

WHANGANUI IWI

and

THE CROWN

RECORD OF UNDERSTANDING
in relation to
WHANGANUI RIVER SETTLEMENT

13 OCTOBER 2011

RECORD OF UNDERSTANDING

THIS RECORD OF UNDERSTANDING is made between

WHANGANUI IWI

and

THE CROWN

1 BACKGROUND

Relationship between Whanganui Iwi and Whanganui River

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.

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Importance of Whanganui River

- 1.4 The Whanganui River is central to the existence of Whanganui Iwi and their health and wellbeing. The River has provided both physical and spiritual sustenance to the Iwi from time immemorial. From the earliest times the Whanganui River has acted as an artery for Māori inhabiting its forests and fertile river terraces and travelling to and from the central North Island. There are numerous kainga and pa sites, urupa and other wāhi tapu throughout the length of the River and there remain 15 active marae on the River today.
- 1.5 The Whanganui River is of significant national importance. It is New Zealand's longest navigable river, stretching for 290km from the northern slopes of Mount Tongariro to the Tasman Sea. Bounded for much of its middle reaches by the Whanganui National Park, the Whanganui River has significant natural, scenic, and recreational values and is an important habitat for indigenous fish and whio (blue duck).
- 1.6 The Whanganui River is also important in the terms of power generation, with waters diverted by the Tongariro Power Scheme from the River's headwaters into Lake Taupo and on into the Waikato River contributing to the generation of approximately 5% of New Zealand's electricity.

Whanganui River Claims

- 1.7 Whanganui Iwi have consistently maintained that they possessed and controlled the Whanganui River and all things that gave the River its essential life and that such possession and control has never been willingly relinquished.
- 1.8 The Whanganui Iwi claim has been persistently maintained since the first petitions on behalf of Whanganui Iwi to Parliament in relation to the Timber Floating Bill in 1873 and the destruction of pa tuna (eel weirs) by the activities of steamers on the River in 1887. Numerous further petitions and other submissions followed over the next 100 years.
- 1.9 Legal proceedings seeking an investigation of the title to the bed of the River were commenced on behalf of Whanganui Iwi in the Māori Land Court in 1938 and those proceedings were pursued through the Māori Land Court, the Māori Appellate Court in 1944, the Māori Land Court again in 1945 and to the Supreme Court in 1949. A further petition and the appointment of a Royal Commission followed in 1950, with matters referred subsequently to the Court of Appeal in 1953, back to the Māori Appellate Court in 1958 and then again to the Court of Appeal who issued a final decision in 1962.
- 1.10 Legal proceedings were also pursued by Whanganui Iwi in connection with the operation of the Tongariro Power Scheme, which was established in the late

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1960s/early 1970s without reference to Whanganui Iwi. Whanganui Iwi advanced their position at the minimum flows hearing before the Rangitikei-Wanganui Catchment Board in 1988 and in subsequent appeals to the Planning Tribunal in 1990 and the High Court in 1992 and then again in 2000 when applications for resource consents by Genesis Power Limited were heard by the Waikato and Manawatu-Wanganui Regional Councils. That litigation continued on appeal to the Environment Court, High Court, Court of Appeal and Supreme Court between 2001 and 2010.

- 1.11 While Whanganui Iwi maintains firmly its objection to the continued operation of the Tongariro Power Scheme, in March 2011 Whanganui Iwi and Genesis Energy entered into a relationship agreement, *Hei Whakaaro Tahī ki Te Mana o Te Awa*, in which the parties agreed bring an end to the litigation between them and to progress the resolution of any outstanding issues in a non-adversarial environment outside of the Courts. That relationship agreement reflects the commitment of Whanganui Iwi and Genesis Energy to an enduring relationship acknowledging and reflecting their respective interests in the health and wellbeing of the Whanganui River.

Waitangi Tribunal

- 1.12 The Wai 167 claim to the Waitangi Tribunal was filed by Hikaia Amohia and the members of the Whanganui River Maori 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.
- 1.13 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.
- 1.14 Among other things, the Tribunal found that:
- 1.14.1 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;
 - 1.14.2 Whanganui Iwi possessed, and held rangatiratanga over, the Whanganui River and never sold those interests;
 - 1.14.3 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;
 - 1.14.4 the Crown vested authority and control of the Whanganui River in local authorities through the Resource Management Act 1991;

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- 1.14.5 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
- 1.14.6 Whanganui Iwi continue to be prejudiced as a result of the Crown's actions.
- 1.15 The Waitangi Tribunal raised two options for consideration in the context of future discussions regarding the Whanganui River, namely, that:
- 1.15.1 the River in its entirety be vested in Whanganui Iwi; and
- 1.15.2 Whanganui Iwi be added as a consent authority under the RMA with both the Iwi and the current authority having to consent to any application where the Whanganui River is involved.
- 1.16 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.

