

WHANGANUI IWI

and

THE CROWN

TŪTOHU WHAKATUPUA

30 AUGUST 2012

TŪTOHU WHAKATUPUA

THIS AGREEMENT, TŪTOHU WHAKATUPUA, is made between

WHANGANUI IWI

and

THE CROWN

The name of this Agreement – Tūtohu Whakatupua – represents the commitment of Whanganui Iwi and the Crown to progress the development of agreed Te Awa Tupua arrangements as part of the settlement of the historical Treaty of Waitangi Claims of Whanganui Iwi in respect of the Whanganui River.

1 BACKGROUND

*Nga wai inuina o Ruatipua era
Nga manga iti e honohono kau ana
Ka hono, ka tupu, hei awa
Hei Awa Tupua*

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

- 1.1 Whanganui Iwi have common links in two principal ancestors, Paerangi and Ruatipua. Ruatipua draws life force from the headwaters of the Whanganui River on Mount Tongariro and its tributaries which stretch down to the sea. The connection of the tributaries to form the Whanganui River is mirrored by the interconnection through whakapapa of the descendants of Ruatipua and Paerangi.

*E rere kau mai te Awanui
Mai i te Kahui 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*

- 1.2 Whanganui Iwi view the Whanganui River as a living being, Te Awa Tupua; an indivisible whole incorporating its tributaries and all its physical and metaphysical elements from the mountains to the sea.
- 1.3 The enduring concept of Te Awa Tupua - the inseparability of the people and River – underpins the desire of Whanganui Iwi to care, protect, manage and use the Whanganui River through the kawa and tikanga maintained by the descendants of Ruatipua and Paerangi.
- 1.4 The Wai 167 claim to the Waitangi Tribunal was filed by Hikaia Amohia and the members of the Whanganui River Māori Trust Board on behalf of Whanganui Iwi on 14 October 1990. The Wai 167 claim included, among other things, claims in respect of

the Whanganui River and was pursued for the benefit of all who affiliate to Whanganui Iwi.

1.5 Those parts of the Wai 167 claim relating to the Whanganui River were heard by the Waitangi Tribunal in 1994 and the Tribunal issued its *Whanganui River Report* in 1999.

1.6 Among other things, the Waitangi Tribunal found that:

1.6.1 to Whanganui Iwi the Whanganui River was a single and indivisible entity, inclusive of the water and all those things that gave the River its essential life;

1.6.2 Whanganui Iwi possessed, and held rangatiratanga over, the Whanganui River and never sold those interests;

1.6.3 expropriation of the bed of the Whanganui River was effected by the Coal-mines Amendment Act 1903, which effectively vested the bed of all navigable rivers, including the Whanganui River, in the Crown without consultation or compensation;

1.6.4 the Crown vested authority and control of the Whanganui River in local authorities through the Resource Management Act 1991;

1.6.5 the acts of the Crown in removing Whanganui Iwi's possession and control of the Whanganui River and its tributaries, and its omission to protect the rangatiratanga of Whanganui Iwi in and over the River were and are contrary to the principles of the Treaty of Waitangi; and

1.6.6 Whanganui Iwi continue to be prejudiced as a result of the Crown's actions.

1.7 Negotiations between Whanganui Iwi and the Crown in relation to the Whanganui River took place between 2002 and 2004 following the issue of the Tribunal's Report. However, those negotiations ended without agreement being reached.

1.8 Discussions between Whanganui Iwi and the Crown recommenced in 2009. In the context of those discussions, the vision of Whanganui Iwi for the settlement of the Whanganui River claim has been founded on two fundamental principles:

1.8.1 **Te Awa Tupua mai i te Kahui Maunga ki Tangaroa** - an integrated, indivisible view of Te Awa Tupua in both biophysical and metaphysical terms from the mountains to the sea; and

- 1.8.2 **Ko au te awa, ko te awa ko au** - the health and wellbeing of the Whanganui River is intrinsically interconnected with the health and wellbeing of the people.
- 1.9 As a result of the discussions between the parties in relation to the Whanganui River settlement, Whanganui Iwi and the Crown entered into a Record of Understanding on 13 October 2011. The Record of Understanding outlined a framework for the next stage of formal negotiations which was focused on:
- 1.9.1 recognising the status of the Whanganui River as Te Awa Tupua;
 - 1.9.2 facilitating an integrated approach to the governance and management of the Whanganui River and its health and wellbeing; and
 - 1.9.3 involving Whanganui Iwi, alongside the Crown, local government and the catchment community, in the governance and management of the Whanganui River.
- 1.10 In the Record of Understanding, Whanganui Iwi and the Crown expressed their mutual commitment to negotiating a settlement in relation to the Whanganui River that:
- 1.10.1 is enduring and meets the interests of Whanganui Iwi and the Crown;
 - 1.10.2 recognises the Whanganui River as Te Awa Tupua;
 - 1.10.3 protects the health and wellbeing of the Whanganui River for future generations;
 - 1.10.4 recognises the unique relationship between Whanganui Iwi and the Whanganui River;
 - 1.10.5 recognises the full range of environmental, social, cultural and economic interests in the Whanganui River;
 - 1.10.6 preserves public rights of use and access to the Whanganui River;
 - 1.10.7 does not derogate from existing private rights in the Whanganui River;
 - 1.10.8 preserves the role and final decision making functions of local government;
 - 1.10.9 promotes and enhances the integrated, catchment-wide management of the Whanganui River; and

- 1.10.10 provides for cost effective, efficient and durable arrangements in relation to the governance and management of the Whanganui River.
- 1.11 The framework encapsulated in the Record of Understanding is founded on two principles:
- 1.11.1 **Te Mana o Te Awa** - recognising, promoting and protecting the health and wellbeing of the River and its status as Te Awa Tupua; and
- 1.11.2 **Te Mana o Te Iwi** - recognising and providing for the mana and relationship of the Whanganui Iwi in respect of the River.
- 1.12 Since October 2011 the negotiations between Whanganui Iwi and the Crown have focused primarily of the first of these principles, Te Mana o Te Awa. At the centre of this aspect of the negotiations has been the status of the Whanganui River as Te Awa Tupua; a whole and indivisible waterway from the mountains to the sea embracing all of its physical and metaphysical elements.
- 1.13 Recognition of the Whanganui River as Te Awa Tupua is intended to place the status of the River at the centre of the settlement and ensure that the Whanganui River is viewed as an integrated whole when any matters relating to or affecting the River are being considered. The integrated and inclusive nature of Te Awa Tupua also innately recognises the intrinsic interconnection between the Whanganui River and the people of the River (both iwi and the community generally).
- 1.14 Whanganui Iwi have also been clear in their desire for a collaborative approach, working alongside local government and the communities of and other persons with interests in the River, which both recognises the status and values of the Whanganui River and looks strategically to its long term future.
- 1.15 As a result of the negotiations between Whanganui Iwi and the Crown since October 2011, broad agreement has now been reached in relation to the Te Awa Tupua (or "whole of River") elements of the Whanganui River settlement.
- 1.16 While other important aspects of the Whanganui River settlement remain to be negotiated, the parties consider that it is appropriate to record the agreements that have been reached in relation to the Te Awa Tupua elements of the Whanganui River settlement.

1.17 To this end, Whanganui Iwi and the Crown now wish to:

1.17.1 record in this Agreement, Tūtohu Whakatupua, ("**Agreement**") the Te Awa Tupua elements that will form the basis of the Whanganui River settlement; and

1.17.2 reaffirm their mutual commitment to continue to work together to:

(a) further develop and finalise the details of the Te Awa Tupua elements set out in this Agreement;

(b) negotiate other elements of redress in relation to the Whanganui River; and

(c) develop a deed of settlement in relation to the historical Treaty of Waitangi claims of Whanganui Iwi in respect of the Whanganui River (which will, among other things, incorporate the Te Awa Tupua elements contained in this Agreement).

1.18 Any final deed of settlement in relation to the historical Treaty of Waitangi claims of Whanganui Iwi in respect of the Whanganui River will be subject to:

1.18.1 the details of the Te Awa Tupua elements being further developed, finalised and agreed between the Crown and Whanganui Iwi negotiators;

1.18.2 the remaining elements of the settlement being negotiated and agreed between the Crown and Whanganui Iwi negotiators;

1.18.3 agreement to the final settlement proposal and the deed of settlement by Cabinet;

1.18.4 ratification and approval of the final settlement proposal and the deed of settlement by Whanganui Iwi; and

1.18.5 the enactment of any necessary settlement legislation.

1.19 Any final deed of settlement in relation to the historical Treaty of Waitangi claims of Whanganui Iwi in respect of the Whanganui River will not:

1.19.1 settle the historical Treaty of Waitangi claims of Whanganui Iwi other than in respect of the Whanganui River;

- 1.19.2 settle the historical Treaty of Waitangi claims of any other iwi in respect of the Whanganui River or otherwise; or
- 1.19.3 extinguish or limit any extant aboriginal title or customary right of Whanganui Iwi or any other iwi whether arising under legislation, common law, fiduciary duty or otherwise.

2 TE AWA TUPUA ARRANGEMENTS

- 2.1 Whanganui Iwi and the Crown have reached agreement on the following key elements of the Te Awa Tupua ("whole of River") arrangements which will form part of the settlement of the historical Treaty of Waitangi claims of Whanganui Iwi in relation to the Whanganui River:
- 2.1.1 statutory recognition of the status of the Whanganui River as Te Awa Tupua;
 - 2.1.2 statutory recognition of Te Awa Tupua as a legal entity with standing in its own right;
 - 2.1.3 the vesting in the name of Te Awa Tupua of those parts of the bed of the Whanganui River that are currently owned by the Crown;
 - 2.1.4 the development and legal recognition of a set of values for Te Awa Tupua;
 - 2.1.5 the appointment of Te Pou Tupua (as Guardian of the River) to represent the interests of Te Awa Tupua; and
 - 2.1.6 the collaborative development and legal recognition of a Whole of River Strategy.
- 2.2 While expressed as individual elements for the purpose of this Agreement, these elements together form an interconnected set of arrangements which are focused on the appropriate recognition of the status of the Whanganui River as Te Awa Tupua.
- 2.3 The matters that have been agreed in relation to these Te Awa Tupua elements are set out in more detail in this Part of the Agreement. There remain certain additional details in relation to these Te Awa Tupua elements that will be the subject of ongoing discussion and development between Whanganui Iwi and the Crown, in consultation with other interested parties where appropriate.

Statutory recognition of the Whanganui River as Te Awa Tupua

- 2.4 The settlement will provide for the statutory recognition of the Whanganui River as Te Awa Tupua. The indicative wording for the statutory recognition of Te Awa Tupua is as follows:

Te Awa Tupua comprises the Whanganui River as an indivisible and living whole, from the mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements.

- 2.5 The recognition of the Whanganui River as Te Awa Tupua will apply to the interconnected waterways within the Whanganui catchment (ie, the Whanganui River from its headwaters to the sea, including its tributaries and encompassing that area above, below, and including the bed of the River).

Recognition of Te Awa Tupua as a legal entity

- 2.6 The settlement will provide for the recognition of Te Awa Tupua as a legal entity.

- 2.7 The creation of a legal personality for the River is intended to:

2.7.1 reflect the Whanganui Iwi view that the River is a living entity in its own right and is incapable of being "owned" in an absolute sense; and

2.7.2 enable the River to have legal standing in its own right.

- 2.8 Consistent with the creation of a legal personality for Te Awa Tupua, the settlement will provide for:

2.8.1 those parts of the bed of the Whanganui River that are currently owned by the Crown to be held in the name of Te Awa Tupua;

2.8.2 the appointment of Te Pou Tupua (as Guardian) to represent the interests and act on behalf and in the name of Te Awa Tupua;

2.8.3 the purposes, powers and functions of Te Pou Tupua; and

2.8.4 funds and property to be held in the name of Te Awa Tupua and administered by Te Pou Tupua.

- 2.9 The recognition of Te Awa Tupua as a legal entity does not, in itself, create any legal ownership in the Whanganui River or its waters.

Vesting of Crown owned parts of the bed in Te Awa Tupua

- 2.10 The settlement will provide for those parts of the bed of the Whanganui River that are currently held by the Crown to be held in the name of Te Awa Tupua. This applies to those parts of the bed of the Whanganui River that are:

- 2.10.1 held and administered by the Commissioner for Crown Lands under the Land Act 1948; and
- 2.10.2 held and administered by the Department of Conservation under the National Parks Act 1980, Conservation Act 1987, and Reserves Act 1977.
- 2.11 For those parts of the bed of the Whanganui River that are currently administered by the Commissioner for Crown Lands, Te Pou Tupua will exercise any relevant landowner functions on behalf of Te Awa Tupua.
- 2.12 For those parts of the bed of the Whanganui River that are currently administered by the Department of Conservation under the National Parks Act 1980, Conservation Act 1987, and Reserves Act 1977, the relevant conservation status and legislative framework will remain in place.
- 2.13 The fact that the Crown owned parts of the bed of the Whanganui River will be held in the name of Te Awa Tupua will not derogate from existing private property rights and will not adversely affect existing public access and use.

Te Awa Tupua Values

- 2.14 The settlement will provide for the legal recognition of a set of values for Te Awa Tupua ("**Te Awa Tupua Values**").
- 2.15 The Te Awa Tupua Values will be developed and agreed for inclusion in the deed of settlement. The Te Awa Tupua values will provide context to the status of the River as Te Awa Tupua and provide guidance to relevant decision makers.
- 2.16 The Te Awa Tupua Values will comprise the innate values and characteristics of the Whanganui River as Te Awa Tupua. They will encompass the natural environment and features of the River and the interrelationship of people (all people not just iwi) with the River.
- 2.17 The settlement will require persons exercising functions and powers relating to the Whanganui River, or activities in the Whanganui River catchment that affect the Whanganui River, to give appropriate consideration to the Te Awa Tupua Values and the legal status of the River as Te Awa Tupua when exercising such functions or powers. This obligation will affect central government agencies as well as local authorities.

Te Pou Tupua (Guardian) for Te Awa Tupua

- 2.18 The settlement will provide for the appointment of two persons to a guardianship-type role - to be collectively known as Te Pou Tupua - to represent the interests and act on behalf and in the name of Te Awa Tupua.
- 2.19 One person (or Pou) will be appointed by the Crown and the other Pou will be appointed collectively by all iwi with interests in the Whanganui River.
- 2.20 It is intended that Te Pou Tupua:
- 2.20.1 is, through the appointment process, symbolic of the Treaty partnership between the Crown and iwi;
 - 2.20.2 will provide the human face of Te Awa Tupua;
 - 2.20.3 will owe its responsibilities to Te Awa Tupua, not the appointors; and
 - 2.20.4 will comprise two persons of high standing, recognising both the importance of the role and the need to interact with Ministers and other interested parties at a leadership level.
- 2.21 The primary functions of Te Pou Tupua will be to:
- 2.21.1 protect the health and wellbeing of Te Awa Tupua;
 - 2.21.2 uphold the status of Te Awa Tupua and the Te Awa Tupua Values;
 - 2.21.3 **act and speak on behalf of Te Awa Tupua;**
 - 2.21.4 carry out the "landowner" functions over those parts of the (formerly) Crown owned parts of the bed of the Whanganui River held under the Land Act 1948; and
 - 2.21.5 carry out any other relevant functions on behalf of Te Awa Tupua (for example participate in statutory or non-statutory processes and hold property or funds in the name of Te Awa Tupua).
- 2.22 Te Pou Tupua will be able to delegate certain of their functions, including any "landowner" functions, to an advisory group comprising representatives of iwi, local government and, as appropriate, other agencies.

Whole of River Strategy

- 2.23 The settlement will provide for the collaborative development, following the enactment of the settlement legislation, of a Whole of River Strategy for the Whanganui River.
- 2.24 The purpose of the Whole of River Strategy will be to bring together all those persons and organisations with interests in the Whanganui River (including iwi, local and central government, commercial and recreational users and other community groups) to collaboratively develop a strategy focused on the future environmental, social, cultural and economic health and wellbeing of the Whanganui River.
- 2.25 The Whole of River Strategy will cover matters such as:
- 2.25.1 issues for the Whanganui River;
 - 2.25.2 a strategy for addressing those issues; and
 - 2.25.3 recommended actions to address those issues.
- 2.26 The Whole of River Strategy is intended to complement RMA and other planning and policy documents, not duplicate them.
- 2.27 Within the collaborative process a small steering group involving iwi, local government and, as appropriate, other key interested parties will take responsibility for driving the collaborative process and delivering the Whole of River Strategy. The collaborative process will be conducted in an open and inclusive manner. There will be a process for public comment on any draft Strategy document that is developed.
- 2.28 The settlement will require persons exercising functions and powers relating to the Whanganui River, or activities in the Whanganui River catchment that affect the Whanganui River, to give appropriate consideration to the Whole of River Strategy when exercising those functions or powers. Decision makers will also have the discretion to adopt or implement the Strategy in whole or in part (including any recommended actions).

3 NEXT STEPS

- 3.1 Following the signing of this Agreement, the Crown and Whanganui Iwi will continue with their negotiations to settle the historical Treaty of Waitangi claims of Whanganui Iwi in relation to the Whanganui River.
- 3.2 Those negotiations will be directed towards reaching agreement on:
 - 3.2.1 a deed of settlement to settle the historical Treaty of Waitangi claims of Whanganui Iwi in relation to the Whanganui River; and
 - 3.2.2 settlement legislation to give effect to that deed of settlement.
- 3.3 Whanganui Iwi and the Crown agree that they will continue to approach the negotiation process:
 - 3.3.1 in good faith;
 - 3.3.2 in a spirit of integrity, fairness and co-operation;
 - 3.3.3 on the basis of open and honest communication; and
 - 3.3.4 in a manner that reflects and seeks to accommodate the perspectives of both parties.
- 3.4 Whanganui Iwi and the Crown agree that the issues still to be addressed in these negotiations include:
 - 3.4.1 certain additional detail relating to the Te Awa Tupua arrangements outlined in this Agreement; and
 - 3.4.2 an historical account, Crown apology and acknowledgements, other River-related cultural redress and financial redress in relation to the settlement of the historical Treaty of Waitangi claims of Whanganui Iwi in respect of the Whanganui River.
- 3.5 Whanganui Iwi and the Crown also agree that the Te Awa Tupua arrangements set out in this Agreement are based on an integrated, inclusive and catchment-wide approach to the Whanganui River. To this end, in parallel with the negotiation process, Whanganui Iwi and the Crown will continue to implement processes to provide for the appropriate input of:

- 3.5.1 local government;
 - 3.5.2 other iwi with interests in the Whanganui River catchment, including Ngāti Tuwharetoa, Ngāti Maniapoto, Ngāti Maru and Ngāti Ruanui; and
 - 3.5.3 other interested groups.
- 3.6 In particular, Whanganui Iwi will be engaging with other iwi with interests in the Whanganui River catchment in relation to:
- 3.6.1 the development of the Te Awa Tupua Values;
 - 3.6.2 the development of an appropriate tikanga-based process for the appointment of one Pou for Te Awa Tupua on behalf of all iwi;
 - 3.6.3 the manner in which their interests are embraced within the Te Awa Tupua arrangements; and
 - 3.6.4 other relevant processes.
- 3.7 Whanganui Iwi and the Crown agree that any final deed of settlement in relation to the historical Treaty of Waitangi claims of Whanganui Iwi in respect of the Whanganui River (which will include the Te Awa Tupua arrangements outlined in this Agreement) will be subject to:
- 3.7.1 the details of the Te Awa Tupua elements being further developed, finalised and agreed between the Crown and Whanganui Iwi negotiators;
 - 3.7.2 the remaining elements of the settlement being negotiated and agreed between the Crown and Whanganui Iwi negotiators;
 - 3.7.3 agreement to the final settlement proposal and the deed of settlement by Cabinet;
 - 3.7.4 ratification and approval of the final settlement proposal and the deed of settlement by Whanganui Iwi; and
 - 3.7.5 the enactment of any necessary settlement legislation.

SIGNED on 30 August 2012

SIGNED for and on behalf
of **THE CROWN** by:

Hon Christopher Finlayson
Minister for Treaty of Waitangi Negotiations

in the presence of:

WITNESS

Name:

Occupation:

Address:

SIGNED for and on behalf
of **WHANGANUI IWI** by:

Brendon Te Tiwha Puketapu
Chairperson
Whanganui River Māori Trust Board

in the presence of:

WITNESS

Name:

Occupation:

Address:

