

MEMORANDUM OF UNDERSTANDING

BETWEEN

WHANGANUI IWI

AND

NGĀTI MANIAPOTO

**THE EFFECT AND IMPLEMENTATION OF
TE PĀ AUROA O TE AWA TUPUA**

15 August 2017

He oranga ngākau

He pikinga waiora

Ngā Kupu Whakataki - Preamble

1. There is a close and longstanding relationship of whanaungatanga between Whanganui Iwi and Ngāti Maniapoto.
2. Both Whanganui Iwi and Ngāti Maniapoto (together with certain other iwi) have customary rights and interests, and corresponding responsibilities, within the catchment of the Whanganui River and its tributaries. In some areas of the catchment those rights and interests are exclusive and in other areas they are shared.
3. This relationship and acknowledgment of interests was expressly recognised by the Chairpersons of the Maniapoto Māori Trust Board and the Whanganui River Māori Trust Board, Tiwha Bell and the late Sir Archie Te Atawhai Tairaoa, when they met, together with other iwi leaders, in the late 1990s/early 2000s. At that time, the iwi leaders of both Whanganui Iwi and Ngāti Maniapoto showed great prescience in anticipating the challenges and tensions that might arise through the Crown's Treaty settlement processes.
4. Tiwha Bell and the late Sir Archie Tairaoa were committed to ensure that such future processes would not undermine the relationship between Whanganui Iwi and Ngāti Maniapoto and they agreed that they would:
 - (a) respect the mana, rights and interests of each iwi within their own rohe;
 - (b) acknowledge their shared history and the mutual interests of both iwi in the health and wellbeing of the Whanganui River as an indivisible whole, Te Awa Tupua;
 - (c) not seek to advance claims within the exclusive areas of each iwi's rohe;
 - (d) not support the transfer of any land within the exclusive area of one iwi's rohe to another iwi; and
 - (e) work together and support one another in advancing the settlement of the claims of Whanganui Iwi and Ngāti Maniapoto with the Crown and the future the health and wellbeing of Te Awa Tupua.
5. On 5 August 2014, the Whanganui River Deed of Settlement, *Ruruku Whakatupua*¹, was signed between the Crown and Whanganui Iwi in settlement of the historical claims of Whanganui Iwi in relation to the Whanganui River. The agreements in

¹ Ruruku Whakatupua comprises two documents; *Ruruku Whakatupua – Te Mana o Te Awa Tupua* and *Ruruku Whakatupua – Te Mana o Te Iwi o Whanganui*. References in this memorandum of understanding to provisions in Ruruku Whakatupua are references to Ruruku Whakatupua – Te Mana o Te Awa Tupua.

Ruruku Whakatupua have been given legislative effect through the Te Awa Tupua (Whanganui River Claims Settlement) Act (**the Act**), which received Royal Assent on 20 March 2017 and came into force on 21 March 2017.