Whanganui Iwi Aspirations

- 1.17 Discussions between Whanganui Iwi and the Crown recommenced in 2009. In these discussions, Whanganui Iwi have outlined their aspirations in terms of the settlement of the historical Treaty of Waitangi claims of Whanganui Iwi in relation to the Whanganui River.
- 1.18 The vision of Whanganui Iwi for the settlement of the Whanganui River claim is founded on two fundamental principles:
- 1.18.1 **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.
- 1.18.2 **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.
- 1.19 Having regard to these two principles, the overarching aspiration of Whanganui Iwi is to ensure that the care, protection, management, use and development of Te Awa Tupua:
- 1.19.1 enhances and protects the health and wellbeing of both Te Awa Tupua and Whanganui Iwi;

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- 1.19.2 accords with the principles, values, kawa, tikanga and maatauranga of Whanganui Iwi;
- 1.19.3 involves Whanganui Iwi in a primary role in planning, management and regulation; and
- 1.19.4 is for the benefit of:
 - (a) first, the environmental, cultural and spiritual health and wellbeing of Te Awa Tupua;
 - (b) secondly, the cultural, environmental, social, political and economic development of Whanganui Iwi; and
 - (c) ultimately, Aotearoa.

Exploratory Discussions

- 1.20 In May 2011 the Crown approved a process of exploratory discussions involving a series of intensive workshops with Whanganui Iwi, representatives of the Office of Treaty Settlements and other Departments with a particular interest in matters concerning the Whanganui River.
- 1.21 The purpose of those exploratory discussions was to develop a settlement framework in relation to key elements of the proposed settlement with a view to appropriately documenting that framework in a Record of Understanding between the parties, which would in turn form a foundation for the next stage of formal negotiations.
- 1.22 The exploratory discussions resulted in the development of a framework that is focused on:
 - 1.22.1 recognising the status of the Whanganui River as Te Awa Tupua;
 - 1.22.2 facilitating an integrated approach to the governance and management of the Whanganui River and its health and wellbeing; and
 - 1.22.3 involving Whanganui Iwi, alongside the Crown, local government and the catchment community, in the governance and management of the Whanganui River.
- 1.23 The framework developed as a result of the exploratory discussions can be viewed in terms of two broad elements:

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- 1.23.1 **Te Mana o Te Awa** – recognising, promoting and protecting the health and wellbeing of the Whanganui River and its the status as Te Awa Tupua; and
- 1.23.2 **Te Mana o Te Iwi** – recognising and providing for the mana of Whanganui Iwi in respect of the Whanganui River.
- 1.24 A summary of the framework is contained in Part 3 of this Record of Understanding.

Agreement

- 1.25 The parties have now agreed to enter into formal negotiations to settle the historical Treaty of Waitangi claims of Whanganui Iwi in relation to the Whanganui River.
- 1.26 The parties have agreed that the terms of this Record of Understanding, including the framework set out in Part 3, will form the basis for the next stage of formal negotiations between the parties.

2 SHARED PRINCIPLES FOR NEGOTIATIONS

- 2.1 Whanganui Iwi and the Crown are committed to negotiating a settlement that:
- 2.1.1 is enduring and meets the interests of Whanganui Iwi and the Crown;
 - 2.1.2 recognises the Whanganui River as Te Awa Tupua;
 - 2.1.3 protects the health and wellbeing of the Whanganui River for future generations;
 - 2.1.4 recognises the unique relationship between Whanganui Iwi and the Whanganui River;
 - 2.1.5 recognises the full range of environmental, social, cultural and economic interests in the Whanganui River;
 - 2.1.6 preserves public rights of use and access to the Whanganui River;
 - 2.1.7 does not derogate from existing private rights in the Whanganui River;
 - 2.1.8 preserves the role and final decision making functions of local government;
 - 2.1.9 promotes and enhances the integrated, catchment-wide management of the Whanganui River; and
 - 2.1.10 provides for cost effective, efficient and durable arrangements in relation to the governance and management of the Whanganui River.
- 2.2 Whanganui Iwi and the Crown agree that they will approach the negotiations process:
- 2.2.1 in good faith;
 - 2.2.2 in a spirit of integrity, fairness and co-operation;
 - 2.2.3 on the basis of open and honest communication; and
 - 2.2.4 in a manner that reflects and seeks to accommodate the perspectives of both parties.
- 2.3 The parties agree that the negotiations are not intended to derogate from existing relevant policy work such as the Fresh Start for Fresh Water programme in which

