Fisheries Limited do not comply with the Māori Fisheries Act 2004 immediately before the commencement of the Te Awa Tupua legislation, they will be deemed to comply with the Māori Fisheries Act 2004 for a period of two years; and

3.3.4 other consequential matters to give effect to the arrangements in clauses 3.3.1 to 3.3.3.

TE AWA TUPUA LEGISLATION

- 3.4 The Te Awa Tupua legislation will provide for the matters set out in clause 3.3.

4. NGĀ PĀNUI WHAKAMĀRAMA

General Matters

EFFECTIVE DATE OF THIS DEED

- 4.1 This supplementary deed, Ruruku Whakatupua - Te Tānekaha, takes effect when it is properly executed by the parties to it.

AMENDMENTS TO THE RURUKU WHAKATUPUA

- 4.2 Ruruku Whakatupua:

4.2.1 is amended by making the amendments set out in this supplementary deed; but

4.2.2 otherwise remains unchanged.

DEFINITIONS AND INTERPRETATION

- 4.3 Unless the context otherwise requires:

4.3.1 terms or expressions defined in Ruruku Whakatupua have the same meanings in this supplementary deed; and

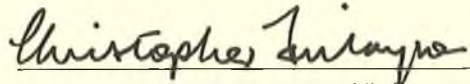
4.3.2 the rules of interpretation in Ruruku Whakatupua apply (with any necessary modifications) to this supplementary deed.

COUNTERPARTS

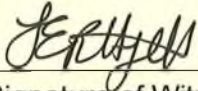
- 4.4 This supplementary deed may be signed in counterparts which together shall constitute one agreement binding on the parties, notwithstanding that the parties are not signatories to the original or same counterpart.

SIGNED as a deed on this 27th day of April 2016

SIGNED for and on behalf of **THE CROWN**)
by the Minister for Treaty of Waitangi)
Negotiations in the presence of:)



Honourable Christopher Finlayson QC



Signature of Witness

FERN WOOLDRIDGE HYETT

Witness Name

PRIVATE SECRETARY (TREATY)

Occupation

WELLINGTON

Address

SIGNED for and on behalf of **THE CROWN**)
by the Minister of Finance (only in relation)
to the tax indemnities) in the presence of:)



Honourable Simon William English



Signature of Witness

Paul Jones Kilgus

Witness Name

Tax Policy Advisor

Occupation

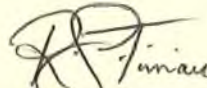
Wellington

Address

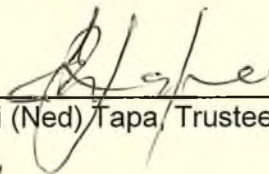
SIGNED for and on behalf of **WHANGANUI IWI** by the
trustees of **NGĀ TĀNGATA TIAKI O WHANGANUI**
in the presence of:



Gerrard Paul Albert, Chairperson



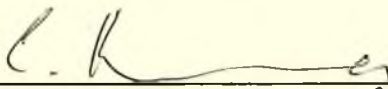
Rawiri Stephen Tinirau, Deputy Chairperson



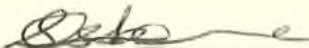
Reneti (Ned) Tapa, Trustee



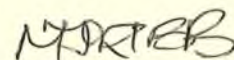
Keria Ngakura Ponga, Trustee



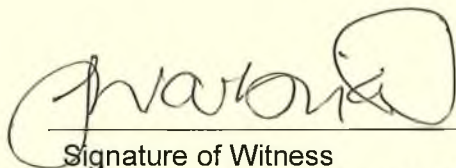
Christopher Robert Kumeroa, Trustee



Susan June Osborne, Trustee



Miriama Jordan Cribb, Trustee



Signature of Witness

Lisa Warbrick

Witness Name

Business Services

Occupation

357 Victoria Ave, Whanganui

Address