6. Ruruku Whakatupua and the Act provide for the establishment a new legal framework for the Whanganui River, *Te Pā Auroa o Te Awa Tupua* (**Te Pā Auroa**). The intention of Te Pā Auroa is, among other things, to:
 - (a) legally recognise Te Awa Tupua as an indivisible and living whole, comprising the Whanganui River and its tributaries from the mountains to the sea, incorporating all its physical and metaphysical elements;
 - (b) require decision-makers and others to uphold *Tupua Te Kawa*, the statement of intrinsic values directed to the health and wellbeing of Te Awa Tupua and recognition of the inseparable connection between the Whanganui River and the iwi of the River;
 - (c) establish the position of *Te Pou Tupua*, jointly appointed by the Iwi of the Whanganui River and the Crown to act as the human face of Te Awa Tupua and uphold its legal status and values;
 - (d) provide a framework which supports, and does not usurp, the mana, interests and exercise of mana motuhake and tiaki rights and responsibilities by the iwi and hapū of the Whanganui River; and
 - (e) ensure, through the riverbed vesting provisions and without prejudice to any claims of iwi customary ownership, that there will be no residual Crown ownership in the bed of the Whanganui River or its tributaries.
7. Clause 9.9.5 of Ruruku Whakatupua expressly records that nothing in Ruruku Whakatupua usurps the mana of, or the exercise of customary rights and responsibilities by, any iwi or hapū with interests in the Whanganui River. Section 6 of the Act requires the provisions of the Act to be interpreted in a manner that best furthers the agreements expressed in Ruruku Whakatupua.
8. In relation to the riverbed vesting provisions, Ruruku Whakatupua and the Act are deliberate in not identifying any specific areas of riverbed that are to be vested in Te Awa Tupua. Instead, Ruruku Whakatupua and the Act refer to the categories of Crown ownership that may exist within the catchment. The ownership of any specific area of bed is a matter of law and fact, and any Crown-assumed ownership is contested by Whanganui Iwi and Ngāti Maniapoto. Rather, it remains open for that Crown ownership to be tested and for the customary ownership of iwi and hapū including Ngāti Maniapoto to be recognised (including through legislation as part of any Ngāti Maniapoto Treaty settlement).
9. Consistent with the longstanding understanding between the iwi of Whanganui and Ngāti Maniapoto and the agreement between Tiwha Bell and the late Sir Archie Te Atawhai Taiaroa, Whanganui Iwi does not seek, through *Te Pā Auroa o Te Awa Tupua* or otherwise, to usurp or adversely affect the mana or rights and interests of Ngāti Maniapoto and its hapū in respect of those parts of the Whanganui River and

its tributaries in which Ngāti Maniapoto has interests. Ngāti Maniapoto similarly does not wish to usurp or adversely affect the mana or rights and interests of Whanganui Iwi and its hapū.

10. The understandings and commitments recorded in this memorandum of understanding reflect the matters discussed and agreed in principle between representatives of Whanganui Iwi and Ngāti Maniapoto in March 2017 immediately prior to the enactment of the Act.
11. Through the understandings and commitments in this memorandum of understanding, Whanganui Iwi and Ngāti Maniapoto wish to:
 - (a) acknowledge and respect the close and longstanding relationship of whanaungatanga between them;
 - (b) recognise and uphold the mana and customary rights and interests of both Whanganui Iwi and Ngāti Maniapoto in relation to the Whanganui River;
 - (c) avoid any unintended consequences of the arrangements in Ruruku Whakatupua and the Act; and
 - (d) work together, in accordance with the principles of rangitiratanga, whanaungatanga, manaakitanga and kotahitanga, to ensure the future health and wellbeing of Te Awa Tupua and advance the environmental, social, cultural and economic health and wellbeing of both iwi.

Ngā Tāngata - Parties

12. This memorandum of understanding is entered into between Ngā Tāngata Tiaki o Whanganui on behalf of Whanganui Iwi and the Maniapoto Māori Trust Board on behalf of Ngāti Maniapoto.
13. In entering this memorandum of understanding, it is the intention of the Maniapoto Māori Trust Board and Ngā Tāngata Tiaki o Whanganui that the agreements and understandings contained in the memorandum will continue to apply to, and for the benefit of, any successor to the Maniapoto Māori Trust Board (such as a Ngāti Maniapoto post-settlement governance entity) that may be established as a consequence of the future settlement of the historical Treaty claims of Ngāti Maniapoto.

Te Koronga - Purpose

14. Having regard to the above context, the purpose of this memorandum of understanding is to:
 - (a) record the mutual understandings and commitments of Whanganui Iwi and Ngāti Maniapoto insofar as they relate to the Whanganui River and its tributaries;

- (b) recognise and uphold the commitment made in clause 9.9.5 of Ruruku Whakatupua that nothing in Ruruku Whakatupua usurps the mana of, or the exercise of customary rights and responsibilities by, any iwi or hapū with interests in the Whanganui River;
- (c) confirm that the vesting of any Crown-owned riverbed in Te Awa Tupua:
 - (i) does not prejudice the rights and interests of Ngāti Maniapoto; and
 - (ii) does not preclude the Crown from recognising, and give effect through legislation to, the customary ownership of Ngāti Maniapoto and its hapū in relation to the bed of the Whanganui River and its tributaries within the rohe of Ngāti Maniapoto;
- (d) confirm the support of Ngā Tāngata o Whanganui for the recognition of the customary ownership of Ngāti Maniapoto and its hapū in relation to the bed of the Whanganui River and its tributaries within areas in which Ngāti Maniapoto and its hapū have exclusive interests;
- (e) confirm the support of Ngāti Maniapoto, on the basis of the understandings and agreements in this memorandum of understanding, for the Te Pā Auroa arrangements and the enactment of the Act;
- (f) confirm the commitment of Whanganui Iwi and Ngāti Maniapoto to work together, in accordance with the principles of rangitiratanga, whanaungatanga, manaakitanga and kotahitanga, in relation to the implementation of Te Pā Auroa; and
- (g) jointly seek the express acknowledgement of the Crown that:
 - (i) Crown presumptions of ownership in relation to any part of the Whanganui River and its tributaries are contested;
 - (ii) recognition of the customary rights, interests and ownership of Ngāti Maniapoto in those parts of the Whanganui River and its tributaries within the rohe of Ngāti Maniapoto is within the scope of Ngāti Maniapoto's Treaty settlement negotiations; and
 - (iii) nothing in Ruruku Whakatupua or the Act precludes the recognition of Ngāti Maniapoto ownership in respect of those parts of the Whanganui River and its tributaries within the rohe of Ngāti Maniapoto.

Kia Matara Rawa – Vesting Parts of the Riverbed in Te Awa Tupua

15. The Crown has made various assumptions of ownership and control over time in respect of parts of the bed of the Whanganui River and its tributaries, including, but not limited to, assumptions based on the Coal-mines Act Amendment Act 1903, navigability, and the common law principle of *ad medium filum aquae*.

16. As already noted, Whanganui Iwi and Ngāti Maniapoto both dispute these assumptions regarding Crown ownership and consider that the question of customary or aboriginal title in respect of the Whanganui River and its tributaries remains a live issue for the iwi and hapū with relevant interests (albeit that for Whanganui Iwi, any historical Treaty claims in relation to the River are to be settled).
17. As noted, the intent of the Te Pā Auroa framework is – among other things – to recognise and uphold the relationship between the iwi and hapū of the Whanganui River and Te Awa Tupua and support the exercise of customary rights and responsibilities by those iwi and hapū in respect of the Whanganui River.
18. With the background outlined above squarely in mind, Whanganui Iwi confirms that the vesting provisions in Ruruku Whakatupua and the Act were negotiated and agreed on the understanding that:
 - (a) the Crown does not know the precise parts of the bed of the Whanganui River and its tributaries that it owns or assumes to own;
 - (b) Ruruku Whakatupua and the Act do not define the “Crown-owned bed” of the Whanganui River that is to be vested with reference to any identified stretches of riverbed (rather, they simply refer to “*the parts of the bed of the River ... owned by the Crown*” under various statutes);
 - (c) the determination of the ownership of any part of the bed of the Whanganui River or its tributaries would require a detailed investigation of title, including consideration of any claims of iwi and/or hapū ownership or interests;
 - (d) an ownership investigation would be carried out if it became necessary for any landowner rights or functions to be exercised in relation to a particular part of the bed of the Whanganui River or its tributaries and there was uncertainty regarding the ownership of that part of the bed, or if there was a claim to ownership to part of the bed by another party (including any iwi or hapū with interests in the Whanganui River);
 - (e) the vesting provisions in Ruruku Whakatupua and the Act are intended to ensure that, if any part of the bed of the Whanganui River or its tributaries is ultimately determined or agreed to be owned by the Crown, that part of the bed will no longer be in Crown ownership, but will instead be owned by Te Awa Tupua;
 - (f) the claims of iwi other than Whanganui Iwi in relation to the Whanganui River and its tributaries are not being settled and are preserved;
 - (g) the vesting provisions do not extinguish or limit any extant aboriginal title or customary rights of any iwi or hapū with interests in the Whanganui River;
 - (h) the vesting provisions do not usurp the mana of, or the exercise of customary rights and responsibilities by, any iwi or hapū with interests in the Whanganui River;