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issues relating to water use, allocation and rights and interests are being discussed at a national level. Whanganui Iwi are participants, through both the Freshwater Iwi Leaders Group and the Land and Water Forum, in separate discussions with the Crown connected with that policy programme and related issues.

3 FRAMEWORK FOR NEGOTIATIONS

SUMMARY OF FRAMEWORK

- 3.1 The framework set out in this Part 3 will form the basis for the next stage of formal negotiations between the parties in relation to arrangements for the Whanganui River.
- 3.2 The negotiations between the parties will focus on the following broad elements:
- 3.2.1 **Te Mana o Te Awa** (recognising, promoting and protecting the health and wellbeing of the Whanganui River and its the status as Te Awa Tupua); and
- 3.2.2 **Te Mana o Te Iwi** (recognising and providing for the mana of Whanganui Iwi in respect of the Whanganui River).
- 3.3 These two elements are reflected in the following matters which will be the subject of further discussion and development in the course of the negotiations.

TE MANA O TE AWA

Status of the River/Te Awa Tupua

- 3.4 There would be statutory recognition of the unique status of the Whanganui River as Te Awa Tupua (**Te Awa Tupua Status**).
- 3.5 Te Awa Tupua encapsulates 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.
- 3.6 The purpose of the Te Awa Tupua Status is to recognise the mana of the Whanganui River in a manner consistent with Whanganui Iwi's view of the River as a single indivisible and living entity.
- 3.7 The negotiations will further explore the manner in which the Te Awa Tupua Status would be recognised appropriately at law.
- 3.8 Trustees would be appointed to represent the interests of the Whanganui River as Te Awa Tupua (**River Trustees**). Reflecting the Treaty partnership, the River Trustees would be appointed by the Crown and Whanganui Iwi. The primary purpose of the River Trustees would be to promote and protect the Te Awa Tupua Status and the health and wellbeing of the River.

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3.9 The Te Awa Tupua Status would:

3.9.1 not involve the transfer of title to Whanganui Iwi;

3.9.2 preserve existing public access and use; and

3.9.3 not derogate from existing private property rights.

3.10 The negotiations in relation to Te Awa Tupua Status will also explore mechanisms to provide that any future decisions regarding the disposition by the Crown of property interests in the Whanganui River would involve both the Crown and Whanganui Iwi.

River Trustees

3.11 The River Trustees would:

3.11.1 comprise a small number of trustees (2-6) with appropriate mana and experience for the role;

3.11.2 be appointed in equal numbers by Crown and Whanganui Iwi; and

3.11.3 reflect a streamlined approach, and would not involve the establishment of a permanent authority requiring significant administrative support.

3.12 The primary purpose of the River Trustees would be to promote and protect the Te Awa Tupua status and the health and wellbeing of the Whanganui River.

3.13 The functions of the River Trustees may include:

3.13.1 an overarching duty to act in the interests of the Whanganui River, not as representatives of their respective appointees;

3.13.2 to facilitate and promote integrated catchment-wide management of the Whanganui River;

3.13.3 to advise and make recommendations to agencies and bodies with administrative responsibilities over the Whanganui River;

3.13.4 to obtain and share information in relation to the Whanganui River;

3.13.5 to develop a set of high level **River Values** which:

(a) would reflect the innate values and attributes of the Whanganui River;

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- (b) would be appropriately considered by agencies and bodies with administrative responsibilities over the Whanganui River; and
- (c) would not be in the nature of an expansive and directive river document - in particular the River Values would not have legal effect as a regional policy statement or statement of general policy under conservation legislation and would not contain rules, targets or methods; and

3.13.6 such other functions that may be agreed to give effect to other elements of the final arrangements that may be negotiated.