- (i) it remains open for:
 - (i) iwi and hapū to make claims of ownership (adverse to the Crown) in relation to the bed of the Whanganui River and its tributaries; and
 - (ii) the Crown to provide settlement redress in relation to the Whanganui River to other iwi and hapū (subject to consideration of any overlapping claims and interests); and
 - (iii) for the Crown and the Courts to recognise the ownership of iwi and hapū in relation to the bed of the Whanganui River and its tributaries (subject to consideration of any overlapping claims and interests).
19. Whanganui Iwi confirms its support for the appropriate recognition (through Ngāti Maniapoto's settlement legislation if required) of the customary ownership of Ngāti Maniapoto and its hapū in relation to the bed of the Whanganui River and its tributaries within areas in which Ngāti Maniapoto and its hapū have exclusive interests (and would also support similar claims by other iwi and hapū in other areas of exclusive interest).
20. If any part of the bed of the Whanganui River and its tributaries is determined to be owned by the Crown (and no iwi/hapū claims to ownership are made and upheld/recognised), that part of the bed will be owned by Te Awa Tupua as a consequence of the Act and any landowner functions will be exercised by Te Awa Tupua. In that event, in respect of any landowner issues that relate to a particular part of the River or its tributaries:
- (a) Te Pou Tupua will be required to engage with the iwi and hapū with interests in that part of Whanganui River or its tributaries;
 - (b) a representative of those iwi and hapū with interests in that part of the Whanganui River or its tributaries will be appointed to Te Karewao, the advisory committee to Te Pou Tupua;
 - (c) Te Pou Tupua must uphold Tupua Te Kawa, which includes the inalienable connection of iwi and hapū to Te Awa Tupua; and
 - (d) Te Pou Tupua will be required to give appropriate weight to any other statutory obligations (which could include matters arising under the Treaty settlements of iwi and hapū) relevant to that part of the Whanganui River or its tributaries.

Te Kirimana – The Agreement

21. Consistent with the above, Whanganui Iwi (through Ngā Tāngata Tiaki o Whanganui) and Ngāti Maniapoto (through the Maniapoto Māori Trust Board) agree:
- (a) in relation to the vesting provisions in the Act:

- (i) there has been no independent determination of Crown ownership in respect of the beds of the Whanganui River and its tributaries within the rohe of Ngāti Maniapoto;
- (ii) the basis of any assumed Crown ownership in respect of the bed of the Whanganui River and its tributaries within the rohe of Ngāti Maniapoto is contested;
- (iii) the vesting provisions of the Act are not intended to affect or limit the rights and interests of Ngāti Maniapoto and its hapū in relation to the Whanganui River and its tributaries, including:
 - a. Treaty claims;
 - b. aboriginal title or customary rights; and
 - c. the exercise of customary rights and responsibilities.
- (iv) Ngāti Maniapoto and its hapū are entitled to:
 - a. pursue Treaty claims and settlement redress in relation to the Whanganui River and its tributaries within the rohe of Ngāti Maniapoto; and
 - b. make claims of ownership (whether founded on aboriginal title, customary law or otherwise) in relation to the bed of the Whanganui River and its tributaries within the rohe of Ngāti Maniapoto;
- (v) it remains open for the Crown (subject to engagement/negotiation with Ngāti Maniapoto and consideration of any overlapping claims and interests) to:
 - a. provide settlement redress to Ngāti Maniapoto and its hapū in relation to the Whanganui River and its tributaries within the rohe of Ngāti Maniapoto; and
 - b. recognise, and give effect through legislation to, the customary ownership of Ngāti Maniapoto and its hapū in relation to the bed of the Whanganui River and its tributaries within the rohe of Ngāti Maniapoto;² and
- (vi) the vesting provisions of the Act do not preclude the Crown from recognising, and giving effect through legislation to, the customary ownership of Ngāti Maniapoto and its hapū in relation to the bed of the

² This would not be effected by a vesting from the Crown to Ngāti Maniapoto (as that would necessitate a legal determination of Crown ownership in the first instance, which is contested). Rather, it would involve the Crown agreeing (following discussions with Ngāti Maniapoto) that it is appropriate to recognise the customary rights and interests of Ngāti Maniapoto to certain parts of the bed of the Whanganui River and its tributaries and then declaring, through legislation, that those parts of the bed are owned by Ngāti Maniapoto.

Whanganui River and its tributaries within the rohe of Ngāti Maniapoto.³


- (b) in relation to the implementation of Te Pā Auroa:
- (i) Ngā Tāngata Tiaki o Whanganui and the Maniapoto Māori Trust Board will work together, in accordance with the principles of rangitiratanga, whanaungatanga, manaakitanga and kotahitanga, in relation to the implementation of Te Pā Auroa;
 - (ii) Ngā Tāngata o Whanganui will support the recognition of the customary ownership of Ngāti Maniapoto and its hapū in relation to the bed of the Whanganui River and its tributaries within areas in which Ngāti Maniapoto and its hapū have exclusive interests (including through legislation in the context of the Ngāti Maniapoto Treaty settlement if required);
 - (iii) Ngā Tāngata o Whanganui will, in the course of the discussion and agreement that is required among iwi with interests in the Whanganui River regarding appointments to Te Kōpuka, support a Ngāti Maniapoto appointment to Te Kōpuka;
 - (iv) Ngā Tāngata o Whanganui will:
 - a. support a Ngāti Maniapoto appointment to Te Karewao where Te Karewao is considering matters within the rohe of Ngāti Maniapoto;
 - b. support Ngāti Maniapoto seeking support (financial and in kind) from the Crown to give effect to kaitiakitanga within the rohe of Ngāti Maniapoto rohe as it applies to Te Awa Tupua; and
 - c. investigate and agree on the content and timing of a Whanganui Iwi/Te Pou Tupua/Ngāti Maniapoto roadshow to socialise Te Awa Tupua within Ngāti Maniapoto.
 - (v) the Maniapoto Māori Trust Board, on the basis of the understandings and agreements in this memorandum of understanding, supports the Te Pā Auroa arrangements and the enactment of the Act; and
- (c) in relation to the position of the Crown:
- (i) in March 2017 Ngā Tāngata Tiaki o Whanganui and the Maniapoto Māori Trust Board jointly requested that the Crown, through the Minister for Treaty of Waitangi Negotiations, provides a written commitment to Ngāti Maniapoto that:

³ As noted above, this would be a declaration of Ngāti Maniapoto ownership through legislation, not a vesting of Crown land in Ngāti Maniapoto, so it is not precluded by the Te Awa Tupua vesting provisions in the Act.

- a. the Crown acknowledges that Crown presumptions of ownership in relation to any part of the Whanganui River and its tributaries are contested;
 - b. recognition of the customary rights, interests and ownership of Ngāti Maniapoto in those parts of the Whanganui River and its tributaries within the rohe of Ngāti Maniapoto is within the scope of Ngāti Maniapoto's Treaty settlement negotiations; and
 - c. nothing in Ruruku Whakatupua or the Act precludes the recognition of Ngāti Maniapoto ownership in respect of those parts of the Whanganui River and its tributaries within the rohe of Ngāti Maniapoto; and
- (ii) in March 2017 Ngā Tāngata Tiaki o Whanganui and the Maniapoto Māori Trust Board jointly requested that the Crown, through the Minister for Treaty of Waitangi Negotiations, provides appropriate acknowledgement of the agreements in this memorandum of understanding in the Minister's speech to the House at the Third Reading of the Te Awa Tupua (Whanganui River Claims Settlement) Bill on 15 March 2017.

Ngā Tuhinga Ingoa - Signatories

Signed this 15th day of August 2017



Gerrard Albert
Chairperson
Ngā Tāngata Tiaki o Whanganui



R. Tiwha Bell
Chairperson
Maniapoto Māori Trust Board