TE MANA O TE IWI

- 3.14 The health and wellbeing of Whanganui Iwi is intrinsically interconnected with the health and wellbeing of the Whanganui River. The inseparability of the people and the Whanganui River underpins the responsibility of Whanganui Iwi to care for, protect, manage and use the Whanganui River.
- 3.15 There would be statutory recognition of the status of Whanganui Iwi in relation to the Whanganui River in order to ensure that the Iwi has standing to be heard in relation to the Whanganui River in all forums and statutory processes.
- 3.16 The settlement legislation would provide for a **Whole of River Strategy** to be developed to promote and enhance integrated management of the Whanganui River. The Whole of River Strategy would:
- 3.16.1 not displace existing decision making or statutory frameworks;
 - 3.16.2 be developed through a collaborative process involving the iwi, local government, relevant Crown agencies, the community and other stakeholders;
 - 3.16.3 be an integrated strategy addressing the future environmental, cultural, social and economic health and wellbeing of the Whanganui River; and
 - 3.16.4 be appropriately considered by agencies and bodies with administrative responsibilities over the Whanganui River so far as is relevant to their functions.
- 3.17 While the River Values will be a high level articulation of the values of the Whanganui River, the Whole of River Strategy would have more of a practical application with a focus on bringing the iwi, key administrative agencies and stakeholders together to promote an integrated approach to the River.

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- 3.18 Through negotiated arrangements such as joint management agreements and a multi agency relationship agreement with the Crown, Whanganui Iwi would be given a clear role alongside the Crown, local government and catchment community in planning, regulation and management processes in relation to the Whanganui River.

4 NEGOTIATION PROCESS

- 4.1 Following the signing of this Record of Understanding, the Crown and Whanganui Iwi will enter into good faith negotiations to settle the historical Treaty of Waitangi claims of Whanganui Iwi in relation to the Whanganui River on the basis set out in this Record of Understanding.
- 4.2 The purpose of the negotiations will be for the Crown and Whanganui Iwi to work towards agreement on:
- 4.2.1 a Deed of Settlement to settle the historical Treaty of Waitangi claims of Whanganui Iwi in relation to the Whanganui River; and
 - 4.2.2 settlement legislation to give effect to that Deed of Settlement.
- 4.3 The parties accept that they will adopt a flexible approach to the negotiations reflecting that:
- 4.3.1 the nature of the framework set out in Part 3 of this Record of Understanding may be modified as the negotiations progress; and
 - 4.3.2 new issues may arise in the negotiations that need to be addressed.
- 4.4 The parties agree that the framework in Part 3 of this Record of Understanding is based on an integrated, inclusive and catchment-wide approach to the Whanganui River with the understanding that there will be one set of arrangements for the Whanganui River. To this end:
- 4.4.1 as part of the negotiations, the parties will develop a process to provide for the input and interests of:
 - (a) local government; and
 - (b) relevant stakeholders;
 - 4.4.2 both Whanganui Iwi and the Crown will ensure that the arrangements provide appropriately for the interests of other iwi; and
 - 4.4.3 Whanganui Iwi will initiate the engagement with the other iwi with interests in the Whanganui River catchment.

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- 4.5 The parties acknowledge that issues still to be addressed in these negotiations in relation to the Whanganui River include:
- 4.5.1 an historical account, apologies and acknowledgements and other relevant cultural redress; and
 - 4.5.2 financial redress.

5 OTHER MATTERS

- 5.1 This Record of Understanding:
- 5.1.1 is entered into on a without prejudice basis;
 - 5.1.2 in particular, may not be used as evidence in proceedings before, or presented to, the Waitangi Tribunal, any court, or any other judicial body or tribunal;
 - 5.1.3 is non-binding; and
 - 5.1.4 does not create legal relations.
- 5.2 Without limiting clause 5.1, Whanganui Iwi and the Crown acknowledge that, during the negotiations process, each party expects the other to comply with the terms of this Record of Understanding.
- 5.3 The entry into a Deed of Settlement by both parties would be subject to:
- 5.3.1 Whanganui Iwi agreeing to the settlement and the proposed redress; and
 - 5.3.2 Cabinet agreeing to the settlement and the proposed redress.

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SIGNED on 13 October 2011

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

Brendon Te Tiwha Puketapu
Chairperson
Whanganui River Maori Trust Board

in the presence of:

WITNESS

Name:

Occupation:

Address:

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

The Minister for Treaty of Waitangi
Negotiations

Hon Christopher Finlayson

The Minister for the Environment

Hon Nick Smith

in the presence of:

WITNESS

Name:

Occupation:

Address: