

WHANGANUI IWI

and

THE CROWN

**RURUKU WHAKATUPUA
TE MANA O TE IWI O WHANGANUI**

[DATE]

*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 MANA O TE IWI O WHANGANUI

*He kupu tēnei kia kore ai e wareware, he ture tēnei
e herehere ana i te Karauna ki te whakatinanatanga
i a Ko Tupua Kawa me Te Mana o Te Iwi.*

*This document, Ruruku Whakatupua - Te Mana o Te Iwi o Whanganui,
reflects the commitment of the Crown to address the grievances of
Whanganui Iwi in relation to the Whanganui River and, in so doing,
to uphold the mana of Whanganui Iwi and their relationship with
Te Awa Tupua.*

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RURUKU WHAKATUPUA - DEED OF SETTLEMENT

THIS DEED is made between

WHANGANUI IWI

and

THE CROWN

Ruruku Whakatupua is the deed of settlement between the Whanganui Iwi and the Crown comprising:

- (a) this document, Ruruku Whakatupua - Te Mana o Te Iwi o Whanganui; and
- (b) Ruruku Whakatupua - Te Mana o Te Awa Tupua.

The purpose of Ruruku Whakatupua is to:

- (a) provide a new framework for Te Awa Tupua; and
- (b) settle the historical Treaty of Waitangi claims of Whanganui Iwi in relation to the Whanganui River.

1 MATUA TE PŌ, MATUA TE AO

From Darkness to Light - the Journey to Settlement

WHANGANUI IWI AND THE WHANGANUI RIVER

- 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.

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

- 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.

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

1: MATUA TE PŌ, MATUA TE AO

- 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.

IMPORTANCE OF THE 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 Whanganui Iwi from time immemorial.
- 1.5 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 kāinga and pā sites, urupā and other wāhi tapu throughout the length of the River and there remain 15 active marae on the River today.
- 1.6 The Whanganui River is also 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.
- 1.7 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 Taupō and on into the Waikato River contributing to the generation of approximately 5% of New Zealand's electricity.

WHANGANUI RIVER CLAIMS

- 1.8 Whanganui Iwi have maintained consistently that they possessed, and exercised rights and responsibilities in relation to, the Whanganui River in accordance with their tikanga and that their rights and interests have never been relinquished willingly.
- 1.9 The Whanganui Iwi claim has been persistently maintained since the first petitions on behalf of Whanganui Iwi to Parliament in the 19th Century in relation to the destruction of pā tuna to enable the activities of steamers on the River. Numerous further petitions and other submissions followed over the next 100 years.
- 1.10 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.
- 1.11 Legal proceedings were also pursued by Whanganui Iwi in connection with the operation of the Tongariro Power Scheme, which was established in the late 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: MATUA TE PŌ, MATUA TE AO

- 1.12 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 that acknowledges and reflects their respective interests in the health and wellbeing of the Whanganui River.

WAITANGI TRIBUNAL

- 1.13 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. Other River-related claims have also been made by groups within Whanganui Iwi.
- 1.14 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.
- 1.15 Among other things, the Waitangi Tribunal found that:
- 1.15.1 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;
 - 1.15.2 Whanganui Iwi possessed, and held rangatiratanga over, the Whanganui River and never sold those interests;
 - 1.15.3 expropriation of the bed of the Whanganui River was effected by the Coal-mines Act Amendment Act 1903, which effectively vested the bed of all navigable rivers, including the Whanganui River, in the Crown without consultation or compensation;
 - 1.15.4 the Crown vested authority and control of the Whanganui River in local authorities through the Resource Management Act 1991;
 - 1.15.5 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
 - 1.15.6 Whanganui Iwi continue to be prejudiced as a result of the Crown's actions.

NEGOTIATIONS

- 1.16 Under the Whanganui River Māori Trust Board Act 1988 the Whanganui River Māori Trust Board has the statutory mandate to negotiate with the Crown for the settlement of the claims of Whanganui Iwi in respect of the Whanganui River.
- 1.17 The negotiations with the Crown in relation to the claims of Whanganui Iwi in respect of the Whanganui River proceeded on the same inclusive basis as the Wai 167 claim to the Waitangi Tribunal with accountability to all Whanganui Iwi through Te Runanga o Te Awa Tupua.

1: MATUA TE PŌ, MATUA TE AO

- 1.18 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.
- 1.19 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:
- 1.19.1 **Te Awa Tupua mai i te Kāhui Maunga ki Tangaroa** - an integrated, indivisible view of Te Awa Tupua in both biophysical and metaphysical terms from the mountains to the sea; and
- 1.19.2 **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.
- 1.20 Through their subsequent negotiations, Whanganui Iwi and the Crown:
- 1.20.1 by a Record of Understanding dated 13 October 2011 agreed to:
- (a) enter formal negotiations to settle the historical Treaty of Waitangi claims of Whanganui Iwi in relation to the Whanganui River; and
- (b) a framework to form the basis of those negotiations;
- 1.20.2 by an agreement entitled Tūtohu Whakatupua dated 30 August 2012 agreed the key elements of the Te Awa Tupua framework; and
- 1.20.3 since the Record of Understanding and Tūtohu Whakatupua, have:
- (a) had extensive negotiations conducted in good faith; and
- (b) negotiated and initialled a deed of settlement.
- 1.21 Consistent with the principles that have underpinned Whanganui Iwi's approach to the settlement, the framework for the settlement has two primary elements:
- 1.21.1 **Te Mana o Te Awa** - recognising, promoting and protecting the health and wellbeing of the River and its status as Te Awa Tupua; and
- 1.21.2 **Te Mana o Te Iwi** - recognising and providing for the mana and relationship of the Whanganui Iwi in respect of the River.
- 1.22 These two elements are reflected in this deed of settlement, Ruruku Whakatupua, which comprises two documents:
- 1.22.1 Ruruku Whakatupua - Te Mana o Te Awa Tupua; and
- 1.22.2 Ruruku Whakatupua - Te Mana o Te Iwi o Whanganui.

1: MATUA TE PŌ, MATUA TE AO

RATIFICATION AND APPROVAL

- 1.23 Whanganui Iwi have, since the initialling of the deed of settlement, by a majority of [**percentage**], ratified this deed and approved its signing on their behalf.
- 1.24 Each majority referred to in clause 1.23 is of valid votes cast in a ballot by eligible members of Whanganui Iwi.
- 1.25 The Crown is satisfied with the ratification and approvals of Whanganui Iwi referred to in clause 1.23.

AGREEMENT

- 1.26 Therefore, the parties:
- 1.26.1 in a spirit of co-operation and compromise wish to enter, in good faith, into this deed, Ruruku Whakatupua, in settlement of the historical claims of Whanganui Iwi in relation to the Whanganui River; and
- 1.26.2 agree and acknowledge as provided in this deed.

2 HE PŪKENGĀ WAI, HE NOHOANGA TĀNGATA, HE NOHOANGA TĀNGATA, HE PUTANGA KŌRERO

Iwi Statement and Historical Account

*He pūkenga wai, he nohoanga tāngata,
he nohoanga tāngata, he putanga kōrero*

*Where there is a body of water, people settle,
and where people settle, histories unfold*

IWI STATEMENT

- 2.1 Clauses 2.2 to 2.25 contain a narrative by Whanganui Iwi regarding the origins of Whanganui Iwi and the significance of the Whanganui River to Whanganui Iwi.

HE RIPO, HE TIPUA, HE KĀINGA

AT EACH RAPID, KAITIAKI AND PEOPLE DWELL

- 2.2 Mā te tuinga kōrero nei e ea ai te uiui a te rāwaho - “Whanganui iwi, Whanganui awa - ko wai koe?” Koianeī ngā mānga o te kupu i rewa mai i ngā ngutu kōwetewete o Te Kāhui Rongo, ko rātau Te Ranga Tairunga nō roto whare wānanga, rātau hoki, ngā kōkō nō runga i ngā marae maha o te Awa, mai i Te Puru-ki-Tuhua ki Te Matapihi.

The purpose of this korero is to confirm the origins of Whanganui Iwi and the Whanganui River. This narrative is drawn from the knowledge passed from Te Kāhui Rongo, whare wānanga and speakers of the marae of the River, from Te Puru-ki-Tuhua to Te Matapihi.

- 2.3 Ko tā ngā matauranga o te Iwi, ko te tuku whakapapa, ko te pakimaero, ko te whakataukī, ko te whakataukī, ko te ngeri, ko te waiata me te kīrehe ngā whakaaritanga o te mātauranga Māori. Nā tēnā, kua āta rarangahia tēnei taurawhiri kōrero i runga i te ia o hēnei kātū kōrero tuku iho.

The learned tribal elders have always maintained that the recitation of genealogy, stories, proverbs, sayings, songs and tribal expressions are the true manifestations of mātauranga Māori. This kōrero has been carefully compiled from those tribal oral traditions.

TE ŌROKOTĪMATANGA O TE AWA O WHANGANUI

THE ORIGINS OF THE WHANGANUI RIVER

- 2.4 Ko Tahuārangī te waka o Maui-mua
Ko Rangitukutuku te aho
Ko Pikimairawea te matau
Ko Hāhā-te-whenua te ika kei rō wai.

2: HE PŪKENGĀ WAI, HE NOHOANGA TĀNGATA, HE NOHOANGA TĀNGATA, HE PUTANGA KŌRERO

*Tahuārangī is the waka
Rangitukutuku is the fishing line
Pikimairawea is the hook
Hāhā-te-whenua was the name of the fish while it was still in the water.*

- 2.5 Ko te ia o te pakimaero nei e pā ana ki te hīrautanga ake o Te Ika-a-Māui, ka ea ai te urupounamu me te kī atu “i konei hōku tūpuna mai te whānautanga ake o te motu nei i te moana”.

This korero relates the hauling up of the Great Fish of Maui. It is used to show that the speaker's ancestors have been here since the hauling up of the North Island from the ocean. The Whanganui River can trace its origins to this story.

- 2.6 E ai ki ngā korero, haruru ana te whenua, haruru ana te moana i te hirautanga mai o Te Ika a Maui. Ina, ka pātuki atu ngā tuākana o Maui-tikitiki ki a Ranginui e tū iho nei, kia tuku mai he mana ake ki tēnā o te Ika nunui, o te ika roroa. Tahī rā, ka whānau mai te mātāmua o Te Kāhui Maunga, ko Matua te Mana, arā, ko Ruapehu maunga. I kite atu i a Ranginui te mokemoketanga i roto i te ngākau a Matua te Mana. Ka mātūruturu mai ngā roimata e rua i a ia ki ngā rekereke o Matua te Mana. Inā te ōrokoīmatanga o te awa o Whanganui.

According to mythology, land and the water resounded when the fish broke the surface of the sea. So the elder brothers of Maui-tikitiki invoked Ranginui to dispatch a power greater than that of the broad and extensive fish of Maui.” Thus, the first of the Kāhui Maunga came into being, Matua te Mana - now known as Mount Ruapehu. Ranginui saw that Matua te Mana's heart was filled with loneliness. Two teardrops from Ranginui fell at the feet of Matua-te-Mana. One of these teardrops became the Whanganui River.

- 2.7 Tū mokemoke roa ko Matua te Mana, kātahi ka pātuki a ia ki a Ranginui kia tuku mai he hoa mōna. Ka whānau mai ai: Ko Matua te Toa; ko Matua te Tapu; ko Matua te Pononga; ko Matua te Hine rātau ko Matua te Takakau. Tēnei te ōroko hanga mai o Te Kāhui Maunga.

"Matua te Mana stood alone for years. In time, he asked Ranginui to provide him with a companion. Thus, over time came into being: Matua te Tapu (Taranaki); Matua te Toa (Tongariro); Matua te Pononga (Ngauruhoe); Matua te Hine (Pihanga) and Matua te Takakau (Rauhoto). This is Te Kāhui Maunga."

- 2.8 Nō mua i te taenga mai o ngā waka tūpuna i Hawaiki Rangiatea, ko 'Kāhui' te karangatanga matua mō ngā iwi taketake o Aotearoa. Noho tahi te kāhui tāngata me te kāhui tipua i roto i te aiotanganui o te kawa tapu, mai uta ki tai. Koia, Te Kāhui Maunga Te Kāhui Rere, Te Kāhui Kapua, Te Kāhui Tara, anānaka, anānaka.

Before the arrival of the ancestral canoes from Hawaiki Rangiatea, 'Kāhui' was the common term of reference for the ancient people already resident in Aotearoa. The ancient ones, together with the ancient guardians dwelt as one in harmony, from the interior to the coast. And so we have Te Kāhui Maunga Te Kāhui Rere, Te Kāhui Kapua, Te Kāhui Tara, and many others.

TE ŌROKOTĪMATANGA O TE IWI O WHANGANUI

THE ORIGINS OF WHANGANUI IWI

Ruatipua and Paerangi

- 2.9 Ki te mārama te tangata nō wai te mana o te awa o Whanganui, me hoki ia ki tōna mātāpuna kia kite ai ōna taringa i te pao tawhito:

*“Pūhaina Tongariro
E rere nei Whanganui
Ko te wai inu tēnā,
O Ruatipua i mua e”.*

To understand who maintains the mana of the Whanganui River, one must return to its source to hear the ancient verse:

*Welling out of Tongariro
The Whanganui flows
As a font of life
For Ruatipua in former times*

- 2.10 Tokorua ngā pūtake o Whanganui iwi, ko Ruatipua rāua ko Paerangi-i-te-wharetoka. I konei ēnei tūpuna nō mua i te taenga mai o ngā waka tūpuna i Hawaiki Rangiātea.

There are two primary ancestors of Whanganui Iwi, Ruatipua and Paerangi-i-te-wharetoka. These ancestors were here prior to the arrival of the Great Migration Fleet from Hawaiki Rangiātea.

- 2.11 Kei te tonga o Ruapehu maunga te takiwā i noho ai a Paerangi. Ko Ruapehu te wharetoka. He nui ngā ingoa nā Paerangi i tapaina ki runga i te whenua nei. Ina, he tika rawa te kōrero ko Paerangi he pūtake o tēnei matua iwi o Whanganui.

Paerangi lived at the southern slopes of Mount Ruapehu, the House of Stone. Paerangi named many places and landmarks in the [Whanganui] region. This confirms Paerangi as a founding ancestor of the Whanganui tribe.

- 2.12 Ā, ko te mana o Ruatipua me ana uri e ū tonu ana pērā ki a Paerangi. Ko te tauira matua ko ngā ingoa taketake o te awa o Whanganui, inā ko Te Awanui-a-Rua, ko Te Wainui-a-Rua, ko rāua anō rāua. Ko hētehi atu o ngā awa, tēnā ko Te Waitahupārae me Te Awa-o-Tarawera, he uri tōtika hēnei nā Ruatipua.

The mana of Ruatipua and his descendants, like that of Paerangi, is also etched in our tribal memory and continues to this day. The primary example of this is the original name of the Whanganui River - The Great Waters of Ruatipua. Some other rivers, such as Te Waitahuparae and Te Awa-o-Tarawera, are direct descendants of Ruatipua.

Kupe and Kuramarotini

- 2.13 Ko Matahourua te waka
Ko Kupe te tangata.

*Matahourua is the waka
Kupe is the leader*

2: HE PŪKENGĀ WAI, HE NOHOANGA TĀNGATA, HE NOHOANGA TĀNGATA, HE PUTANGA KŌRERO

2.14 Pūrea ngā hau o te ngutu awa kei runga i te tauihu o Matahourua waka, ka huaina te ingoa ki te wāhi rā, ko Te Kaihau a Kupe. Ka tere whakaputa a Kupe i te pūwaha o Whanganui ki Kākata, ka tukuna atu e ia hōna kaitiaki ki uta, kimi atu ai he whenua mōna. Ko Arai-te-uru rāua ko Niwa ngā ingoa o ngā kaitiaki nei. I huri rāua hei mokomoko nui. Nā te taenga atu ki runga i te hiwi o Mairehau, i kite atu rāua i te auahi e puta ana i ngā ahi kā o te iwi o Paerangi. Nā rāua te whakatauaākī kōrero ki a Kupe: "Kua kā kē ngā ahi". Nā tēnā, ka huaina te kīrehe - "Te Ahikā roa o Paerangi-i-te-wharetoka".

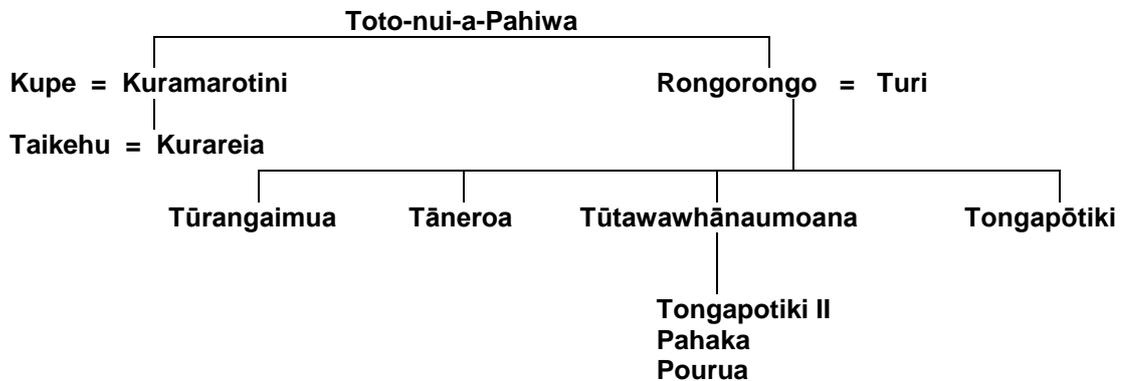
The famous navigator, Kupe, entered the mouth of the Whanganui River on his waka, Matahourua. This visit is remembered with the naming of that area as Te Kaihau a Kupe. As Kupe voyaged up river to Kākata, he sent his guardians inland, to seek suitable lands for occupation. The names of these guardians are Arai te uru and Niwa. They transformed themselves into giant reptiles. When they arrived upon the ridge Mairehau, they observed smoke from the ancient fires of the descendants of Paerangi. They returned informing Kupe of what they saw, resulting in the tribal expression "the long burning occupation fires of Paerangi-i-te-wharetoka."

Te Taenga mai o Aotea Waka

The Arrival of Aotea Canoe

2.15 Ko Aotea te waka
Ko Turi te tangata.

*Aotea is the canoe
Turi is the leader.*



2.16 Ko hēnei ngā tamariki a Turi rāua ko Rongorongo i noho ki te takiwā o Whenuakura me Pātea. Nā konei ka puta te tūhonotanga i waenga i ngā uri taketake o Whanganui Iwi me te iwi nō runga i a Aotea waka. Heoi anō, ānei kē ngā tuākana, arā, ko Tūrangaimua ka noho ki a Rātiti, te tamāhine a te tohunga ko Kauika. Ka puta mai ngā kāwai o ngā uri o Ngā Rauru Kītahi. Ko Tāneroa, te tamahine a Turi raua ko Rongorongo, ka noho ki Uhengapuanake, ka puta mai ko Ngāti Ruanui. Tēnā, ko ngā uri o Tūtawawhānaumoana rāua ko Tongapōtiki, koia ko ngā kāwai heke o roto o Whanganui Iwi.

2: HE PŪKENGĀ WAI, HE NOHOANGA TĀNGATA, HE NOHOANGA TĀNGATA, HE PUTANGA KŌRERO

The genealogical chart above outlines the children of Turi and Rongorongo that lived in the vicinity of Whenuakura and Patea. This outlines the connection between the original inhabitants of Whanganui and the descendants of those on Aotea waka. Tūrangaimua married Rātiti, the daughter of the tohunga of Aotea, Kauika. From this union comes Ngā Rauru Kītahi. Tāneroa, the daughter of Turi and Rongorongo, married Uhengapuanake, resulting in the people of Ngāti Ruanui. Finally, the descendants of Tūtawawhānaumoana and Tongapōtiki are Whanganui Iwi.

Pourua and Paerangi II

2.17 I te wā i a Pourua i hui tahi rāua ko Paerangi II ki te hiwiroa kei te taha hauāuru o Whanganui awa. Nā rāua te whenua i whakarohe i waenga i a rāua anō, i te mea, i a rāua te mana o te kupu. Ko te taha uru o te hiwinui mō ngā uri o Pourua, arā, ko Tahau rāua ko Tūtamaki. Ko te taha rāwhiti o te hiwinui mō ngā uri o Paerangi II. Na konei, ka kite te rereketanga o te Iwi o Whanganui me ona whanaunga.

Pourua met with Paerangi II on the main ridge to the west of the Whanganui River. They divided the lands between them as was their right. The western side of the main ridge was given to the descendants of Pourua, namely, Tahau and Tūtamaki. The eastern side of the main ridge was for the descendants of Paerangi II. This decision affirmed the distinction between Whanganui Iwi and its neighbouring relatives.

Tamakehu and Ruaka

2.18 Nā Pourua o runga ka heke tonu iho, arā, nā Tahau ka puta ko Rongomaitahaenui. Nā Rongomaitahaenui ka puta ko Urutamia. Nā Urutamia ka puta ko Kahupane. Ka noho a Kahupane ki a Te Aotoruiti, ka puta ko Tamakehu. Ka noho a Tamakehu ki a Ruaka ka puta mai ko Tamaūpoko, ko Hinengākau rātau ko Tūpoho. I te reanga o Hekenui Whakarake mā, nā rātau anō te awa i whakarohe i runga anō i te oati tawhito i whiria i Tieke, he rohe tupuna, arā, ko Hinengākau kei runga, ko Tamaūpoko kei waenga, ko Tūpoho kei raro. Ka whakahoutia te pepehā rongonui mō te awa: “He muka nā te taurawhiri a Hinengākau”. Ko te taurawhiri ā Hinengākau ki hōna tungāne, ko Tamaūpoko rāua ko Tūpoho. Ahakoa ngā karangatanga maha o ngā hapū kei ngā tahataha o Te Awanui-a-Rua, ko te awa te taura i hereherea ai ngā muka tāngata ki roto i te kotahitanga. Ko ngā whakapapa o Tamakehu ki ngā waka e waru, neke atu, he taonga hunahuna nō roto o te whare wānanga o Ūpokotauaki, kei Patiarero. Toitū ana tēnei poipoi kei waenga i te Kāhui Rongo o nāiane rangi.

From Tahau came Rongomaitahaenui. From Rongomaitahaenui came Urutamia. From Urutamia came Kahupane. Kahupane married Te Aotoruiti, giving forth Tamakehu. Tamakehu married Ruaka, giving forth Tamaupoko, Hinengakau and Tupoho. In Hekenui Whakarake’s time this whakapapa, confirmed generations before at Tieke, was revived and hence, Hinengākau in the north, Tamaūpoko in the centre and Tūpoho in the south. This gave rise to the famous tribal expression: “I am a thread of the interwoven rope of Hinengākau”.

The interwoven rope of Hinengākau and her brothers Tamaupoko and Tupoho is a metaphor for the Whanganui River. Despite the many references to the hapū residing on the banks of the Great Waterway of Rua, the river is the thread that binds the people in a united collective. The knowledge of the genealogical links of Tamakehu to the many waka, is a guarded treasure from the whare wānanga, Ūpokotauaki at Patiarero. This sacred recital survives amidst the Kāhui Rongo of today.

KO NGĀ TIPUA KEI RŌ WAI, HE TŪPUNA*THE KAITIAKI WITHIN THE WATERWAYS ARE OUR ANCESTORS*

- 2.19 E ai ki Te Kāhui Rongo, 'he ripo, he tipua, he kāinga'. Kua akona mātau ngā uri ko ngā tipua kei rō wai, kei runga maunga, kei whea rānei o te rohe, - he tūpuna. Nā tēnei whakapono, ka mārāma ngā uri o te awa ki te whakataukī - Kauaka e kōrero mō te Awa, kōrero ki te Awa.

According to the Kāhui Rongo: "At each rapid, kaitiaki and people dwell." We have been taught that the kaitiaki within the waterways, upon the mountains - wherever in the tribal domain they reside - are our ancestors. Therefore, we do not speak about the Awa, instead we commune directly with the Awa.

- 2.20 Mai i Te Wharetoka o Paerangi ki Te Toka Tū-moana o Tūtaramoana, he tokopae hoki ngā tipua kei tēnā, kei tēnā ripo o te awa. He tipua, he kaitiaki, he tūpuna. I te wā i tae mai a Turi me hōna iwi ki Te Wainui a Taiehu i runga i ngā kupu tohutohu a Kupe, i tae mai hoki ngā atua, ngā kaitiaki me ngā tipua nō Hawaiki Rangiatea. I haere whakautā a Tūtangatakino rāua ko Mokohikuwaru, noho ai hei kaitiaki mō te tai whakarunga o te awa nui. Ko Tuhaepō, he uri nā Kewa, te tohunga i ārahi i ngā tipua nei. Kei ngā tahataha o te awa he tūāhu, ka puta mai ai te ia kōrero "he ripo, he tipua." Ko te tikanga o te uruuru whenua kei Tokapihepihe, he whakaaritanga o te mana o ngā kaitiaki nei, taea tonutia i roto i hēnei rangi te kite atu, te rongō atu.

From Ruapehu to the ocean rock of Tūtaramoana, there are guardians at each rapid of the river. They are of the supernatural realm, they are guardians, they are our ancestors. When Turi and his people arrived at Te Wainui a Taiehu, after following the instructions of his brother-in-law Kupe, they also brought their deities, guardians and supernatural beings from Hawaiki Rangiatea. Tūtangatakino and Mokohikuwaru, deities that were brought on Aotea, journeyed inland, to reside as guardians for the upper river reaches. Tuhaepō, descendant of Kewa, was the tohunga that assisted these guardians. On the banks of the river are located sacred altars, physical manifestations of the tribal statement, "At each rapid, a guardian." Uruuru whenua is the ritual acknowledgement of the mana of these guardians and is still observed today. An example of this can be seen at Tokapihepihe.

- 2.21 Nō mua mai anō i te taenga mai o te Pākehā i noho tuturu ai ngā uri o ngā kāwai tipua me ngā kawai tūpuna nei ki tēnā pito, ki tēnā pito o te awa matua mai i tōna take heke noa ai ki tōna kopaunga. Neke atu i te rua rau ngā kainga me ngā nohoanga a ngā mātua ki te rerenga matua, he maha noa atu ngā kāinga e piri ana ki ngā pari me ngā tahataha o ngā awa iti e honohono kau ana ki a ia. Ko te taketake tērā o te rerenga kupu e kōrero ana mō te whakakotahitanga o te awa me ōna iwi, inā: Ngā manga iti me ngā manga nui e honohono kau ana, ka hono, ka tupu, hei awa - hei Awa Tupua." Ara anō ētehi kupu e whakaatu ana i te maha o ngā hapū me ngā iwi i piri ai ki ngā tahataha o te awa nei, inā te pepehā o te iwi "Ngā kawau o uta, ngā torea o tai." Ko ēnei manu e rua e kitea whanuitia ki uta nei, ki tai ra. Ko ngā kawau nei ko ngā hapū maha o te tai whakarunga, ko ngā torea rai ko ngā hapū maha o te tai whakararo.

Since before the arrival of the Pākehā, the descendants of the tipua and tūpuna referred to in this account lived along the length of the River, from the headwaters to the mouth. There were close to 200 kainga on the banks and cliffs along the length of main stem of the Whanganui River. There were many more other kainga along the tributaries. That is the origin of the saying: "The small streams and the big streams which run into one another and continue to link and swell, until a river is formed - Te Awa Tupua". Another saying that demonstrates the number of hapū and iwi who live on the banks of the River is "The shags of the interior, the pied stilts of the coast".

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These two birds are common species in the respective inland and coastal regions of the River. The shags represent the many hapū of the upper reaches, the pied stilts represent the many hapū of the lower reaches.

- 2.22 He mouri tō tēnā pito, tō tēnā pito o te awa. Ko ia mouri e pupuru ana i te mana o te hapū o taua pito, ā, ko taua mouri anō he kaitiaki. He mana tō te hapū ki te hī ika ki tōna pito. Ko ngā pā tuna, ko ngā utu piharau, he mea tapu nō tēnā hapū, nō tēnā whānau. He ingoa, he kōrero, he pāwerawera tō ia pā, tō ia utu. Ko hētehi i mahi ai e ngā hapū e rua, e toru neke atu e pērā ana te nui o tōna hanganga me ngā ika i hua ai i a ia.

Each part of the River has a mouri. Those mouri maintain the mana of the hapū for that particular place and are kaitiaki. Each hapū has the right to fish and construct pā tuna and utu piharau in their section of River. Each pā has a name, kōrero and human association through use and maintenance over time. Some were maintained by two or three hapū, sometimes more, such was their size and ability to provide a catch of sufficient quantity.

- 2.23 Kei te ngutu awa hētehi nohoanga e karamuia ana e ngā hapū o uta i te wā e tika ana ki te tango i ngā ika o tai. I heke mai hēnei hapū i runga i te ara whanaungatanga. Ko te wā e tika ana ki te hāhā manu ki uta e pērā anō te pikinga o ngā hapū o tai ki te tango i ngā kai o te Wao-Tū-Nui. Ahakoa te raupatu haere o ngā iwi o waho i roto i ngā tau maha, kīhei ngā hapū o Whanganui i tūturi ki te mana o iwi kē. Ko te mana nei nō tuawhakarere, nō tawhitorangi. Engari nā te taenga mai o tauwiwi me wāna ture, kua honotia te peka rāwaho ki te rākau Māori, he rerekē tōna hua me te rongo o tōna kiko, he kawa.

At the river mouth there were seasonal kainga which were utilised by hapū from the upper reaches when it was the appropriate season to fish. This is a reciprocal relationship because when it was the appropriate time to harvest birds inland, the hapū from the lower reaches migrated up the River. Despite the repeated attempts by foreign tribes, the hapū of Whanganui were never overcome. This mana came from ancient celestial origins and was maintained until the arrival of Europeans, which resulted in drastic and devastating changes for the Māori way of life.

TE TIRITI O WAITANGI*THE TREATY OF WAITANGI*

- 2.24 Tae atu ki te wā i tae mai te Tiriti o Waitangi, ka noho kau ngā hapū maha kei roto i ngā pā tūwatawata kei nga tahataha o te awa, matāra ana ki te taenga mai o te ito. Ko Hori Kingi raua ko Te Mawae nga rangatira nui o te tai whakararo, ko Te Pēhi Tūroa te ariki o te tai whakarunga.

Extending to the period of the signing of the Treaty of Waitangi, the hapū remained steadfast in their fortified pā on the respective sides of the river, always vigilant to the arrival of foreign enemies. Hōri Kingi and Te Mawae were the major chiefs of the lower reaches; Te Pēhi Tūroa was the ariki of the upper reaches.

- 2.25 Tekau ma whā ngā rangatira i tohua te Tiriti o Waitangi:

Mei 23, 1840: Hōri Kingi Te Anaua; Tawhito; Te Mawae; Rere o Maki; Wiremu Te Tauri; Rore; Tūroa; Taka; Kurawatia; ratou ko Te Rangiwhakarurua

Mei 31, 1840: Te Hiko, Uripo; Takarangi rātou ko Pakoro

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Fourteen chieftains signed the Treaty of Waitangi.

May 23, 1840: *Hōri Kingi Te Anaua; Tawhito; Te Mawae; Rere o Maki; Wiremu Te Tauri; Rore; Turoa; Taka; Kurawatia and Te Rangiwhakarurua*

May 31, 1840: *Te Hiko, Uripo; Takarangi and Pakoro*

Maru a ka hura, Tangaroa unuhia!

Unuhia ki mua waka, ki roto waka i a Tāne Mahuta

Ka puta ki waho, ki te whai ao, ki te ao mārama!

E Rongo e whakairihia ki runga, ki runga, hai!

Let Maru reveal the encumbrances, let Tangaroa remove them!

***Remove them from the front and within the vessel that
was sourced from Tāne Mahuta***

And emerge into the world of light and understanding!

Let Rongo uphold enlightenment, let it be so!

HISTORICAL ACCOUNT

2.26 Clauses 2.27 to 2.97 contain an account of the historical events upon which the Crown's acknowledgements and apology in Part 3 are based.

TŌU PIKI AMOKURA NŌU, TŌKU PIKI AMOKURA NŌKU
HISTORY MUST BE VIEWED THROUGH BOTH OUR LENS

Whanganui Iwi and Te Tiriti o Waitangi

2.27 As at 1840 the iwi and hapū of Whanganui (Whanganui Iwi) possessed, and exercised rights and responsibilities in relation to, the Whanganui River in accordance with their tikanga. Other iwi and hapū also exercised rights and responsibilities in relation to parts of the Whanganui River and its catchment. In the 1840s there was a substantial Māori population dispersed along the length of the Whanganui River and its major tributaries. This population expanded and contracted at different sites according to the seasonal rhythms of resource gathering.

2.28 In May 1840, fourteen Whanganui River rangatira signed the Treaty of Waitangi at Pūtiki. The Māori text of the Treaty guaranteed Māori "te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa" and, in the English text, "the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession".

*"...The river is the beginning...for our people from the mountain to the sea.
 It ties us together like the umbilical cord of the unborn child...Without that
 strand of life it has no meaning...Without the river we really would be nothing"*

*Matiu Mareikura, a Ngāti Rangī/Whanganui tohunga who passed away in 1998,
 speaking of the significance of the River to his people.*

The Whanganui purchase

2.29 In 1839 and 1840 the New Zealand Company entered into arrangements with some Whanganui Māori that purported to purchase land for European settlement in the Whanganui basin. Prominent Whanganui rangatira at the time were not present to sign or agree to the purported purchase. Early in 1841 the first settlers came to what would become the site of a town near the mouth of the River. In May 1841 the Company asked the Crown to grant it 89,600 acres in Whanganui. The lower reaches of the Whanganui River ran through the middle of the block claimed by the Company, from Tunuhaere and Kaiwhaiki to the sea.

2.30 In 1842 the Crown referred the New Zealand Company's claims to the Land Claims Commissioner for investigation. In 1844 Commissioner William Spain recommended that the Crown grant the Company 40,000 acres of coastal lands, and that Māori receive £1,000 compensation and one tenth of the purchase block in reserves. Whanganui Māori refused these terms and Spain told them this would not prevent the Europeans having the land. However, the Governor did not confirm Spain's recommended award.

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- 2.31 In 1848 Donald McLean purchased for the Crown a block of 86,200 acres at Whanganui, and paid Māori the £1000 Spain had recommended as payment for 40,000 acres. The purchase deed included a clause stating on behalf of the signatories:

A ko te wenua katoa e takoto ana i roto i enei rohe haunga ano nga wahi i wakatapua i te tuinga i roto i tenei pukapuka mo matou kua oti nei i a matou te tangi te mihi te poroporoake te tuku tonu atu ma te Pakeha me nga awa me nga wai me nga rakau me nga aha noa iho o taua wenua.

An English version of the deed translated the clause:

Now all the land contained within these boundaries excepting the places mentioned in this paper as reserved for ourselves we have wept and sighed over bidden farewell to and delivered up for ever to the Europeans; together with the rivers streams trees and all and everything connected with the said land.

- 2.32 From this point on the Crown asserted authority over the River within the boundaries of the 1848 purchase. In 1849 Whanganui Māori complained to Donald McLean, who had completed the 1848 purchase for the Crown, that a gunboat crew had taken a log from the River marked as belonging to them. McLean told Māori they could only claim logs fronting their reserves, the rest being the property of Europeans.

Control over the River

“Ko te takutai taku nohoanga i te wa e nohinohi ana au, kaore e tukuna matau ki te taone, ki te tiriti, kei te takutai e noho ana, matau me o matau matua...kaore koe e tika ana ki te tuku kupenga ki tera wahi...i mutu mai to mana ki te piriti.

When I was a small child the River bank was where I was forced to remain together with my elders. We were not allowed to venture into town...or set nets in that place...our mana ceased at the bridge.”

Te Paea Arapata, a Ngāti Tuera/Ngā Paerangi kuia who was born around 1900, giving her perspective of how the loss of control of the river affected her people during her childhood.

- 2.33 After 1840 and the purchase of the Whanganui block, Whanganui Iwi and other Māori continued to use the Whanganui River as a highway, both for traditional purposes and for trading with settlers. Whanganui Māori also continued to assert control of the River.
- 2.34 The outbreak of war in other districts between the Crown and Māori raised tensions in Whanganui. In 1864 two taua, which both included members of Whanganui Iwi, fought each other at Moutoa Island, located in the Whanganui River adjacent to Rānana. Prior to the battle Matene Rangitauira, the leader of a Pai Mārire taua who wanted to attack the township near the mouth of the River, met with the rangatira Te Pēhi Pakaro Tūroa at Pipiriki to seek permission to proceed down the River. Te Pēhi did not want the town attacked and reportedly told Matene that the Whanganui River from Peterehama down was sacred and that no war party should pass. Intensive negotiations followed, but the taua decided to descend the River anyway and a battle was arranged. On 13 May 1864, the day before the battle, two old men held a rope across the River to signify that the taua had not been granted passage. On 14 May the taua was defeated by a force of Māori from the lower reaches of the Whanganui River at Moutoa Island.
- 2.35 In the early 1880s Te Keepa Te Rangihwinui and other Whanganui rangatira asserted control over the Whanganui River by imposing an aukati (customary prohibitive

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measure) preventing the passage of Europeans up the River. Te Keepa erected a carved pole at Kauarapaua to mark the southern boundary of a land trust designed as a mechanism for Whanganui Iwi to retain tribal control of their remaining lands. Te Keepa announced that Pākehā could not travel on the River to access land upstream of the pole without his authorisation. In 1884, Whanganui Māori escorted Government surveyors down the Whanganui River after they were stopped while surveying the main trunk railway. Other instances of Whanganui Iwi preventing passage of European travellers on the River were recorded from the 1860s onwards.

Statutory management of the River

- 2.36 From the late 1850s national legislation allowed local and provincial authorities to erect and manage dams, wharves, bridges and other structures on the banks and bed of rivers and streams. It was not until the 1870s that legislation specific to Whanganui authorised local authorities to build a bridge and wharf, to collect tolls for their use, and to reclaim areas of the riverbed. The statutes did not provide for Whanganui Iwi involvement in the relevant regulatory bodies. This legislation included provision to compensate owners of riparian lands prejudicially affected by reclamation or other harbour works.

The Native Land Court and alienation of riparian lands

- 2.37 At 1860 the vast majority of the lands bordering the Whanganui River remained under Māori customary ownership. The Native Land Acts of 1862 and 1865 established the Native Land Court. The Court was to determine the owners of Māori land “according to Native Custom” and convert customary title into title derived from the Crown. The Acts also waived the Crown’s pre-emptive right of land purchase and enabled Māori to lease and sell lands held under Crown-granted titles in the same manner as Pākehā.
- 2.38 Between 1866 and the early twentieth century, the Native Land Court investigated and awarded titles to Māori for riparian land blocks adjacent to the Whanganui River. Some riparian blocks were subsequently sold to the Crown. In 1871 Whanganui Iwi applied for title to the foreshore and riverbed adjacent to several Pūtiki riparian blocks, but the Native Land Court ruled that it could not investigate below the high water mark. At the turn of the twentieth century Whanganui Iwi still owned approximately 60% of the river frontage between the River’s tidal limit (Raorikia) and the confluence of the Whakapapa and Whanganui Rivers.

River management and clearance

“We have been taught to treasure the river for what it is, and what it has been given to us for. For we are its caretakers, we have been given the job of taking care of the river. And we care for it jealously.”

Matiu Mareikura, giving his perspective on the values of Whanganui Iwi that have been passed down in relation to the care of the river.

- 2.39 Into the 1880s and beyond waka continued to be the main form of transport on the upper Whanganui River. Whanganui Māori provided virtually all River transport for Europeans until the early 1890s and derived income from these activities. Around this time there was increasing interest from the Crown and settlers in mineral prospecting at sites along the River and in the River’s potential as a transport route for steamboats and scenic attractions.

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- 2.40 The River, particularly in its upper reaches, was difficult for steamboat navigation. Forty rapids punctuated the 51-mile section from the port to Pipiriki, with a further 103 in the 59-miles between Pipiriki and Maraekowhai. Whanganui Iwi know these rapids by name and consider each one the home of a tribal guardian. After Maraekowhai, there was still a considerable distance to go before Taumarunui, the proposed junction of the River and the main trunk railway, was reached.
- 2.41 In January 1885 Native Minister John Ballance met with Whanganui Māori at Rānana, Jerusalem/Kauaeroa and Pipiriki. Ballance told Māori the Government supported the “improvement” of rapids to assist the establishment of a steamer service by private interests. Ballance lauded the benefits of a steamer service for Māori and Pākehā alike: it would “make the Wanganui what it was intended to be - a great highway for the people into the interior”. There were expressions of support by Whanganui Māori to allow a steamer to be put on the Whanganui River and the Minister was told that this would be dealt with by Māori committees. This suggested Māori envisaged that their own committees would have some involvement over the extent of the river usage. However, the Minister in his address did not suggest a role for the Māori committees in regulating steamers.
- 2.42 Although the Native Minister indicated that rapids would have to be cleared to allow the steamers to pass, it appears Whanganui Iwi did not envisage the scale and effect of the clearance work that followed. In late 1885 the Crown began clearing snags and rapids from the River. By March 1886, 31 rapids had been cleared. Clearance work was completed to Pipiriki by early 1887. It is not clear under what legislative or other authority the Crown undertook the clearance work.
- 2.43 From the late 1880s Whanganui Māori complained of the impact of River clearances and steamer operations on the River, including their fisheries, pā tuna and utu piharau. Pā tuna (eel weirs) were wooden structures erected in the middle of the River while utu piharau (lamprey weirs) extended into the River from the bank. The tuna, piharau and other fisheries provided an important food source for Whanganui Iwi.
- 2.44 In early 1887, Whanganui Māori obstructed clearance works on the River. Newspapers reported that Māori were concerned about the effect of removing stones from the banks of the River. In 1887, Pauro Tutaawha and 66 others petitioned Parliament complaining that steamers were destroying their fisheries and eel weirs, and that steamers had come as far as Pipiriki despite Ballance having “promised” in 1885 that the steamer service would not extend beyond Rānana. The official minutes of Ballance’s meeting make no reference to that promise.
- 2.45 In 1888 Werahiko Aterea and 162 others requested that the deepening of the Whanganui River be stopped as they had never agreed to it. The Native Affairs Committee recommended that the 1887 petition be referred to the Government for consideration but dismissed the 1888 petition without recommendation. No further action was taken by the Government on the 1887 petition.

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- 2.46 In 1889, a meeting of Whanganui Māori, chaired by the rangatira Tōpia Tūroa, was held at Koriniti to discuss the question of improvements up the River. While Whanganui Māori present did not object to improvements being made or to steamers travelling as far as Taumarunui, they asked that their weirs be protected. In 1891 the District Engineer reported that most weirs in the River had been destroyed by snagging crews, but noted that Māori had also re-erected weirs in several rapids. It was also reported that Māori were likely to prevent the removal of these weirs in the future.

“..E ngaro ana te mātauranga i o matau nei matua...Ka whakaoti katoa te ha i au, au te Māori, i te mea ko au te Māori he aroha toku hoa...:

Our mātauranga was in decline... and our essence as Māori was being extinguished on account of our inherently trusting nature.”

A perspective from Te Paea Arapata on the loss of customary knowledge as a result of Crown actions in relation to the River.

Wanganui River Trust

- 2.47 In 1891, Parliament passed the Wanganui River Trust Act 1891. The Act was intended to conserve the natural scenery and protect the navigability of the “Upper Wanganui River District,” defined as commencing at Raorikia and stretching to four miles from the River’s source. The Wanganui River Trust could erect jetties, establish landing places, and charge tolls on the River.
- 2.48 Section 11 of the Wanganui River Trust Act provided that “Nothing in this Act contained shall affect any rights conferred upon the Natives by the Treaty of Waitangi, or shall be deemed to confer upon the Trust any jurisdiction over private lands, or over any Native lands the title to which has not been investigated by the Native Land Court”. This section was added following a suggestion by James Carroll, the Member of Parliament for Eastern Māori, during the second reading of the Act. There was no provision for Māori membership on the Trust’s board, and there is no evidence that the Wanganui River Trust Bill was translated into Te Reo Māori.
- 2.49 Between 1891 and 1893 Whanganui Iwi continued to protest against public works on the River. Individuals obstructed the removal of snags, boulders and weirs by the Wanganui River Trust. In March 1892, the Trust reported that it had partially removed an eel weir at Matahiwi and removed a weir and boulders at Kauaeroa. Māori were said to have put “every obstacle possible in the way of the work”. In May 1893, Māori prevented the Trust from taking stones from the margin of the River at Kauaeroa in order to construct groynes, and refused an offer from the Trust to pay for the stones.
- 2.50 Partly in response to this obstruction, Parliament passed the Wanganui River Trust Act Amendment Act 1893. The Act empowered the Trust to remove earth, stone, boulders and sand from the River regardless of whether the Native Land Court had investigated title to the riparian lands. Māori Members of Parliament who spoke in the debate opposed the passage of the Bill and moved unsuccessfully that it be referred to the Native Affairs Committee.
- 2.51 Te Keepa and 59 others also petitioned Parliament protesting the passage of the Bill. The Act introduced a provision by which Māori affected by works could apply to the Native Land Court for compensation. While some compensation was paid to an individual outside of the Native Land Court process in 1901, it appears that two 1907 applications to the Court did not proceed to hearing.

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- 2.52 Some Whanganui Iwi continued to obstruct clearance works undertaken by the Trust following the 1893 Amendment Act. In December 1893 a member of Whanganui Iwi was fined a nominal amount in the Whanganui Resident Magistrate’s Court for obstructing the Trust from removing stones. In March 1894, Premier Richard Seddon and the Hon James Carroll visited Pipiriki to discuss a number of issues with Whanganui Iwi, including the River works. Seddon stressed that Whanganui Iwi should not take the law into their own hands in opposing the activities of the Whanganui River Trust.
- 2.53 The Whanganui Resident Magistrate’s Court heard another case in March 1894 regarding obstruction at the Matahiwi rapid. The two defendants argued that they only sought to protect their fisheries from damage. The Magistrate found “that the evidence went to show that the works which were being constructed did interfere somewhat with these weirs, and the natives claimed that under section 11 of the Act of 1891 that the Board had no right to injure any right which they possessed in respect of fisheries under the Treaty of Waitangi”. He also noted, however, that his Court could not decide such an important matter of legal interpretation. The defendants were convicted and fined £1 each. During another 1894 case the Resident Magistrate told three members of Whanganui Iwi on trial that they must go to Court and “submit to European law” to define their rights to their fisheries. The Supreme Court later dismissed an appeal of the latter case by the defendants. In 1895 Premier Seddon authorised police supervision for clearance work at the Haumoana rapid.
- 2.54 In 1895 Mereaina Rauangina and 151 other Whanganui women petitioned Parliament “to prevent the operation of the law of the Government to remove stones from out of the Whanganui River”. The petitioners objected “so that the Government will not destroy our eel-weirs our lamprey-weirs our whitebait dams and the flood currents of the river and the banks of said river either on one side or the other”. The petition restated the Whanganui Iwi understanding from Ballance that steamers would not go further than Rānana, and appealed to their rights under the Treaty of Waitangi. The petition stated that “no meeting of hapus or influential chiefs” had agreed that the steamers and the road should go up to Pipiriki.
- 2.55 A follow-up letter addressed to Premier Seddon complained that as a result of works in the River some pā tuna and utu piharau, (“constructions that have descended to us from our ancestors”) had dried up, and that the “removal of... stones in the river front [had] caused our places of abode and our cultivations to break away”. The letter stated that in 1885 Ballance had also assured Whanganui Iwi that only those weirs directly in the path of the steamer would be removed, although the official minutes of Ballance’s meeting are also silent on this issue.
- 2.56 The Native Affairs Committee recommended that the Native Minister visit Whanganui Iwi to discuss the issues raised. In November 1895 Seddon and Carroll met again with Whanganui Iwi at Whanganui township and other River settlements and negotiated the removal of a weir at Kauaeroa. Following the visit the Premier received several further letters from Whanganui Iwi protesting interference with eel weirs.
- 2.57 At the turn of the century legal uncertainty arose over the use of rivers as highways and the ownership of minerals in riverbeds. In 1903 section 14 of the Coal-mines Act Amendment Act 1903 provided that the beds of all navigable rivers “shall remain and shall be deemed to have always been vested in the Crown”. The Whanganui River was and remains the longest navigable river in New Zealand. The Act also declared that all minerals contained within those river beds belonged to the Crown. There was no consultation with Whanganui Iwi over the legislation.

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- 2.58 Steamer services to Taumarunui commenced in 1903. Further amendments to the Wanganui River Trust Act in 1920 and 1922 continued to exclude any specific provisions for Māori representation on the Trust's board, nor was there consultation with Whanganui Iwi in relation to these amendments.
- 2.59 Steamer services declined during the early twentieth century as road-building increased, and the Wanganui River Trust was abolished in 1940. Section 28(1) of the Reserves and Other Lands Disposal Act 1940 vested all property owned by the Trust in the Crown. During the third reading of the Reserves and Other Lands Disposal Bill in the Legislative Council, the Honourable Rangi Mawhete sought an assurance from the Leader of the Council that Māori would not lose the protection of their Treaty rights previously set out in section 11 of the Wanganui River Trust Act 1891. Referring to the Crown's decision to appeal a recent decision of the Native Land Court in favour of the Whanganui Iwi claim to customary ownership of the River, Mawhete told the Legislative Council "All along the Crown has assumed that it owned the Wanganui River, but the Native Appeal Court will now be called upon to decide who is the rightful owner". In response the Leader of the Legislative Council gave an assurance that nothing in the Bill would affect any river rights that Māori had previously held.
- 2.60 The Crown funded all navigation maintenance works in the River up until 1975, after which it devolved responsibility to the Rangitikei-Wanganui Catchment Board.

Gravel extraction

"Ko te tangi a te kuia nei: Ka pewhea aku mokopuna? Ka ngaro nga kai, ka ngaro te mana me whakaae koe kia riro i a tauwi nga mana o o tupuna i roto i te wai.

The old woman lamented: What will become of my grandchildren? The River stocks will suffer and its mana will suffer if you allow tauwi to take the mana of our tupuna."

This statement by Whanganui Iwi kuia, Te Manawanui Pauro (Ngati Tuera/Nga Paerangi), who passed away in 2010 aged 102, recalls her grandmother's lament over gravel extraction from the Whanganui River.

- 2.61 In the twentieth century railway and road construction created demand for River stones and gravel. However, gravel extraction from the Whanganui River prior to 1920 was limited and unsupervised. Section 5 of the Wanganui River Trust Amendment Act 1920 empowered the Wanganui River Trust to extract and sell gravel from the Whanganui River. Unlike the Wanganui River Trust Amendment Act 1893, there was no provision for Whanganui Iwi to pursue compensation. After Parliament abolished the Trust in 1940, it empowered the Ministry of Works to continue gravel extraction. From 1958 the Wanganui Harbour Board could license gravel and sand extraction from the River's tidal reaches. The Rangitikei-Wanganui Catchment Board and Regional Water Board could licence gravel extraction from 1977. In 1974 the Ministry of Works estimated that 945,000 cubic yards of gravel had been extracted from the Whanganui River in the Taumarunui area since 1965.
- 2.62 Whanganui Iwi observed that gravel extraction destroyed gravel beds that provided habitats for fish, and ultimately contributed to the depletion of traditional fisheries.
- 2.63 Compensation for the taking of stones and gravel from the River has also been a concern for Whanganui Iwi. During the 1893 disputes between Whanganui Iwi and the Wanganui River Trust, some compensation was paid by the Trust to Māori at Upokopoito, Whakaruawhaka, and Ruapirau for stones taken to construct groynes. At

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another location on the River, however, Māori refused compensation and prevented the Trust from taking stones. In 1927, a petition by Piki Kotuku and 125 others sought compensation for the loss of their “livelihood” through various River works, and sought royalties for the taking of gravel from the River.

- 2.64 During the 1980s the Rangitikei-Wanganui Catchment Board and Regional Water Board encouraged contractors to restrict gravel excavation to beach areas above the River’s normal summer level so as to reduce environmental impacts. Nonetheless the gravel required washing and discharges from gravel washing plants ultimately reached and discoloured the River. Although the Board attempted to mitigate the effects of gravel extraction and washing by setting water quality standards, it did not involve Whanganui Iwi in discussions.

Scenery preservation

- 2.65 The Scenery Preservation Act 1903 enabled the Crown to compulsorily acquire land for scenic purposes pursuant to the provisions of the Public Works Act 1894. The Crown used this Act, and its successors, to acquire riparian lands along the Whanganui River that it considered contributed to the River’s natural and scenic value. In 1905 the Scenery Preservation Commission recommended 19,140 acres of Whanganui Iwi land adjacent to the Whanganui River be acquired for scenery preservation purposes. By 1912 the Crown had taken about 4,000 acres of riparian land for scenery preservation purposes under the Public Works Act 1908.
- 2.66 This process provoked considerable opposition from Whanganui Iwi. In 1913 and 1914 Whanganui Iwi petitioned Parliament on three separate occasions to request relief or compensation for Māori land taken for scenery preservation purposes. The third petition also asked for a commission to inquire into the takings, and in 1914 the Native Affairs Committee recommended that the government action this request.
- 2.67 The Wanganui River Reserves Commission sat in 1916 and heard evidence from 34 Māori witnesses. Members of Whanganui Iwi urged that only steep cliffs and inaccessible areas be taken as scenic reserves. They objected to the taking of riparian land that was suitable for farming, contained urupā, or was used to access the River, and requested that the Crown pay greater compensation to take into account the scenic value of the lands taken.
- 2.68 Although River rights were outside the Commission’s terms of reference, Whanganui Iwi members also used the opportunity to raise their grievances in relation to the River. Several witnesses urged the Crown to address the question of Whanganui Iwi rights in relation to the River. Hakiāha Tawhiao, who based his claims to compensation on the provisions of the Treaty of Waitangi, mentioned the destruction of eel weirs and suggested that Whanganui Iwi were due compensation for the benefits derived by businesses such as the local steamer operator from “our river waters”. Hakiāha stated that “those waters belong entirely to us. The Maoris own the river... I lay far more stress on our river rights than on these scenic lands”.
- 2.69 Following the release of the Commission’s report, most of its recommendations relating to Māori riparian lands, including the return of some land to its former owners, were left to lapse. By 1919 the Crown had acquired at least 6,700 acres of Māori-owned riparian lands along the Whanganui River under the Public Works Act 1908 for scenery preservation purposes.

Maintenance of interests in the twentieth century

“Whanganui Iwi have sought to preserve their rights, protested, petitioned the Crown and pursued their claims....before numerous Courts, tribunals such litigation has often seen issues narrowed such that they are almost unrecognisable in Māori terms.”

The late Sir Archie Te Atawhai Tairaoa, (Ngāti Hauā/Ngāti Tū) describing the Whanganui Iwi perspective on their long running claims and litigation.

- 2.70 During the twentieth century Whanganui Iwi continued to assert their interests in and rangatiratanga in relation to the Whanganui River.
- 2.71 In 1927 Parliament received two further petitions from Whanganui Iwi that reiterated a number of the grievances stated several times since the first petition in 1887, but now also sought compensation for the loss of Whanganui Iwi interests. The petition of Piki Kotuku and 125 others of Taumarunui requested £300,000 compensation in recognition of their rights in the Whanganui River and loss of livelihood. The petitioners sought compensation for the release of trout, which they claimed had killed off some native fish species, as well as for the taking of gravel, the taking of land for scenery preservation purposes, damage to pā tuna and utu piharau, and for the profits made by the steamer company.
- 2.72 In 1930 the Government responded by authorising the Native Land Court to inquire into the petition and report to Parliament. By 1937 this inquiry had not been completed so Whanganui Iwi, under Titi Tihu and others, applied to the Native Land Court to investigate what they considered to be their customary ownership of the Whanganui River.

The River and the Courts

- 2.73 From 1938 Whanganui Iwi sought to maintain their interests in the Whanganui River through the courts. Between 1938 and 1962 seven courts considered questions of title to the riverbed and Māori customary interests. The courts could only consider rights according to English common law and New Zealand statutes. The Native Land Act 1931 did not allow for the investigation of title to a river as a whole. Whanganui Iwi accordingly framed their case within the terms of English law rather than their own tikanga. Their claim therefore focused on the bed of the River, rather than their own conception of the River as an indivisible whole.

The following waiata, Tenei Ka Noho, was composed by Titi Tihu at the start of the riverbed claim in the Native Land Court. Tihu is symbolic of the continuous efforts by Whanganui Iwi to advance their claims in respect of the Whanganui River. Tihu’s involvement with the River claim extended from his lodging of the claim to ownership of the Whanganui River in the Native Land Court in 1938 and continued unabated through to 1988 with objections to pollution and the diversion of water from the Whanganui River. Tihu died in May 1988 prior to the minimum flows hearing before the Rangitikei-Wanganui Catchment Board.

Tenei Ka Noho

<i>Tenei ka noho ki te whatitoka o tōku whare</i>	<i>As I sit at the doorway of my house</i>
<i>Pohaha mai i te whenua</i>	<i>Where the land is divided</i>
<i>Whakarongo ki te hau e pā mai i waho nei</i>	<i>I listen to the winds that are blowing out there</i>
<i>He hau tonga pea?</i>	<i>Is it the southerly wind?</i>
<i>Pokarekare ana ngā wai o Whanganui</i>	<i>The waters of Whanganui are rippling</i>
<i>Ko āku mana ra kei te huihui</i>	<i>Tis my strengths that are combining</i>
<i>Kia pai, kia tika, kia rangimarie</i>	<i>For good, for right, and for peace</i>
<i>Tērā aku rongō kua pai te tuku atu</i>	<i>I have heard that it has gone out</i>
<i>Kirunga ki ngā iwi ē</i>	<i>To all the people</i>
<i>Nāwai rawa ko koe, i noho ai koe i te nohoanga o Tanga</i>	<i>Even though you sit in a position belonging to Tanga</i>
<i>Mā Wharawhara rā e ui atu ki a Te Hekenui</i>	<i>Wharawhara will query to Te Hekenui</i>
<i>Kia korerotia mai, nāwai koe?</i>	<i>To say, who am I?</i>
<i>Māku rā hei kī atu, Nā Tamaupoko, Na Hinengākau, Na Tupoho na</i>	<i>I will answer, I am from Tamaupoko, Hinengakau and Tupoho</i>
<i>Ko te Hekenui ra hei pou korero, kirunga ki ngā iwi katoa</i>	<i>Te Hekenui will be the main orator to the people</i>
<i>Ko au ra hei pou mo runga i te karauna mo ngā iwi katoa</i>	<i>I will only be a main speaker to the Crown for all my people</i>
<i>Kia haria mai ra, kia takato ki te aio</i>	<i>So that it is all laid out, and spreads it in a serenity</i>
<i>Mō wai i rukiruki ē?</i>	<i>Who will intensify this?</i>
<i>Tūwharetoa, e Kui, e Mamae, maranga ra kirunga</i>	<i>Tūwharetoa, my elder Kui Mamae, awake, arise!</i>
<i>Kāti te moe</i>	<i>Enough of sleeping!</i>
<i>Maranga mai kirunga, rauhitia mai to iwi</i>	<i>Arise and shelter your people</i>
<i>Toia to waka kirunga te Paeroa</i>	<i>Steer your waka toward Paeroa</i>
<i>Tērā ngā tāngata, ngā tāngata o whea?</i>	<i>Look at those people, who are they?</i>
<i>Ngā tāngata o Whanganui</i>	<i>They are people from Whanganui</i>
<i>Whakataha rawa mai</i>	<i>Veer this way</i>

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<i>Te Pitiana a tō tungāne a Te Piki</i>	<i>The petition of your relation, Te Piki</i>
<i>E tama ē, ka mate, ka mate atu he tete hura</i>	<i>Oh young man, a leader falls</i>
<i>Ora mai he tētē hura</i>	<i>Another rises, oh yes!</i>
<i>Ka mate, ka mate, ka ora, ka ora</i>	<i>Although in death there is life</i>
<i>Tēnei te tangata, puhuruhuru</i>	<i>Here stands a man covered in hair</i>
<i>Nāna i tiki mai, whakawhiti te rā</i>	<i>Twas he who brought in the light</i>
<i>Upāne, upāne kaupāne, whiti te rā</i>	<i>In rank to forge ahead, to the rising sun.</i>

- 2.74 In 1938 and 1939 the Native Land Court heard from three Whanganui Iwi witnesses - Hekenui Whakarake, Wharawhara Topine and Pareta Wereta - in support of their case, as well as seven Crown witnesses. In September 1939 the Court ruled that Whanganui Iwi held the bed of the Whanganui River under their customs and usages at 1840. The Court also held that customary fisheries had been indiscriminately destroyed without remedies. In 1944 the Native Appellate Court unanimously upheld the 1939 ruling, following an appeal from the Crown.
- 2.75 After a further Crown appeal, the Supreme Court ruled in 1949 that Parliament had vested the bed of the Whanganui River in the Crown through the Coal-mines Act Amendment Act 1903. During the 1949 Supreme Court hearing and afterwards the focus of the River litigation turned to the status of Māori customary rights in the riverbed between 1840 and 1903. Whanganui Iwi maintained that the Native Land Court had never investigated title to the riverbed prior to 1938 and that the ancestral right to the River was distinct from ancestral rights to riparian lands because the River was held for the tribe as a whole.
- 2.76 Following the Supreme Court decision, the Crown appointed a Royal Commission of Inquiry in 1950 to inquire further into Māori customary interests in the Whanganui riverbed, and to advise whether compensation was due for loss of those interests. The Royal Commission endorsed the Native Land Court and Native Appellate Court rulings, and found that, but for the 1903 legislation, Whanganui Iwi would be the customary owners of the bed as they had been at 1840. The Commission recommended the Crown compensate Whanganui Iwi for gravel extraction, but not for the loss of customary fisheries. Attempts to negotiate compensation in 1951 were inconclusive, with proposals put forward by Whanganui Iwi characterised by a Crown official as “so exaggerated as to be ridiculous”.
- 2.77 In 1951 the Crown legislated to authorise the Court of Appeal to inquire into Māori customary ownership of the riverbed. A majority judgment held that Māori were the customary owners of the River at 1840. The Court proposed that the Government authorise the Māori Appellate Court to consider whether grants of title to riparian land issued by the Native Land Court prior to the Coal-mines Act Amendment Act 1903 resulted in rights to the centre of the riverbed under the English common law principle *ad medium filum aquae*.
- 2.78 In 1958, following statutory amendment, the Māori Appellate Court found no evidence from the previous proceedings to show that there had been, as Whanganui Iwi contended, a separate ancestral claim to the River prior to 1938 that was distinct from ancestral claims to riparian lands. In the Māori Appellate Court’s interpretation there

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was no overarching tribal title to the riverbed, and, by implication, title to the riverbed was held by the owners of riparian lands. The Court did not hear evidence regarding Whanganui Iwi protests in relation to the River in the nineteenth century or the parliamentary petitions put forward by Whanganui Iwi prior to 1938.

- 2.79 The matter returned to the Court of Appeal and, in 1962, the Court found that the *ad medium filum aquae* principle had extinguished Māori customary ownership of the riverbed when the Native Land Court granted titles to riparian blocks.
- 2.80 Whanganui Iwi decided against appealing the Court of Appeal's decision to the Privy Council for reasons related to costs and the likelihood of success. The Crown, adopting the findings of the 1962 Court of Appeal, declined to provide remedy to Whanganui Iwi. In 1977 Whanganui Iwi petitioned Queen Elizabeth II to remove Crown title to the riverbed. The Māori Affairs Committee and a Cabinet Committee considered the petition before it was declined in 1983.

Tongariro Power Scheme

“Kua whakahokia mai e ia, e te Karauna, tāku reo ki au - engari he aha te painga o te reo ki te kore he tūrangawaewae, ki te kore he wai hei pipi i au me āku mokopuna?”

Now the Crown has seen fit to return my language to me - but what use is my language if I have no place to stand, or water to bless myself or my grandchildren?”

A statement by Te Paea Arapata, giving her perspective on the impact of the Tongariro Power Scheme on the Whanganui River.

- 2.81 In 1955 the Crown initiated plans to draw water for hydro-electric power generation from the headwaters of the Whanganui River and other rivers and tributaries within the watershed of Tongariro and Ruapehu. The Crown designed the scheme to provide for the anticipated energy demands of New Zealanders. An Order in Council issued in 1958, under the Public Works Act 1928, *authorised* the diversion of water from the Whanganui River and other rivers into the proposed Tongariro Power Scheme and the altering of river levels. The Crown did not consult with or give notice to Whanganui Iwi about the Order in Council. This was despite the ongoing litigation over the bed of the Whanganui River.
- 2.82 In 1964 Cabinet approved the first two stages of the Tongariro Power Scheme in principle “so that preliminary discussions, negotiations, and further studies may proceed on a firm basis, on the understanding that further approval will be sought before commencement of construction.” Stage one, the “Western Diversion”, would divert water from the Whanganui River.
- 2.83 The Crown did not specifically consult Whanganui Iwi about the scheme before diversion commenced in 1971, despite consulting and sometimes compensating non-Whanganui Iwi River users (such as the Taumarunui Borough Council and Wanganui Harbour Board) and engaging with and paying compensation to another iwi in relation to the development of the scheme. In 1968 the Chairman of a public meeting arranged by the Taumarunui Borough Council ruled Whanganui Iwi kaumātua Hikaia Amohia out of order when he asked the Minister of Electricity why the Crown was not consulting with Whanganui Iwi over the proposed diversion. Mr Amohia's questions were left unanswered.

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- 2.84 Waters from the Whanganui River and its tributaries, including the Whakapapa River and the Taurewa, Okupata, Tawhitikuri, Te Whaiāu, Otamangakau and Mangatepopo Streams, were diverted into Lake Rotoaira and then through the Tokaanu Power Station into Lake Taupō through the Western Diversion of the Tongariro Power Scheme.
- 2.85 These diversions lowered the water level of the Whanganui River and parts of the Whakapapa River quickly became dry. In response to this and earlier lobbying by acclimatisation societies, in 1973 the Minister of Electricity authorised a minimum flow in the Whakapapa River below the diversion structure. Between 1975 and 1977 the Tongariro Power Scheme diverted approximately 84% of the mean flow of the headwaters of the Whanganui River. Between 1973 and 1992 the mean flow reduction at Te Maire, 58 kilometres downstream of the Whakapapa diversion intake, was 26%.
- 2.86 In 1982 the Rangitikei-Wanganui Catchment Board fixed minimum acceptable flows on the Whanganui River pursuant to the Water and Soil Conservation Act 1967. The first term of the fixed minimum flows began in 1983 and expired in 1988. In September 1988, the Rangitikei-Wanganui Catchment Board fixed new minimum flows for the Whanganui River expiring in 1993. Both the Electricity Corporation of New Zealand (ECNZ) and the Whanganui River Māori Trust Board lodged appeals to the Planning Tribunal against Catchment Board's decision. The Trust Board sought to have the natural flow of the River fixed as the acceptable minimum flow. ECNZ sought to have the previous 1983 minimum flow levels restored for another five year term.
- 2.87 The Planning Tribunal sat for 84 days and heard evidence from a number of witnesses, including 24 witnesses in support of the Whanganui Iwi position. The Whanganui Iwi kaumātua, Hikaia Amohia (Ngāti Hauā) told the Planning Tribunal:
- “For our people ihi, tapu, and mana go together. Each one is dependent upon the others. Any interference with nature, including the River, breaks the law of tapu; breaks the ihi or sacred affinity of our Māori people with the River; and reduces the mana and soul of the Whanganui River...When you interfere with the flow of the River, you are interfering with nature.”*
- 2.88 The Tribunal delivered its decision on 29 October 1990. It cancelled the minimum flows set by the Catchment Board and instituted a new minimum flow regime that did not meet the levels sought by Whanganui Iwi. In 1992 the Whanganui River Māori Trust Board and others appealed the Tribunal's decision to the High Court. The High Court upheld the Planning Tribunal's decision.
- 2.89 From 1991 the operation of the Tongariro Power Scheme came under the resource consents regime established by the Resource Management Act 1991. Whanganui Iwi have continued to object to the operation of the scheme under that process.
- 2.90 In relation to the Tongariro Power Scheme, Whanganui Iwi have consistently expressed their view that the diversions and reduced flows have damaged the health, wellbeing and mauri of the Whanganui River, and adversely affected the cultural and spiritual values of Whanganui Iwi.

Further litigation and claims

“The river and the land and its people are inseparable. And so if one is affected, the other is affected also. My father, mother and our tūpuna lived on the Whanganui River. They knew the river well. The river is the heartbeat, the pulse of our people. Without the Awa we are nothing, and therefore I am reminded of the kōrero when one of our elders Taitoko Tawhiri said of the River, if the Awa dies, we die as a people. Ka mate te Awa, ka mate tātou te iwi.”

A statement from kaumātua Niko Tangaroa, (Ngāti Pamoana/Ngā Paerangi), who passed away in 1998, on the Whanganui Iwi perspective of the unity of the River, its land and people.

- 2.91 When diversion of water from the Whanganui River for the Tongariro Power Scheme began in 1971, Whanganui Iwi kaumātua revived their legal claim to the River by applying to the Māori Land Court for a rehearing of the 1949 Supreme Court decision. The application did not proceed.
- 2.92 From 1974, Whanganui Iwi pursued direct negotiations with the Crown over River issues, including compensation for gravel extraction. In 1975 Whanganui Iwi met with the Minister of Māori Affairs who, relying on the Court of Appeal’s 1962 decision, stated that any claims on behalf of riparian owners at 1903 would have to establish specific details of loss.
- 2.93 In 1983 Whanganui Iwi kaumātua Titi Tihu applied to the Crown for compensation for gravel extraction. Subsequent discussions became intertwined with discussions about the Crown proposal to create a national park in the Whanganui region. Whanganui Iwi maintained that the River should not be included in the proposed park until ownership of the River was resolved. In 1986 Whanganui Iwi consented to the establishment of Whanganui National Park in principle, based on Crown assurances that the riverbed would be excluded from the Park, that the legislation would “recognise the spiritual value and mana” of the River to Whanganui Iwi, that Whanganui Iwi would “have a very real say in matters which affect Māori cultural values and spirituality” and that the Park’s establishment would not prejudice further claims to the riverbed or other lands.
- 2.94 In 1988 the Crown enacted the Whanganui River Trust Board Act 1988 under which the Whanganui River Māori Trust Board was created, consisting of nine members appointed on the recommendation of the Minister of Māori Affairs. Section 6 of the Act authorised the Trust Board to negotiate “for the settlement of all outstanding claims relating to the customary rights and usages of te iwi o Whanganui, or any particular hapū, whānau, or group, in respect of the Whanganui River, including the bed of the river, its minerals, its water and its fish”.
- 2.95 The Crown made an interim financial contribution of \$140,500 to the Trust Board without prejudice to any future settlement. A further payment of \$200,000 was made in 1990. Much of the money was absorbed by continuing litigation regarding the effect of the Tongariro Power Scheme on the Whanganui River.
- 2.96 The Resource Management Act 1991 gave regional and local authorities substantial functions and powers over natural resources, including the power to grant resource consents for uses of the Whanganui River. It also envisaged greater iwi involvement in resource management. However, Whanganui Iwi consider that they have not been accorded any significant recognition or authority in decisions made under the Act.

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- 2.97 In October 1990 Hikaia Amohia, and the then members of the Whanganui River Māori Trust Board - Archie Taiaroa, Joan Akapita, Michael Potaka, Rangipo Metekingi, Linda Henry, Julie Ranginui, Brendon Puketapu, Kevin Amohia and John Maihi - lodged the Whanganui River claim (Wai 167) with the Waitangi Tribunal on behalf of Whanganui Iwi. The Wai 167 claim was pursued for the benefit of all who affiliate to Whanganui Iwi and sought, amongst other things, the restoration of “their tino rangatiratanga over the Whanganui River and its tributaries, their full customary entitlements and other attributes of the River, and its tributaries which have been theirs from time immemorial”.
- 2.98 From the 1870s to the present, Whanganui Iwi have continually sought justice for their claims and grievances and protection for the Whanganui River. The principles and values which sustained those claims, and the fundamental ethos of Te Awa Tupua, form the foundation of this settlement.

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

3 HEI POUNGA WAI HOE MAI NĀ HŌ MĀTUA

Acknowledgements and Apology

Hei pounga wai hoe mai nā hō mātua

The waters poled by the ancestors

Acknowledging the efforts of our ancestors

ACKNOWLEDGEMENTS

- 3.1 The Crown acknowledges through this settlement that Te Awa Tupua is 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 - "*E rere kau mai te Awanui, mai i te Kāhui Maunga ki Tangaroa*".
- 3.2 The Crown acknowledges that to Whanganui Iwi the enduring concept of Te Awa Tupua - the inseparability of the people and the River - underpins the responsibilities of the iwi and hapū of Whanganui in relation to the care, protection, management and use of the Whanganui River in accordance with the kawa and tikanga maintained by the descendants of Ruatipua, Paerangi and Haunui-a-Paparangi.
- 3.3 The Crown acknowledges and respects the intrinsic connection between the iwi and hapū of Whanganui and the Whanganui River reflected in the Whanganui pepeha, "*Ko au te awa, ko te awa ko au*".
- 3.4 The Crown acknowledges the importance of the Whanganui River as a source of physical and spiritual sustenance for iwi and hapū of Whanganui, including:
- 3.4.1 as home for the iwi and hapū of Whanganui, with 143 known marae along the length of the River;
 - 3.4.2 as a means of travel, trade and social and cultural connection for the people of the River;
 - 3.4.3 as a food basket and fishery; and
 - 3.4.4 as a source of rōngoā and other resources.
- 3.5 The Crown acknowledges that the iwi and hapū of Whanganui, over many generations since 1840, have maintained the position that they never willingly or knowingly relinquished their rights and interests in the Whanganui River and have sought to protect and provide for their special relationship with the Whanganui River in many ways, including:
- 3.5.1 raising grievances directly with the Crown including numerous petitions to Parliament beginning in the nineteenth century;

3: HEI POUNGA WAI HOE MAI NĀ HŌ MĀTUA

- 3.5.2 pursuing legal proceedings regarding the ownership of the bed of the Whanganui River through a succession of courts and a Royal Commission of Inquiry between 1938 and 1962;
- 3.5.3 opposing the establishment and operation of the Tongariro Power Scheme, including litigation relating to the effect of the scheme on the Whanganui River; and
- 3.5.4 filing claims regarding the Whanganui River in the Waitangi Tribunal.
- 3.6 The Crown acknowledges that it has not adequately dealt with the longstanding grievances of the iwi and hapū of Whanganui in relation to the Whanganui River.
- 3.7 The Crown acknowledges that since 1840 it has assumed control and authority over the Whanganui River. In particular, the Crown acknowledges that it promoted and implemented legislation during the nineteenth and early twentieth centuries which had little or no recognition of Whanganui Iwi interests in the Whanganui River and which had no provision for the involvement of Whanganui Iwi in the management of the River, including:
 - 3.7.1 the enactment of the Wanganui River Trust Act 1891 and its amendments, which empowered the Wanganui River Trust to erect jetties, clear the Whanganui River for navigation purposes and control and sell River gravel and shingle;
 - 3.7.2 the enactment of Coal-mines Act Amendment Act 1903, which deemed the beds of all navigable rivers to “have always been vested in the Crown” and that all minerals contained within those river beds belonged to the Crown; and
 - 3.7.3 the acquisition of over 6,700 acres of riparian land owned by Whanganui Iwi along the Whanganui River under the Public Works Act 1908 for scenery preservation purposes.
- 3.8 The Crown acknowledges that it has failed to recognise, respect, and protect the special relationship of the iwi and hapū of Whanganui with the Whanganui River.
- 3.9 The Crown acknowledges that:
 - 3.9.1 from the mid-1880s the Crown started to remove pā tuna and utu piharau and alter the Whanganui River to enable the passage of steam boats on the river;
 - 3.9.2 the removal of pā tuna and utu piharau adversely affected an important food source and valuable taonga of Whanganui Iwi;
 - 3.9.3 Whanganui Iwi opposed the actions of the Wanganui River Trust in relation to the clearance of the Whanganui River, including the destruction and damage of pā tuna and utu piharau, which led to the conviction of members of Whanganui Iwi who took steps to try to protect their taonga; and
 - 3.9.4 river clearances contributed to a decline in the exercise of customary fishing practices by the iwi and hapū of Whanganui and an associated loss of mātauranga.
- 3.10 The Crown acknowledges that the Crown and other parties have extracted large amounts of gravel from the bed of the Whanganui River and that the effects of that

3: HEI POUNGA WAI HOE MAI NĀ HŌ MĀTUA

extraction and the lack of compensation have been a source of grievance for Whanganui Iwi since the late nineteenth century.

- 3.11 The Crown acknowledges that by the middle of the twentieth century the cumulative effects of the Crown's acts and omissions in relation to the Whanganui River had caused significant prejudice to Whanganui Iwi.
- 3.12 The Crown acknowledges that the cumulative effect of these acts and omissions amounted to a failure to actively protect the interests of Whanganui Iwi and was a breach of the Treaty of Waitangi and its principles.
- 3.13 The Crown acknowledges that the cumulative effect of its actions and omissions undermined the ability of the iwi and hapū of Whanganui to exercise their customary rights and responsibilities in respect of the Whanganui River and consequently the expression of their mana.
- 3.14 The Crown acknowledges that the litigation between 1938 and 1962 relating to the ownership of the bed of the Whanganui River:
 - 3.14.1 was in part a reaction to the Crown's actions affecting the Whanganui River;
 - 3.14.2 was required to be framed in terms of English law as a claim for a title to the riverbed, rather than the River as an indivisible whole;
 - 3.14.3 resulted in several findings between 1938 and 1954 that Whanganui Iwi had held the bed of the Whanganui River at 1840 under their customs and usages;
 - 3.14.4 remains one of the longest cases in New Zealand legal history; and
 - 3.14.5 was pursued at significant financial and emotional cost to the hapū and whānau of Whanganui.
- 3.15 The Crown acknowledges that in relation to the creation and establishment of the Tongariro Power Development Scheme:
 - 3.15.1 the Crown was aware of the concerns of Whanganui Iwi in relation to the scheme;
 - 3.15.2 the Crown failed to consult with Whanganui Iwi; and
 - 3.15.3 the Crown's failure to consult with Whanganui Iwi was inconsistent with the Crown's duty to act in good faith towards Whanganui Iwi and was a breach of the Treaty of Waitangi and its principles.
- 3.16 The Crown acknowledges that the diversion of the headwaters of the Whanganui River for the Tongariro Power Development scheme:
 - 3.16.1 is considered by Whanganui Iwi to be inconsistent with their tikanga;
 - 3.16.2 has had an adverse effect on the cultural and spiritual values of Whanganui Iwi; and
 - 3.16.3 has caused distress and remains a significant grievance for Whanganui Iwi.

3: HEI POUNGA WAI HOE MAI NĀ HŌ MĀTUA

- 3.17 The Crown acknowledges the national importance of the Whanganui River and its contribution to New Zealand's development through:
- 3.17.1 its natural, scenic and conservation value;
 - 3.17.2 its value for recreation and tourism;
 - 3.17.3 its economic and historical value as the longest navigable river in New Zealand and use as a "highway" during European settlement in the nineteenth and early twentieth centuries;
 - 3.17.4 its value as a resource for gravel extraction; and
 - 3.17.5 its value as a resource for electricity generation, including the significant contribution it has to the generation and stability of New Zealand's electricity supply.
- 3.18 The Crown acknowledges that through this settlement Whanganui Iwi have sought to bring all the iwi, hapū and other communities of the Whanganui River together for the common purpose of upholding and protecting the mana of the Whanganui River and its health and wellbeing for the benefit of future generations and, ultimately, all of New Zealand.
- 3.19 The Crown acknowledges that the approach taken by Whanganui Iwi in respect of this settlement represents significant compromise and generosity of spirit by Whanganui Iwi and promotes a collaborative, inclusive approach to the Whanganui River and its future governance and management with the recognition and protection of Te Awa Tupua at its heart.

APOLOGY

- 3.20 The Crown makes this apology in respect of the Whanganui River to the iwi and hapū of Whanganui, their tūpuna and their uri.
- 3.21 The Crown recognises through this settlement that Te Awa Tupua embodies the Whanganui River as an indivisible whole from the mountains to the sea and the inalienable interconnection between the iwi and hapū of Whanganui and the Whanganui River, as expressed in the Whanganui pepeha "*E rere kau mai te Awanui, 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").
- 3.22 The Crown unreservedly apologises for its actions and omissions that have breached the Treaty of Waitangi and its principles and damaged the special relationship between the iwi and hapū of Whanganui and the Whanganui River.
- 3.23 The Crown deeply regrets that it undermined the ability of Whanganui Iwi to exercise their customary rights and responsibilities in respect of the Whanganui River, and consequently the expression of their mana. The Crown further regrets that this compromised the physical, cultural and spiritual wellbeing of the iwi and hapū of Whanganui Iwi.
- 3.24 The Crown recognises that for generations the iwi and hapū of Whanganui have tirelessly pursued justice in respect of the Whanganui River. The Crown recognises and sincerely regrets the opportunities it has missed, until now, to adequately address

3: HEI POUNGA WAI HOE MAI NĀ HŌ MĀTUA

those grievances. Redress, through this settlement (Ruruku Whakatupua) and the Te Awa Tupua framework (Te Pā Auroa nā Te Awa Tupua), is long overdue.

- 3.25 With this apology the Crown seeks to atone for its past wrongs, and begin the process of healing. This settlement marks the beginning of a renewed and enduring relationship between Whanganui Iwi and the Crown that has Te Awa Tupua at its centre and is based on mutual trust and cooperation, good faith and respect for the Treaty of Waitangi and its principles.

TE AWA TUPUA LEGISLATION

- 3.26 The Te Awa Tupua legislation will provide for the matters set out in clauses 3.1 to 3.25.

4 TE PĀKURUKURU

Whanganui Iwi - Crown Relationship Agreement

Te Pākukururu - the figurehead of a working vessel

Me he tētē waka, me he tau e, to hika ra e!

While the work on a waka tētē may be mundane, the reward will be fulfilling.

Waka tētē were unadorned waka with simpler carvings, which were used for fishing and to carry goods, produce and people along inland waterways.

Te Pākukururu is a figurehead on a waka tētē and signifies that the relationship document between Whanganui Iwi and the Crown will assist to guide the parties as they navigate forward and work together to give effect to this settlement.

- 4.1 The Crown acknowledges this settlement marks the beginning of a renewed and enduring relationship between Whanganui Iwi and the Crown that has Te Awa Tupua at its centre and is based on mutual trust and cooperation, good faith and respect for the Treaty of Waitangi and its principles.
- 4.2 Whanganui Iwi confirms its commitment to an ongoing and active relationship with the Crown as Treaty partners that is founded upon and recognises:
- 4.2.1 the commitment of Whanganui Iwi and the Crown to Te Awa Tupua and Tupua te Kawa;
 - 4.2.2 the inter-connected relationship between Whanganui Iwi and Te Awa Tupua;
 - 4.2.3 the integrated, collaborative principles which underpin Te Pā Auroa nā Te Awa Tupua; and
 - 4.2.4 the principles of the Treaty of Waitangi.
- 4.3 The parties agree that, following the signing of this deed and prior to the settlement date, Whanganui Iwi and the Crown will work together to develop and agree a relationship document, Te Pākukururu.
- 4.4 Te Pākukururu will include provisions that:
- 4.4.1 reflect the renewal of the Treaty relationship between Whanganui Iwi and the Crown through Te Awa Tupua;
 - 4.4.2 represent a mutual commitment from both Whanganui Iwi and the Crown to Te Awa Tupua and a commitment to each other;

4: TE PĀKURUKURU

- 4.4.3 build on the principles that underpin Te Awa Tupua - in particular that Te Awa Tupua is an indivisible and living whole and the intrinsic interrelationship of people to the River;
- 4.4.4 contain a commitment to engage on the ongoing integrity and application of the principles of the settlement;
- 4.4.5 provide a basis for subsequent discussions between Whanganui Iwi and the Crown as to how Te Awa Tupua can be recognised in the day to day work of the Crown; and
- 4.4.6 reflect a non-adversarial approach to the relationship.

5 TE PĀ AUROA NĀ TE AWA TUPUA

Te Awa Tupua Framework

Te Pā Auroa - The Broad Eel Weir

*He pā kaha kua hangaia kia toitū ahakoa ngā waipuke o te ngahuru,
o te makariri me te kōanga*

The broad eel weir built to withstand the autumn, winter and spring floods

Symbolising an extensive, well-constructed framework for Te Awa Tupua that is fit for purpose, enduring and the responsibility of all.

- 5.1 Ruruku Whakatupua - Te Mana o Te Awa Tupua provides for Te Pā Auroa nā Te Awa Tupua which is a new framework for the Whanganui River centred on Te Awa Tupua.
- 5.2 Te Pā Auroa nā Te Awa Tupua comprises the following elements:
 - 5.2.1 Te Awa Tupua and its legal status;
 - 5.2.2 Tupua te Kawa (the Te Awa Tupua values);
 - 5.2.3 Te Pou Tupua (the human face of Te Awa Tupua);
 - 5.2.4 Te Heke Ngahuru ki Te Awa Tupua (the Te Awa Tupua strategy);
 - 5.2.5 Te Kōpuka nā Te Awa Tupua (the Te Awa Tupua strategy group);
 - 5.2.6 Kia Matara Rawa (the vesting of the Crown-owned parts of the bed of the Whanganui River in Te Awa Tupua); and
 - 5.2.7 Te Korotete o Te Awa Tupua (the Te Awa Tupua fund).
- 5.3 Ruruku Whakatupua – Te Mana o Te Awa Tupua also includes provision for:
 - 5.3.1 the protection of the name 'Te Awa Tupua';
 - 5.3.2 the establishment of a register of accredited hearing commissioners with relevant skills, knowledge of the Whanganui River, and understanding of Te Awa Tupua and Te Pā Auroa nā Te Awa Tupua;
 - 5.3.3 the involvement of Whanganui Iwi in:
 - (a) a collaborative process to review and identify how to improve and better coordinate the management of activities on the surface of the Whanganui River; and
 - (b) a fisheries coordination group to coordinate the work planning and management activities of the organisations with fisheries or fish habitat management responsibilities in the Whanganui River catchment and provide a forum for the iwi with interests in the Whanganui River to

5: TE PĀ AUROA NĀ TE AWA TUPUA

contribute to the protection, management and sustainable utilisation of those fisheries and fish habitats; and

- 5.3.4 the exploration, in the course of the Crown's intended review of the Protected Objects Act 1975, of changes to interim custody arrangements and prima facie ownership of taonga tūturu in the context of Te Awa Tupua and, pending that review, the interim custodianship in Te Awa Tupua of any newly found taonga tūturu found in the Whanganui River.

6 KO AU TE AWA, KO TE AWA KO AU

Whanganui Iwi Standing

Ko au te awa, ko te awa ko au

I am the River and the River is me

RECOGNITION OF IWI STANDING

- 6.1 The Crown acknowledges that Whanganui Iwi has an inalienable interconnection with, and responsibility to, Te Awa Tupua and its health and wellbeing.
- 6.2 Ngā Tāngata Tiaki o Whanganui will be recognised as having an interest in Te Awa Tupua greater than and separate from any interest in common with the public generally.
- 6.3 For the purposes of the Resource Management Act 1991, Ngā Tāngata Tiaki o Whanganui will:
- 6.3.1 be an iwi authority;
 - 6.3.2 be entitled to lodge a submission on any matter relating to or affecting the Whanganui River where there is a submission process in relation to that matter; and
 - 6.3.3 be entitled to be heard on any matter relating to or affecting the Whanganui River where a hearing, proceeding or inquiry is to be held in relation to that matter.
- 6.4 For the purposes of other statutory frameworks Ngā Tāngata Tiaki o Whanganui will:
- 6.4.1 be deemed to be an interested person or party;
 - 6.4.2 be entitled to lodge a submission on any matter relating to or affecting the Whanganui River where there is a submission process in relation to that matter; and
 - 6.4.3 be entitled to be heard on matters relating to or affecting the Whanganui River where a hearing, proceeding or inquiry is to be held in relation to that matter.
- 6.5 To avoid doubt:
- 6.5.1 clauses 6.2 to 6.4 are subject to clauses 6.5.2 to 6.7;
 - 6.5.2 clauses 6.2 to 6.4 do not provide any additional right to be notified (including limited notification under the Resource Management Act 1991) or be consulted where Ngā Tāngata Tiaki o Whanganui would not otherwise have that right; and
 - 6.5.3 where a decision-maker has a statutory discretion as to whether to notify or consult Ngā Tāngata Tiaki o Whanganui:

6: KO AU TE AWA, KO TE AWA KO AU

- (a) that discretion is preserved; but
- (b) clauses 6.1 and 6.2 should be had regard to in the exercise of that discretion.

6.6 Clauses 6.2 to 6.4:

- 6.6.1 do not remove any procedural requirement on Ngā Tāngata Tiaki o Whanganui in relation to lodging a submission or giving a notice of intention to appear or be heard;
- 6.6.2 do not prevent any other person, including any iwi or hapū with interests in the Whanganui River, from being recognised as an interested person or party on matters relating to or affecting the Whanganui River;
- 6.6.3 do not comprise a recognition of mana whenua in relation to the whole or any particular part of the Whanganui River or its catchment; and
- 6.6.4 do not bind, compromise, advantage or disadvantage, or operate as a precedent for any other matter.

6.7 In clause 6.6.1 "**procedural requirement**":

- 6.7.1 means a requirement:
 - (a) to lodge a submission or file a notice of intention to appear or be heard; or
 - (b) as to timing, form, service or any other procedure that must be followed when a submission is lodged or a notice of intention to appear or be heard is filed; but
- 6.7.2 does not include any substantive threshold or requirement.

STATUS OF NGĀ TĀNGATA TIAKI O WHANGANUI

6.8 Ngā Tāngata Tiaki o Whanganui will be deemed to be:

- 6.8.1 a public authority for the purposes of the Resource Management Act 1991;
- 6.8.2 a public body for the purposes of clause 30 of Schedule 7 of the Local Government Act 2002; and
- 6.8.3 a public body for the purposes of the Walking Access Act 2008.

TE AWA TUPUA LEGISLATION

6.9 The Te Awa Tupua legislation will provide for the matters set out in clauses 6.1 to 6.8.

7 RANGAHAU E TĀNE, MIROI E TĀNE

Customary Activities

Rangahau e Tāne, Miroi e Tāne

Tāne who provides, Tāne who embraces

- 7.1 The Crown acknowledges that the exercise of customary activities by Whanganui Iwi is an integral part of the relationship between Whanganui Iwi and the Whanganui River.
- 7.2 Persons exercising functions and powers under the Resource Management Act 1991 must recognise and provide for the acknowledgement set out in clause 7.1.

Authorised customary activities

- 7.3 In clauses 7.4 to 7.24 "**authorised customary activity**" means:
- 7.3.1 the launching and use of waka and support craft and the erection and use of associated temporary structures (including barges and temporary jetties) on the Whanganui River for ceremonial, customary, recreational, educational and sporting purposes, including:
- (a) the annual Te Tira Hoe Waka;
 - (b) tribal games;
 - (c) regatta;
 - (d) tribally significant tangihanga, including the transportation of tūpāpaku (human remains); and
 - (e) other significant tribal events;
- 7.3.2 the collection of river stones, shingle, sands and pakohe from the Whanganui River for customary purposes;
- 7.3.3 the use of the Whanganui River for customary practices relating to the physical, spiritual and cultural health and wellbeing of persons including bathing, cleansing, baptisms and other customary practices; and
- 7.3.4 the erection and, subject to clauses 7.9.1 and 7.9.2, the use of pā tuna (eel weirs), utu piharau (lamprey weirs) and other traditional fisheries structures for the purpose of revitalising, maintaining and exercising customary fisheries practices and knowledge.

7: RANGAHAU E TĀNE, MIROI E TĀNE

- 7.4 Members of Whanganui Iwi may carry out authorised customary activities on the Whanganui River:
- 7.4.1 despite:
- (a) sections 9 to 17 of the Resource Management Act 1991;
 - (b) a rule in any regional or district plan;
 - (c) the requirement for any permit or authorisation under the Conservation Act 1987, National Parks Act 1980 or the Reserves Act 1977;
 - (d) a navigational bylaw; or
 - (e) except as provided for in clause 7.19, the requirement for any permit or authorisation under any other legislation; and
- 7.4.2 subject to
- (a) clauses 7.5 to 7.10; and
 - (b) clause 7.18 to 7.24.
- 7.5 In relation to the exercise of the authorised customary activities referred to in clause 7.3.2 on any land administered under conservation legislation, prior to the settlement date (or such later date as may be agreed between the parties), Whanganui Iwi and the Director-General of Conservation will develop and agree criteria that must be met before any such activity may be carried out pursuant to clause 7.4.
- 7.6 In relation to the authorised customary activities referred to in clause 7.3.4, prior to the settlement date (or such later date as may be agreed between the parties):
- 7.6.1 Whanganui Iwi and the Crown, in consultation with relevant local authorities, will develop and agree criteria that must be met before any such activity may be carried out pursuant to clause 7.4; and
- 7.6.2 as part of that process, Whanganui Iwi and the Director-General of Conservation will explore any particular criteria that may need to apply to exercise of those activities within any land administered under conservation legislation.
- 7.7 The criteria referred to in clauses 7.5 and 7.6 may:
- 7.7.1 include the parts of the Whanganui River in which an authorised customary activity may be exercised;
- 7.7.2 include any conditions on the exercise of an authorised customary activity including the terms on which that activity may be limited or suspended in whole or in part; and
- 7.7.3 be varied by agreement between the relevant parties from time to time.

7: RANGAHAU E TĀNE, MIROI E TĀNE

- 7.8 No authorised customary activities may be carried out pursuant to:
- 7.8.1 clause 7.3.2, within any land administered under conservation legislation, until criteria are agreed under clause 7.5; and
 - 7.8.2 clause 7.3.4, until criteria are agreed under clause 7.6.
- 7.9 In relation to the authorised customary activities referred to in clause 7.3.4:
- 7.9.1 any customary fishing (including, to avoid doubt, the use of any structures referred to in clause 7.3.4 for the purposes of customary fishing) must be carried out with an appropriate authorisation under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 or any equivalent regulatory mechanism under the Fisheries Act 1996 that is developed through the process set out in clauses 8.26 to 8.30 of Ruruku Whakatupua - Te Mana o Te Awa Tupua to provide for the management of customary food gathering by members of Whanganui Iwi; and
 - 7.9.2 any taking of native fish species from an area administered under conservation legislation must be carried out under an appropriate authorisation under that legislation.
- 7.10 Any authorised customary activity to be carried out pursuant to clause 7.4 in the common marine and coastal area will also require a protected customary rights order or an agreement under the Marine and Coastal Area (Takutai Moana) Act 2011.

Notices to authorities

- 7.11 In clauses 7.12 to 7.16 "**relevant authority**" means (as the case may be):
- 7.11.1 a local authority;
 - 7.11.2 the Minister of Conservation and/or Department of Conservation in the case of the activities regulated under the Conservation Act 1987, National Parks Act 1980 or the Reserves Act 1977; or
 - 7.11.3 the administering body of any reserve under the Reserves Act 1977.
- 7.12 By written notice on or before 30 November each year, Ngā Tāngata Tiaki o Whanganui must notify any relevant authority of the authorised customary activities (excluding the activities referred to in clause 7.3.1(d)) that will occur in the 12 month period commencing on 1 January of the following year and the likely dates and locations of those activities ("**annual notice**").
- 7.13 Upon receipt of the annual notice, a relevant authority must not, without the consent of Ngā Tāngata Tiaki o Whanganui, grant a resource consent or permit or otherwise authorise an activity:
- 7.13.1 at the locations and on the dates specified in the annual notice; and
 - 7.13.2 that would have the effect of preventing or would have a significant adverse effect on the carrying out of an authorised customary activity specified in the annual notice.

7: RANGAHAU E TĀNE, MIROI E TĀNE

- 7.14 By written notice as soon as is practicable, but not less than 20 business days before the exercise of each authorised customary activity, Ngā Tāngata Tiaki o Whanganui must notify a relevant authority of the precise dates and locations on which the authorised customary activities will be carried out ("**confirmation notice**").
- 7.15 Upon receipt of the confirmation notice and not less than 10 business days before the exercise of the authorised customary activity specified in the confirmation notice, a relevant authority will give public notice of the proposed exercise of the authorised customary activity.
- 7.16 In relation to the authorised customary activities referred to in clause 7.3.1(d) (relating to tribally significant tangihanga, including the transportation of tūpāpaku (human remains)):
- 7.16.1 clauses 7.11 to 7.15 will not apply; but
- 7.16.2 as soon as is reasonably practicable, Ngā Tāngata Tiaki o Whanganui will give written notice to any relevant authority of the time and location of the proposed exercise of those authorised customary activities.
- 7.17 No coastal occupation charge provided for in a regional coastal plan or other charge will be able to be imposed on a member of Whanganui Iwi exercising an authorised customary activity specified in a confirmation notice.

Processes and protocols

- 7.18 In relation to an authorised customary activity:
- 7.18.1 Ngā Tāngata Tiaki o Whanganui will develop, in consultation with iwi and hapū with interests in the Whanganui River, appropriate protocols and processes in relation to:
- (a) the parts of the Whanganui River within which the authorised customary activity may be exercised;
- (b) who will be able to exercise the authorised customary activity; and
- (c) any conditions on the exercise of the authorised customary activity, including the terms on which an authorised customary activity may be limited or suspended in whole or in part; and
- 7.18.2 such activity must be carried out in accordance with:
- (a) any protocols and processes developed under clause 7.18.1; and
- (b) the criteria agreed under clauses 7.5 and 7.6.

Health and safety

- 7.19 Nothing in clauses 7.1 to 7.18 affects any obligation to comply with any relevant legislation in relation to health and safety of persons and the safety of structures.

Process to deal with significant adverse effects on the environment

7.20 In clauses 7.21 and 7.22 "**Minister**" means:

7.20.1 the Minister of Conservation in the case of any public conservation lands or resources managed under the Conservation Act 1987, National Parks Act 1980 or Reserves Act 1977; or

7.20.2 otherwise, the Minister for the Environment.

7.21 Clause 7.22 applies where Ngā Tāngata Tiaki o Whanganui or the Minister considers that:

7.21.1 a significant adverse effect on the environment has arisen or is likely to arise from the carrying out of an authorised customary activity; or

7.21.2 a significant adverse effect on the environment has arisen or is likely to arise that affects the ability of members of Whanganui Iwi to carry out an authorised customary activity;

("potential effect").

7.22 Where clause 7.21 applies:

7.22.1 Ngā Tāngata Tiaki o Whanganui or the Minister may give notice in writing to the other party of the potential effect;

7.22.2 Ngā Tāngata Tiaki o Whanganui and the Minister will agree a process for investigating and if necessary addressing the potential effect;

7.22.3 Ngā Tāngata Tiaki o Whanganui and the Minister may seek and obtain any information considered relevant, including through the commissioning of reports, for the purpose of assessing the nature and extent of any potential effect; and

7.22.4 Ngā Tāngata Tiaki o Whanganui and the Minister will work in a constructive and timely manner to seek to address any potential effect that has arisen or is likely to arise.

Process between Whanganui Iwi and relevant local authorities

7.23 As part of the future relationship between Ngā Tāngata Tiaki o Whanganui and relevant local authorities, and in addition to any engagement under clause 7.6.1, Ngā Tāngata Tiaki o Whanganui and relevant local authorities will explore:

7.23.1 whether other customary activities could be carried out by Whanganui Iwi on the Whanganui River without the need for a statutory authorisation from a local authority;

7.23.2 in particular, whether other customary activities could be provided for as permitted activities in relevant regional plans or district plans; and

7.23.3 the development of appropriate protocols between Ngā Tāngata Tiaki o Whanganui and relevant local authorities relating to the customary practice of placing rahui (restrictions) in relation to any part of the Whanganui River.

7: RANGAHAU E TĀNE, MIROI E TĀNE

- 7.24 To avoid doubt, the exercise of authorised customary activities under clause 7.4:
- 7.24.1 only relates to the exercise of authorised customary activities by members of Whanganui Iwi;
 - 7.24.2 does not preclude or constrain the continued exercise by Whanganui Iwi of any customary activities that are currently able to be exercised without permit or authorisation under any legislation or plan; and
 - 7.24.3 does not affect the exercise of customary activities by any other iwi with interests in the Whanganui River.

TE AWA TUPUA LEGISLATION

- 7.25 The Te Awa Tupua legislation will provide for the matters set out in clauses 7.1 to 7.22.

8 TE RIU MĀENEENE

Other Cultural Redress

Te Riu Māeneene o Te Waka

The sleek hull of the waka

SIGNIFICANCE OF RIPO

- 8.1 The Crown recognises the following statement of significance in respect of the relationship of Whanganui Iwi with, and the importance to Whanganui Iwi of, the ripo of the Whanganui River:

Ngā Ripō o Te Awa o Whanganui

Ko ngā ripō, he pou whakamārama ki rō wai nō ia hapū. He matapihi hoki ki te ao wairua, ma te tangata hei whakatika ngā ahuatanga tangata ki runga wai, ki roto wai, ki ngā tahataha, ngā ahuatanga katoa o te Awa, ngā ahuatanga katoa o te tangata, e rite ana rāua.

There are more than 240 identified ripo (rapids) on the Whanganui River between Taumarunui and the mouth of the River. These ripo have distinctive ancient names which are protected and maintained by the hapū associated with each of those ripo. These names, and their associated korero, remain central to both the relationship between each hapū of Whanganui Iwi and the Whanganui River and to the relationship of Whanganui Iwi collectively with the River.

Whanganui hapū hold that each ripo of the Whanganui River is inhabited by a kaitiaki (spiritual guardian), which is particular to each hapū. Each of these kaitiaki is a mouri and is responsible for maintaining the lifeforce and therefore the health and wellbeing of the Whanganui River and its people. Each hapū and the whānau within that hapū are responsible collectively for maintaining the mouri of the ripo and, in so doing, the collective mouri of Te Awa Tupua.

These kaitiaki of the ripo provide insight, guidance and premonition in relation to matters affecting the Whanganui River, its resources and life in general. Whanganui Iwi and the hapū and whānau of Whanganui look to these kaitiaki for guidance in times of joy, despair or uncertainty, for the guidance and insight they can provide.

Ripo also have a practical importance for Whanganui Iwi and the hapū of Whanganui. Each ripo has unique physical characteristics and is valued accordingly. Most were valuable fishing locations, where pā tuna were constructed in the fastest flowing current to catch tuna migrating downstream and utu piharau were constructed in the slower flowing water to catch piharau migrating upstream. The appropriate location, construction and maintenance of these pā requires specialised knowledge and is imbued with kawa and tikanga. The exercise of rights and responsibilities by hapū and whānau in respect of these pā is an expression of mana and an acknowledgment of the rights and responsibilities of those hapū and whānau to both the ripo and the Whanganui River as a whole.

8: TE RIU MĀENEENE

GEOGRAPHIC NAMES

8.2 The Te Awa Tupua legislation will alter each of the following existing geographic names to the altered geographic name set opposite it:

Existing geographic name	Altered geographic name
Whataumu Stream	Whātaumā Stream
Orongatea Stream	Ōrongotea Stream

8.3 In addition to the geographic names which are to be altered on the basis set out in clause 8.2, Whanganui Iwi has identified a number of other geographic names connected with the Whanganui River and its tributaries which Whanganui Iwi consider to be incorrect.

8.4 The Crown acknowledges that Whanganui Iwi will work with the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa in relation to the process for seeking the change of those other names under the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008.

SOCIAL SERVICES PROJECT

8.5 For Whanganui Iwi, their health and wellbeing is connected intrinsically with the health and wellbeing of the Whanganui River - *Ko au te awa, ko te awa ko au.*

8.6 Whanganui Iwi and the Crown have discussed Whanganui Iwi’s desire to develop a social services programme that reflects an enduring, overarching relationship between the Whanganui Iwi and the Crown, involves proactive collaboration between Crown agencies, the Iwi and other groups and results, ultimately, in the better delivery of services and outcomes to the communities of the Whanganui region.

8.7 Whanganui Iwi and the Crown have agreed, as part of their overarching relationship, to progress a project directed to the improvement of social services collaboration in the Whanganui region (“**social services project**”).

8.8 Whanganui Iwi and the Crown have agreed that the social services project will:

8.8.1 involve Whanganui Iwi together with relevant agencies including the Ministry of Social Development, the Ministry of Education, Te Puni Kōkiri, New Zealand Police and the Department of Corrections in a collaborative process;

8.8.2 explore the development of a whole of government programme that facilitates improved collaboration across, and delivery by, agencies in respect of health and related social services (including health, education, social development, child, youth and family, corrections and justice) within the Whanganui region; and

8.8.3 be initiated following the signing of this deed.

TE AWA TUPUA LEGISLATION

8.9 The Te Awa Tupua legislation will provide for the matters set out in clauses 8.1 and 8.2.

9 NGĀ RAUAWA AUKAHA

Financial Redress

Ngā Rauawa Aukaha o Te Waka

The lashed topboards of the waka

FINANCIAL REDRESS

- 9.1 The Crown will, in accordance with clauses 9.2 and 9.3, pay to Ngā Tāngata Tiaki o Whanganui as financial redress:
- 9.1.1 the amount of \$80 million; and
 - 9.1.2 the amount of \$1 million to be used for the purposes referred to in clause 3.35 of Ruruku Whakatupua - Te Mana o Te Awa Tupua.

ON-ACCOUNT PAYMENTS

- 9.2 Following the signing of this deed, and subject to the Crown being satisfied as to the matters relating to Ngā Tāngata Tiaki o Whanganui set out in clauses 10.2 and 10.3, the Crown will pay to Ngā Tāngata Tiaki o Whanganui:
- 9.2.1 the amount of \$15 million as an on-account payment in respect of the amount referred to in clause 9.1.1; and
 - 9.2.2 the amount referred to in clause 9.1.2 as an on-account payment.
- 9.3 Following agreement between Ngā Tāngata Tiaki o Whanganui and the Crown under clause 12.19 in relation to the form of the draft Te Awa Tupua bill for introduction, the Crown will pay to Ngā Tāngata Tiaki o Whanganui the amount of \$64 million as a further on-account payment in respect of the amount referred to in clause 9.1.1.
- 9.4 The Crown will pay the balance of any amount owing under clause 9.1 to Ngā Tāngata Tiaki o Whanganui on settlement date.

INTEREST

- 9.5 The Crown must, if the Te Awa Tupua legislation is enacted, pay interest on the amounts referred to in clause 9.1 to Ngā Tāngata Tiaki o Whanganui within 10 business days after settlement date.
- 9.6 The interest is payable:
- 9.6.1 for the period:
 - (a) beginning on the date of the initialling of this deed of settlement; and

9: NGĀ RAUAWA AUKAHA

- (b) in relation to each payment, ending on the day before the date of the payment referred to in:
 - (i) clause 9.2.1;
 - (ii) clause 9.2.2; and
 - (iii) clause 9.3; and

9.6.2 at the rate from time to time set as the official cash rate by the Reserve Bank, calculated on a daily basis, but not compounding.

9.7 The interest is:

9.7.1 subject to any tax payable in relation to it; and

9.7.2 payable after withholding any tax required by legislation to be withheld.

WHANGANUI IWI PROJECTS

9.8 Whanganui Iwi have identified several projects that they would like to initiate following the signing of this deed including:

9.8.1 a capacity building project directed to capacity building, infrastructure and support to facilitate the transition of Whanganui Iwi to a post-settlement environment and the initial implementation stage of the settlement;

9.8.2 a marae infrastructure project directed to identifying, assessing and advancing options for the issues associated with the marae of the Whanganui River, including issues of restoration and renovation, riparian land management, energy efficiency, sewerage and stormwater, and water supply and security;

9.8.3 an education project directed to developing, in coordination with the Ministry of Education and local schools, a programme for providing better educational outcomes for Whanganui Iwi through the development of Whanganui Iwi based curriculum, kohanga reo training and accreditation, and language programmes, utilising Te Awa Tupua as a key tool; and

9.8.4 a cultural revitalisation project directed to developing a co-ordinated, long-term cultural revitalisation programme for the cultural knowledge and traditional practices of Whanganui Iwi, centred around wananga, school-based projects, the annual Tira Hoe Waka and the teaching and exercise of traditional practices on the River.

9.9 The Crown acknowledges that, following the signing of this deed, Ngā Tāngata Tiaki o Whanganui may determine, in accordance with its trust deed, to use funds from the on-account payments referred to in clause 9.2 to initiate and advance the projects referred to in clause 9.8 and other matters relating to the implementation of the arrangements in this deed.

10 TE HOEROA

Governance

Te Hoeroa o Te Waka

The steering paddle of the waka

NGĀ TĀNGATA TIAKI O WHANGANUI

- 10.1 Whanganui Iwi intends to establish a trust to be called Ngā Tāngata Tiaki o Whanganui as the entity to receive the redress and participate in the settlement arrangements under this deed of settlement.
- 10.2 Following the initialling of this deed, Whanganui Iwi must provide, to the Crown's satisfaction, confirmation that Ngā Tāngata Tiaki o Whanganui:
- 10.2.1 has been established;
 - 10.2.2 is an appropriate entity to receive the redress that is to be provided to it under this deed;
 - 10.2.3 has a structure that provides appropriately for:
 - (a) the representation of Whanganui Iwi;
 - (b) transparent decision-making and dispute resolution processes; and
 - (c) accountability to Whanganui Iwi; and
 - 10.2.4 has been ratified by Whanganui Iwi (by a ratification process agreed in writing by Whanganui Iwi and the Crown) as an appropriate entity to receive the redress that is to be provided to it under this deed.
- 10.3 Whanganui Iwi must, following the initialling of this deed, ensure that Ngā Tāngata Tiaki o Whanganui signs and provides to the Crown a deed of covenant in the form set out in the schedule to this document.

GOVERNANCE REORGANISATION

- 10.4 The Te Awa Tupua legislation will, on the terms provided by that legislation:
- 10.4.1 dissolve the Whanganui River Māori Trust Board;
 - 10.4.2 repeal the Whanganui River Māori Trust Board Act 1988;
 - 10.4.3 vest the assets and liabilities of the Whanganui River Māori Trust Board in Ngā Tāngata Tiaki o Whanganui;
 - 10.4.4 dissolve the Pakaitore Trust;

10: TE HOEROA

- 10.4.5 vest the assets and liabilities of the Pakaitore Trust in Ngā Tāngata Tiaki o Whanganui;
- 10.4.6 dissolve Te Whiringa Muka Trust;
- 10.4.7 vest the assets and liabilities of Te Whiringa Muka Trust in Ngā Tāngata Tiaki o Whanganui (excluding, for the avoidance of doubt, the assets and liabilities of Whanganui Iwi Fisheries Limited);
- 10.4.8 provide that upon vesting, to the extent that any asset or liability is owned or held subject to any charitable trusts, the asset or liability vests in Ngā Tāngata Tiaki o Whanganui:
- (a) freed of those charitable trusts; but
 - (b) subject to those trusts expressed in the deed of trust for the Ngā Tāngata Tiaki o Whanganui;
- 10.4.9 provide, in respect of Whanganui Iwi Fisheries Limited, that:
- (a) to the extent that any asset or liability of that company is held subject to any charitable purposes:
 - (i) the asset or liability is freed of those charitable purposes; and
 - (ii) the company's constitution is deemed to have been amended to the extent necessary to give effect to clause 10.4.9(a)(i); and
 - (b) if that company is a tax charity for the purposes of the Inland Revenue Acts, the company ceases to be a tax charity; and
- 10.4.10 provide for various transitional arrangements in respect of Whanganui River Māori Trust Board, the Pakaitore Trust and Te Whiringa Muka Trust and Ngā Tāngata Tiaki o Whanganui including transitional taxation arrangements.

11 NGĀ RITENGA WHAKAŪ

Implementation Process

- 11.1 Whanganui Iwi and the Crown have agreed that, following the signing of this deed of settlement and prior to the settlement date, they will continue to work together as appropriate in relation to the implementation of various matters provided for in this deed.
- 11.2 The implementation matters referred to in clause 11.1 that relate to Te Pā Auroa nā Te Awa Tupua include:
- 11.2.1 preparatory work for the establishment and appointment of Te Pou Tupua (Part 3 of Ruruku Whakatupua - Te Mana o Te Awa Tupua);
 - 11.2.2 preparatory work for the establishment and appointment of Te Karewao (Part 3 of Ruruku Whakatupua - Te Mana o Te Awa Tupua);
 - 11.2.3 commissioning the scoping study in respect of the Whanganui River (clause 3.35 of Ruruku Whakatupua - Te Mana o Te Awa Tupua);
 - 11.2.4 preparatory work for the relationships between Te Pou Tupua and:
 - (a) certain Crown agencies (clauses 3.36 to 3.40 of Ruruku Whakatupua - Te Mana o Te Awa Tupua); and
 - (b) relevant local authorities (clauses 3.41 and 3.42 of Ruruku Whakatupua - Te Mana o Te Awa Tupua);
 - 11.2.5 preparatory work for the establishment and appointment of Te Kōpuka nā Te Awa Tupua (Part 5 of Ruruku Whakatupua - Te Mana o Te Awa Tupua);
 - 11.2.6 the development of procedures for Te Kōpuka nā Te Awa Tupua (clauses 5.28 to 5.32 of Ruruku Whakatupua - Te Mana o Te Awa Tupua);
 - 11.2.7 the design, establishment and operation of Te Korotete o Te Awa Tupua (clause 7.5 of Ruruku Whakatupua - Te Mana o Te Awa Tupua);
 - 11.2.8 preparatory work for the establishment of a collaborative process relating to managing activities on the surface of the Whanganui River (clauses 8.15 to 8.21 of Ruruku Whakatupua - Te Mana o Te Awa Tupua);
 - 11.2.9 preparatory work for the establishment of a fisheries co-ordination group (clauses 8.22 to 8.25 of Ruruku Whakatupua - Te Mana o Te Awa Tupua); and
 - 11.2.10 preparatory work for the establishment of a collaborative process relating to a customary food gathering mechanism (clauses 8.26 to 8.30 of Ruruku Whakatupua - Te Mana o Te Awa Tupua).

11: NGĀ RITENGA WHAKAŪ

- 11.3 The implementation matters referred to in clause 11.1 that relate to the arrangements in respect of Whanganui Iwi include:
- 11.3.1 the criteria to apply to the exercise of customary activities (clauses 7.5 and 7.6 of Ruruku Whakatupua - Te Mana o Te Iwi o Whanganui); and
 - 11.3.2 preparatory work for the process between Ngā Tāngata Tiaki o Whanganui and relevant local authorities in relation to authorised customary activities (clause 7.23 of Ruruku Whakatupua - Te Mana o Te Iwi o Whanganui).
- 11.4 Whanganui Iwi and, where appropriate, the Crown will also engage with other iwi with interests in the Whanganui River in relation to the implementation of various matters provided for in this deed, including:
- 11.4.1 the appointment of Te Pou Tupua (Part 3 of Ruruku Whakatupua - Te Mana o Te Awa Tupua);
 - 11.4.2 the appointment of Te Karewao (Part 3 of Ruruku Whakatupua - Te Mana o Te Awa Tupua);
 - 11.4.3 the appointment of Te Kōpuka nā Te Awa Tupua (Part 5 of Ruruku Whakatupua - Te Mana o Te Awa Tupua); and
 - 11.4.4 the processes and protocols to apply to the exercise of customary activities (clause 7.18.1 of Ruruku Whakatupua - Te Mana o Te Iwi o Whanganui).
- 11.5 Whanganui Iwi and, where appropriate, the Crown will also engage with relevant local authorities in relation to the implementation of various matters provided for in this deed, including:
- 11.5.1 preparatory work for the establishment and appointment of Te Karewao (Part 3 of Ruruku Whakatupua - Te Mana o Te Awa Tupua);
 - 11.5.2 commissioning the scoping study in respect of the Whanganui River (clause 3.35 of Ruruku Whakatupua - Te Mana o Te Awa Tupua);
 - 11.5.3 preparatory work for the relationships between Te Pou Tupua and relevant local authorities (clauses 3.41 and 3.42 of Ruruku Whakatupua - Te Mana o Te Awa Tupua);
 - 11.5.4 preparatory work for the process between Ngā Tāngata Tiaki o Whanganui and relevant local authorities in relation to authorised customary activities (clause 7.23 of Ruruku Whakatupua - Te Mana o Te Iwi o Whanganui);
 - 11.5.5 preparatory work for the establishment and appointment of Te Kōpuka nā Te Awa Tupua (Part 5 of Ruruku Whakatupua - Te Mana o Te Awa Tupua); and
 - 11.5.6 the development of procedures for Te Kōpuka nā Te Awa Tupua (clauses 5.28 to 5.32 of Ruruku Whakatupua - Te Mana o Te Awa Tupua).

12 TE TATĀ WHAKAIROIRO

Settlement Matters

Te Tatā Whakairoiro o Te Waka

The ornate bailer of the waka

ACKNOWLEDGEMENTS

12.1 Whanganui Iwi and the Crown acknowledge that:

- 12.1.1 the negotiations resulting in this deed were conducted in good faith and in the spirit of co-operation and compromise;
- 12.1.2 they have each acted honourably and reasonably in relation to the settlement;
- 12.1.3 it is not possible to:
 - (a) assess the loss and prejudice suffered by Whanganui Iwi as a result of the events on which the historical claims are based; or
 - (b) fully compensate Whanganui Iwi for all loss and prejudice suffered;
- 12.1.4 Whanganui Iwi intends their foregoing of full compensation to contribute to New Zealand's development;
- 12.1.5 the settlement is intended to enhance the on-going relationship between Whanganui Iwi and the Crown (in terms of the Treaty of Waitangi, its principles, and otherwise); and
- 12.1.6 taking all matters into consideration (some of which are specified in this clause 12.1), the settlement is fair in the circumstances.

HISTORICAL CLAIMS

12.2 In this deed, "**historical claims**":

- 12.2.1 means every claim (whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date) that Whanganui Iwi, or a representative entity, had at, or at any time before, the settlement date, or may have at any time after the settlement date, and that:
 - (a) is, or is founded on, a right arising:
 - (i) from the Treaty of Waitangi or its principles; or
 - (ii) under legislation; or
 - (iii) at common law, including aboriginal title or customary law; or

12: TE TATĀ WHAKAIROIRO

- (iv) from fiduciary duty; or
 - (v) otherwise; and
 - (b) arises from, or relates to, acts or omissions before 21 September 1992:
 - (i) by, or on behalf of, the Crown; or
 - (ii) by or under legislation; and
 - (c) relates to the Whanganui River; and
- 12.2.2 includes those parts of the Wai 167 claim to the Waitangi Tribunal relating to the Whanganui River.

12.3 However, "**historical claims**" does not include the following claims:

- 12.3.1 a claim that a member of Whanganui Iwi, or a whānau, hapū, or group referred to in clause 12.4.4, may have that is, or is founded on, a right arising as a result of being descended from an ancestor who is not referred to in clause 12.4.1;
- 12.3.2 a claim that Whanganui Iwi may have to the extent that that claim does not arise from or relate to the Whanganui River; or
- 12.3.3 a claim that a representative entity may have to the extent the claim is, or is founded, on a claim referred to in clause 12.3.1.

WHANGANUI IWI

12.4 In this deed, "**Whanganui Iwi**":

12.4.1 means:

- (a) the collective group comprised of every individual who descends from a person who exercised, at any time from 6 February 1840, customary rights and responsibilities in respect of the Whanganui River by virtue of being descended from:
 - (i) Ruatipua;
 - (ii) Paerangi; and
 - (iii) Haunui-ā-Pāpārangi; and
- (b) any individual referred to in clause 12.4.1(a);

12.4.2 includes the iwi, hapū and tupuna rohe groups whose members:

- (a) descend from:
 - (i) Ruatipua;
 - (ii) Paerangi; and
 - (iii) Haunui-ā-Pāpārangi; and

12: TE TATĀ WHAKAIROIRO

- (b) collectively exercise, or exercised, at any time from 6 February 1840, customary rights and responsibilities in respect of the Whanganui River;
 - 12.4.3 includes, but is not limited to, the hapū and tūpuna rohe groups identified in clauses 12.6 and 12.7; and
 - 12.4.4 includes any whānau, hapū or other group to the extent composed of individuals referred to in clause 12.4.1, including, but not limited to, the hapū and tūpuna rohe groups identified in clauses 12.6 and 12.7.
- 12.5 For the purpose of clause 12.4:
- 12.5.1 a person may be descended from another person by:
 - (a) birth;
 - (b) legal adoption; or
 - (c) Māori customary adoption in accordance with Whanganui Iwi tikanga; and
 - 12.5.2 "**customary rights and responsibilities**" means rights, interests and responsibilities according to tikanga Māori, including rights, interests and responsibilities in relation to the use and occupation of the Whanganui River and its catchment.
- 12.6 The hapū of Whanganui Iwi include, but are not limited to:
- 12.6.1 Ngāti Hāua;
 - 12.6.2 Ngāti Patutokotoko/ Ngāti Peketuroa;
 - 12.6.3 Ngāti Kura;
 - 12.6.4 Ngāti Hau;
 - 12.6.5 Ngāti Ruakā;
 - 12.6.6 Ngā Poutama;
 - 12.6.7 Ngāti Pāmoana;
 - 12.6.8 Ngāti Tuera;
 - 12.6.9 Ngā Paerangi;
 - 12.6.10 Ngāti Tupoho;
 - 12.6.11 Ngāti Rangi; and
 - 12.6.12 Ngāti Uenuku.

12: TE TATĀ WHAKAIROIRO

12.7 The tūpuna rohe groups of Whanganui Iwi include, but are not limited to:

- 12.7.1 Hinengakau;
- 12.7.2 Tamaupoko;
- 12.7.3 Tupoho;
- 12.7.4 Tamahaki; and
- 12.7.5 Uenuku.

12.8 Whanganui Iwi does not include:

- 12.8.1 Ngāti Tuwharetoa (including Ngāti Hikairo, Ngāti Manunui, and Ngāti Hinemihī);
- 12.8.2 Ngāti Maniapoto;
- 12.8.3 Ngāti Rereahu;
- 12.8.4 Ngāti Maru;
- 12.8.5 Ngāti Ruanui;
- 12.8.6 Ngā Rauru Kītahi; or
- 12.8.7 Ngāti Apa.

12.9 Whanganui Iwi wish to clarify that:

- 12.9.1 the hapū listed in clause 12.6 are the hapū on the list provided by Hekenui Whakarake before the Royal Commission of Inquiry in relation to the bed of the Whanganui River in 1950;
- 12.9.2 the list is not exhaustive and is a reflection of those hapū who were active during the proceedings;
- 12.9.3 however, the list highlights the connections between all hapū and tūpuna rohe affiliated to Whanganui Iwi; and
- 12.9.4 there are many other hapū of Whanganui Iwi active today and they are not excluded.

SETTLEMENT

12.10 On and from the settlement date:

- 12.10.1 the historical claims are settled;
- 12.10.2 the Crown is released and discharged from all obligations and liabilities in respect of the historical claims; and
- 12.10.3 the settlement is final.

12: TE TATĀ WHAKAIROIRO

12.11 Except as provided in this deed or the Te Awa Tupua legislation, the parties' rights and obligations remain unaffected.

12.12 Without limiting clause 12.11 or derogating from clauses 9.2 to 9.9 of Ruruku Whakatupua - Te Mana o Te Awa Tupua, nothing in this deed or the Te Awa Tupua legislation will:

12.12.1 extinguish or limit any aboriginal title or customary right that Whanganui Iwi may have;

12.12.2 constitute or imply an acknowledgement by the Crown that any aboriginal title, or customary right, exists; or

12.12.3 except as provided in this deed or the Te Awa Tupua legislation:

(a) affect a right that Whanganui Iwi may have, including a right arising:

(i) from Te Tiriti o Waitangi or its principles;

(ii) under legislation;

(iii) at common law (including in relation to aboriginal title or customary law);

(iv) from a fiduciary duty; or

(v) otherwise; or

(b) be intended to affect any action or decision under the deed of settlement between Māori and the Crown dated 23 September 1992 in relation to Māori fishing claims; or

(c) affect any action or decision under any legislation and, in particular, under legislation giving effect to the deed of settlement referred to in clause 12.12.3(b), including:

(i) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;

(ii) the Fisheries Act 1996;

(iii) the Māori Fisheries Act 2004; or

(iv) the Māori Commercial Aquaculture Claims Settlement Act 2004; or

12.12.4 affect the ability for a group to:

(a) apply for or be granted customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011; or

(b) apply for or be granted aboriginal title or customary rights in relation to the Whanganui River.

12.13 Clause 12.12 does not limit clause 12.11.

12: TE TATĀ WHAKAIROIRO

REDRESS

12.14 The redress to be provided in settlement of the historical claims:

12.14.1 is intended to benefit Whanganui Iwi collectively; but

12.14.2 may be applied by Ngā Tāngata Tiaki o Whanganui, in accordance with its trust deed, in a manner that benefits, directly or indirectly, members, or groups of members, of Whanganui Iwi.

IMPLEMENTATION OF SETTLEMENT

12.15 The Te Awa Tupua legislation will:

12.15.1 settle the historical claims;

12.15.2 exclude the jurisdiction of any court, tribunal, or other judicial body in relation to the historical claims and the settlement;

12.15.3 provide that the rule against perpetuities and the Perpetuities Act 1964 does not:

(a) apply to a settlement document; or

(b) prescribe or restrict the period during which:

(i) the trustees of Ngā Tāngata Tiaki o Whanganui, may hold or deal with property; and

(ii) Ngā Tāngata Tiaki o Whanganui may exist; and

12.15.4 require the Secretary for Justice to make copies of this deed publicly available.

12.16 Ngā Tāngata Tiaki o Whanganui must use best endeavours to ensure that every historical claim proceedings is discontinued:

12.16.1 by the settlement date; or

12.16.2 if not by the settlement date, as soon as practicable afterwards.

12.17 The Crown may, after the settlement date, do all or any of the following:

12.17.1 advise the Waitangi Tribunal (or any other tribunal, court, or judicial body) of the settlement;

12.17.2 request the Waitangi Tribunal to amend its register of claims, and adapt its procedures, to reflect the settlement;

12.17.3 from time to time propose for introduction to the House of Representatives a bill or bills for either or both of the following purposes:

(a) terminating historical claim proceedings; and

(b) giving further effect to this deed, including achieving:

12: TE TATĀ WHAKAIROIRO

- (i) certainty in relation to a party's rights and/or obligations; and/or
- (ii) a final and durable settlement.

12.18 Whanganui Iwi must support a bill referred to in clause 12.17.3.

TE AWA TUPUA LEGISLATION

12.19 The draft Te Awa Tupua bill proposed for introduction must:

12.19.1 provide for all matters for which legislation is required to give effect to this deed; and

12.19.2 be agreed by Ngā Tāngata Tiaki o Whanganui and the Crown.

12.20 Whanganui Iwi and the Crown acknowledge that:

12.20.1 the draft Te Awa Tupua bill must comply with relevant drafting conventions for a government bill; and

12.20.2 this deed (including, in particular, Te Pā Auroa nā Te Awa Tupua) contains unique features that must be given effect to through the draft Te Awa Tupua bill.

12.21 Whanganui Iwi and Ngā Tāngata Tiaki o Whanganui must support the passage through Parliament of the Te Awa Tupua legislation.

SETTLEMENT CONDITIONAL

12.22 This deed is conditional on:

12.22.1 the Crown being satisfied as to the matters in clause 10.2 in relation to Ngā Tāngata Tiaki o Whanganui;

12.22.2 the Crown being provided with a signed copy of the deed of covenant referred to clause 10.3; and

12.22.3 the Te Awa Tupua legislation coming into force.

12.23 However, the following provisions of this document are binding on its signing:

12.23.1 clauses 9.2 and 9.3;

12.23.2 clauses 10.2 and 10.3;

12.23.3 clauses 12.19 to 12.22; and

12.23.4 Part 13.

TE AWA TUPUA LEGISLATION

12.24 The Te Awa Tupua legislation will provide for the matters set out in clauses 12.2 to 12.13 and clause 12.15.

13 NGĀ PĀNUI WHAKAMĀRAMA

Definitions and General Provisions

DEFINED TERMS

13.1 In this deed:

- 13.1.1 "**assessable income**" has the meaning given to it by section YA 1 of the Income Tax Act 2007;
- 13.1.2 "**business day**" means a day that is not:
- (a) a Saturday or a Sunday; or
 - (b) Waitangi Day, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, or Labour Day; or
 - (c) a day in the period commencing with 25 December in any year and ending with 15 January in the following year; or
 - (d) a day that is observed as the regional anniversary day in:
 - (i) Wellington; or
 - (ii) Whanganui;
- 13.1.3 "**Commissioner of Inland Revenue**" includes, where applicable, the Inland Revenue Department;
- 13.1.4 "**conservation legislation**" means the Conservation Act 1987 and the Acts listed in Schedule One to that Act;
- 13.1.5 "**Crown**" has the meaning given to it by section 2(1) of the Public Finance Act 1989;
- 13.1.6 "**Crown redress**" means redress provided by the Crown to Ngā Tāngata Tiaki o Whanganui;
- 13.1.7 "**cultural redress**" means the redress provided by or under;
- (a) parts 4, 6, 7; and 8; or
 - (b) the Te Awa Tupua legislation giving effect to any of those parts;
- 13.1.8 "**date of this deed**" means the date this deed is signed by the parties;

13: NGĀ PĀNUI WHAKAMĀRAMA

- 13.1.9 "**deed of settlement**" and "**deed**" means Ruruku Whakatupua, the deed of settlement between Whanganui Iwi and the Crown in relation to the settlement of the historical Treaty of Waitangi claims of Whanganui Iwi relating to the Whanganui River comprising:
- (a) this document, Ruruku Whakatupua - Te Mana o Te Iwi o Whanganui; and
 - (b) Ruruku Whakatupua - Te Mana o Te Awa Tupua;
- 13.1.10 "**eligible member of Whanganui Iwi**" means a member of Whanganui Iwi who on [date] was:
- (a) aged 18 years or over; and
 - (b) registered on the register of members of Whanganui Iwi for the purpose of voting on:
 - (i) the ratification, and signing, of this deed; and
 - (ii) the approval of Ngā Tāngata Tiaki o Whanganui to receive the redress;
- 13.1.11 "**financial redress**" means the redress provided by or under
- (a) clauses 9.1 to 9.6; or
 - (b) the Te Awa Tupua legislation giving effect to any of those clauses;
- 13.1.12 "**financial redress amount**" means the amounts referred to in clause 9.1 as financial redress; and
- 13.1.13 "**GST**":
- (a) means goods and services tax chargeable under the Goods and Services Tax Act 1985; and
 - (b) includes, for the purposes of this Part 13, any interest or penalty payable in respect of, or on account of, the late or non-payment of GST;
- 13.1.14 "**historical claim proceedings**" means an historical claim made in any court, tribunal, or other judicial body;
- 13.1.15 "**historical claims**" has the meaning given to it by clauses 12.2 to 12.3;
- 13.1.16 "**indemnified amount**" means the amount paid to Te Awa Tupua under clause 7.1 of Ruruku Whakatupua - Te Mana o Te Awa Tupua;
- 13.1.17 "**indemnity demand**" means a demand made by Ngā Tāngata Tiaki o Whanganui to the Crown under this Part 13 for an indemnity payment;
- 13.1.18 "**indemnity payment**" means a payment made by the Crown under this Part 13;

13: NGĀ PĀNUI WHAKAMĀRAMA

- 13.1.19 "**iwi with interests in the Whanganui River**" includes Whanganui Iwi, Ngāti Tuwharetoa, Ngāti Maniapoto, Ngāti Rereahu, Ngāti Maru, Ngāti Ruanui, Ngā Rauru Kītahi and Ngāti Apa;
- 13.1.20 "**member of Whanganui Iwi**" means an individual referred to in clause 12.4.1;
- 13.1.21 "**Minister**" means a Minister of the Crown;
- 13.1.22 "**month**" means a calendar month;
- 13.1.23 "**Ngā Tāngata Tiaki o Whanganui**" means the trustees from time to time of the trust known by that name (and established by a trust deed in accordance with clause 10.2) in their capacity as trustees of that trust;
- 13.1.24 "**notice**" means a notice given under this Part 13, or any other applicable provisions of this deed, and "**notify**" has a corresponding meaning;
- 13.1.25 "**on-account payment**" means the amounts paid by the Crown on account of the settlement referred to in clauses 9.2 and 9.3;
- 13.1.26 "**party**" means each of the following:
- (a) Whanganui Iwi; and
 - (b) the Crown;
- 13.1.27 "**person**" includes an individual, a corporation sole, a body corporate, and an unincorporated body;
- 13.1.28 "**provision**", in relation to redress, includes its payment, credit, transfer, vesting, making available, creation, or grant;
- 13.1.29 "**redress**" means:
- (a) the acknowledgement and the apology made by the Crown under Part 3;
 - (b) the cultural redress; and
 - (c) the financial redress;
- 13.1.30 "**relevant local authorities**" means (as the context requires) one, some or all of:
- (a) Horizons Regional Council;
 - (b) Whanganui District Council;
 - (c) Ruapehu District Council; and
 - (d) Stratford District Council;
- 13.1.31 "**representative entity**" means:
- (a) Ngā Tāngata Tiaki o Whanganui;

13: NGĀ PĀNUI WHAKAMĀRAMA

- (b) a person (including any trustee or trustees) acting for or on behalf of:
 - (i) the collective group referred to in clause 12.4.1(a); or
 - (ii) any one or more members of Whanganui Iwi; or
 - (iii) any one or more of the whānau, hāpu, or groups of individuals referred to in clause 12.4.4;
- 13.1.32 "**Ruruku Whakatupua - Te Mana o Te Awa Tupua**" means the document of that name which forms part of the deed of settlement;
- 13.1.33 "**schedule**" means Te Tiripou - the schedule to this deed;
- 13.1.34 "**settlement**" means the settlement of the historical claims under this deed and the Te Awa Tupua legislation;
- 13.1.35 "**settlement date**" means the date that is 20 business days after the date on which the Te Awa Tupua legislation comes into force;
- 13.1.36 "**settlement document**" means a document entered into to give effect to this deed;
- 13.1.37 "**tax**" includes income tax and GST;
- 13.1.38 "**taxable activity**" has the meaning given to it by section 6 of the Goods and Services Tax Act 1985;
- 13.1.39 "**taxable supply**" has the meaning given to it by section 2 of the Goods and Services Tax Act 1985;
- 13.1.40 "**tax indemnity**" means an indemnity given by the Crown under this Part 13;
- 13.1.41 "**Te Awa Tupua legislation**" means, if the bill proposed by the Crown for introduction to the House of Representatives under clause 12.19 is passed, the resulting Act;
- 13.1.42 "**Treaty of Waitangi**" means the Treaty of Waitangi as set out in schedule 1 to the Treaty of Waitangi Act 1975;
- 13.1.43 "**trustees of Ngā Tāngata Tiaki o Whanganui**" means the trustees from time to time of that trust;
- 13.1.44 "**Tūtohu Whakatupua**" means the agreement referred to in clause 1.20.2;
- 13.1.45 "**use**", in relation to redress or an indemnity payment, includes dealing with, payment, transfer, distribution, or application;
- 13.1.46 "**Waitangi Tribunal**" means the tribunal established by section 4 of the Treaty of Waitangi Act 1975; and
- 13.1.47 "**writing**" means representation in a visible form and on a tangible medium (such as print on paper).

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INTERPRETATION

- 13.2 This deed must be interpreted in a manner which best furthers the overarching purpose and intent of Te Pā Auroa nā Te Awa Tupua as stated in clauses 1.3 and 1.4 of Ruruku Whakatupua - Te Mana o Te Awa Tupua.
- 13.3 The Te Awa Tupua legislation will include a provision that the Te Awa Tupua legislation must be interpreted in a manner which best furthers the overarching purpose and intent of Te Pā Auroa nā Te Awa Tupua as stated in clauses 1.3 and 1.4 of Ruruku Whakatupua - Te Mana o Te Awa Tupua and the agreements expressed in this deed.
- 13.4 In relation to the interpretation of this deed, unless the context requires a different interpretation:
- 13.4.1 headings do not affect the interpretation;
 - 13.4.2 all parts of speech, and grammatical forms, of a defined term have corresponding meanings;
 - 13.4.3 the singular includes the plural and vice versa;
 - 13.4.4 one gender includes the other genders;
 - 13.4.5 any monetary amount is in New Zealand currency;
 - 13.4.6 time is New Zealand time;
 - 13.4.7 something, that must or may be done on a day that is not a business day, must or may be done on the next business day;
 - 13.4.8 a period of time specified as:
 - (a) beginning on, at, or with a specified day, act, or event includes that day or the day of the act or event;
 - (b) beginning from or after a specified day, act, or event does not include that day or the day of the act or event;
 - (c) ending by, on, at, with, or not later than, a specified day, act, or event includes that day or the day of the act or event;
 - (d) ending before a specified day, act or event does not include that day or the day of the act or event; or
 - (e) continuing to or until a specified day, act, or event includes that day or the day of the act or event;
 - 13.4.9 a reference to:
 - (a) an agreement or document, including this deed, means that agreement or that document as amended, novated, or replaced;
 - (b) legislation, including the Te Awa Tupua legislation, means that legislation as amended, consolidated, or substituted;

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- (c) a party includes a permitted successor of that party; and
 - (d) a particular Minister includes any Minister who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the relevant matter;
- 13.4.10 an agreement by two or more persons binds them jointly and severally; and
- 13.4.11 if the Crown must endeavour to do something or achieve some result, the Crown:
- (a) must use reasonable endeavours to do that thing or achieve that result; but
 - (b) is not required to propose for introduction to the House of Representatives any legislation, unless expressly required by this deed.
- 13.5 If there is a conflict between a provision that is in the main body of this deed and a provision in a schedule, the provision in the main body of the deed prevails.

EFFECT OF THIS DEED

- 13.6 This deed:
- 13.6.1 is "without prejudice" until it becomes unconditional; and
 - 13.6.2 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.
- 13.7 Clause 13.6 does not exclude the jurisdiction of a court, tribunal, or other judicial body in respect of the interpretation or enforcement of this deed.

TERMINATION

- 13.8 The Crown or Ngā Tāngata Tiaki o Whanganui may terminate this deed, by notice to the other, if:
- 13.8.1 the Te Awa Tupua legislation has not come into force within 30 months after the date of this deed; and
 - 13.8.2 the terminating party has given the other party at least 60 business days' notice of an intention to terminate.
- 13.9 If this deed is terminated in accordance with its provisions:
- 13.9.1 this deed (and the settlement) are at an end;
 - 13.9.2 subject to this clause, this deed does not give rise to any rights or obligations; and
 - 13.9.3 this deed remains "without prejudice".

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13.10 However, the parties intend that the on-account payments under clauses 9.2 and 9.3 will be taken into account in any future settlement of the historical claims of Whanganui Iwi in relation to the Whanganui River.

AMENDMENTS

13.11 This deed may be amended only by written agreement signed by Ngā Tāngata Tiaki o Whanganui and the Crown.

ENTIRE AGREEMENT

13.12 This deed, in relation to the matters in it:

13.12.1 constitutes the entire agreement between the parties; and

13.12.2 supersedes all earlier representations, understandings, and agreements.

NO ASSIGNMENT OR WAIVER

13.13 Clause 13.14 applies to rights and obligations under this deed or a settlement document.

13.14 Except as provided in this deed or a settlement document, a party:

13.14.1 may not transfer or assign its rights or obligations;

13.14.2 does not waive a right by:

(a) failing to exercise it; or

(b) delaying in exercising it; and

13.14.3 is not precluded by a single or partial exercise of a right from exercising:

(a) that right again; or

(b) another right.

NOTICE REQUIREMENTS

13.15 A notice under this deed must be:

13.15.1 in writing; and

13.15.2 signed by the party giving it; and

13.15.3 addressed to the recipient at its address as provided:

(a) in clause 13.18: or

(b) if the recipient has given notice of a new address, in the most recent notice of a change of address; and

13.15.4 given by:

(a) personal delivery (including by courier) to the recipient's street address;
or

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- (b) sending it by pre-paid post addressed to the recipient's postal address.

Timing

13.16 A notice is to be treated as having been received:

- 13.16.1 at the time of delivery, if personally delivered; or
13.16.2 on the second day after posting, if posted.

13.17 However, if a notice is treated under clause 13.16 as having been received after 5pm on a business day, or on a non-business day, it is to be treated as having been received on the next business day.

Addresses

13.18 The address of:

13.18.1 Whanganui Iwi and Ngā Tāngata Tiaki o Whanganui is:

Liverpool Street
Whanganui 4500
PO Box 323
Whanganui 4540

13.18.2 The Crown is:

c/- The Solicitor-General
Crown Law Office
Level 3
Justice Centre
19 Aitken Street
PO Box 2858
Wellington.

TAX

Indemnity

13.19 The provision of Crown redress, the indemnified amount, or an indemnity payment, by the Crown to the persons specified in this deed ("**recipients**") is not intended to be:

- 13.19.1 a taxable supply for GST purposes; or
13.19.2 assessable income for income tax purposes.

13.20 The Crown must, therefore, indemnify the recipients for:

- 13.20.1 any GST payable by a recipient in respect of the provision of Crown redress, the indemnified amount, or an indemnity payment;
13.20.2 any income tax payable by a recipient as a result of any Crown redress, the indemnified amount, or an indemnity payment, being treated as assessable income of Ngā Tāngata Tiaki o Whanganui; and

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13.20.3 any reasonable cost or liability incurred by a recipient in taking, at the Crown's direction, action:

- (a) relating to an indemnity demand; or
- (b) under clause 13.31 or clause 13.32.1(b).

Limits

13.21 The tax indemnity does not apply to the following (which are subject to normal tax treatment):

13.21.1 interest paid under clauses 9.5 to 9.7:

13.21.2 a recipient's:

- (a) use of Crown redress, the indemnified amount, or an indemnity payment; or
- (b) payment of costs, or any other amounts, in relation to Crown redress or the indemnified amount.

Acknowledgements

13.22 To avoid doubt, the parties acknowledge:

13.22.1 the redress is provided:

- (a) to settle the historical claims; and
- (b) with no other consideration being provided;

13.22.2 in particular, the following are not consideration for the Crown redress:

- (a) an agreement under this deed to:
 - (i) enter into an encumbrance, or other obligation in relation to Crown redress; or
 - (ii) pay costs (such as rates, or other outgoings, or maintenance costs) in relation to Crown redress;
- (b) the performance of that agreement;

13.22.3 nothing in this part is intended to imply that:

- (a) the provision of Crown redress, the indemnified amount, or an indemnity payment, is:
 - (i) a taxable supply for GST purposes; or
 - (ii) assessable income for income tax purposes;
- (b) if a recipient is a charitable trust, or other charitable entity, it receives:
 - (i) redress, assets, or rights other than for charitable purposes; or

13: NGĀ PĀNUI WHAKAMĀRAMA

- (ii) income other than as exempt income for income tax purposes; and

13.22.4 Ngā Tāngata Tiaki o Whanganui is the only entity that this deed contemplates performing a function described in section HF 2(2)(d)(i) or section HF 2(3)(e)(i) of the Income Tax Act 2007.

Consistent actions

13.23 None of the recipients, a person associated with a recipient, or the Crown will act in a manner that is inconsistent with clauses 3.19 to 3.32.

13.24 In particular, Ngā Tāngata Tiaki o Whanganui agrees that:

13.24.1 from the settlement date, it will be a registered person for GST purposes, unless it is not carrying on a taxable activity; and

13.24.2 neither it, nor any person associated with it, will claim with respect to the provision of Crown redress, or an indemnity payment:

- (a) an input credit for GST purposes; or
- (b) a deduction for income tax purposes.

Indemnity demands

13.25 A recipient and the Crown must give notice to the other, as soon as reasonably possible after becoming aware that the recipient may be entitled to an indemnity payment.

13.26 An indemnity demand:

13.26.1 may be made at any time after the settlement date; but

13.26.2 must not be made more than 20 business days before the due date for payment of the tax, whether that date is:

- (a) specified in an assessment; or
- (b) a date for the payment of provisional tax; or
- (c) otherwise determined; and

13.26.3 must be accompanied by:

- (a) evidence of the tax, and of any other amount sought, which is reasonably satisfactory to the Crown; and
- (b) if the demand relates to GST and the Crown requires, a GST tax invoice.

Indemnity payments

13.27 If a recipient is entitled to an indemnity payment, the Crown may make the payment to:

13.27.1 the recipient; or

13: NGĀ PĀNUI WHAKAMĀRAMA

13.27.2 the Commissioner of Inland Revenue, on behalf of, and for the account of, the recipient.

13.28 A recipient must pay an indemnity payment received by it to the Commissioner of Inland Revenue, by the later of:

13.28.1 the due date for payment of the tax; or

13.28.2 the next business day after receiving the indemnity payment.

Repayment

13.29 If it is determined that some or all of the tax to which an indemnity payment relates is not payable, the recipient must promptly repay to the Crown any amount that:

13.29.1 the Commissioner of Inland Revenue refunds or credits to the recipient; or

13.29.2 the recipient has received but has not paid, and is not required to pay, to the Commissioner of Inland Revenue.

13.30 The recipient has no right of set-off or counterclaim in relation to an amount payable by it under clause 13.29.

Rulings

13.31 The recipient must assist the Crown with an application to the Commissioner of Inland Revenue for a ruling, whether binding or not, in relation to the provision of Crown redress or the indemnified amount.

Control of disputes

13.32 If the recipient is entitled to an indemnity payment, the Crown may:

13.32.1 by notice to the recipient, require it to:

(a) exercise a right to defer the payment of tax; and/or

(b) take any action specified by the Crown, and confirmed by expert legal tax advice as appropriate action in the circumstances, to respond to, and/or contest:

(i) a tax assessment; and/or

(ii) a notice in relation to the tax, including a notice of proposed adjustment; or

13.32.2 nominate and instruct counsel on behalf of the recipient whenever it exercises its rights under clause 13.32.1; and

13.32.3 recover from the Commissioner of Inland Revenue any tax paid that is refundable.

TE AWA TUPUA LEGISLATION

13.33 The Te Awa Tupua legislation will provide for the matters set out in clauses 13.1 and 13.3.

SIGNED as a deed on [*date*]

SIGNED for and on behalf
of **WHANGANUI IWI** by
the [mandated signatories] in the
presence of:

[*name*]

[*name*]

WITNESS

Name:

Occupation:

Address:

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

The Minister for Treaty of Waitangi
Negotiations in the presence of:

Hon Christopher Finlayson QC

The Minister of Finance
(only in relation to the tax indemnities)
in the presence of:

Hon Simon William English

WITNESS

Name:

Occupation:

Address:

TE TIRIPOU

Schedule

Deed of Covenant

PARTIES

- (1) **NGĀ TĀNGATA TIAKI O WHANGANUI**
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand ("the Crown")

BACKGROUND

- A. Under a deed of settlement dated [date] between Whanganui Iwi and the Crown, the Crown agreed to provide certain redress to Ngā Tāngata Tiaki o Whanganui, which was to be established by Whanganui Iwi, subject to certain terms and conditions specified in the deed of settlement.
- B. Ngā Tāngata Tiaki o Whanganui was established on [date] by Whanganui Iwi in accordance with clause 10.2 of the deed of settlement to receive the redress to be provided by the Crown under the deed of settlement.
- C. As required by clause 10.3 of the deed of settlement, Ngā Tāngata Tiaki o Whanganui covenants with the Crown as set out in this deed.

NOW NGĀ TĀNGATA TIAKI O WHANGANUI AGREES with the Crown as follows:

1 COVENANT

- 1.1 Ngā Tāngata Tiaki o Whanganui covenants with the Crown that from the date of this deed Ngā Tāngata Tiaki o Whanganui:
 - (a) is a party to the deed of settlement as if it had been named as a party to the deed of settlement and had executed it;
 - (b) will observe and perform all the obligations of Ngā Tāngata Tiaki o Whanganui under the deed of settlement; and
 - (c) is bound by the terms of the deed of settlement.
- 1.2 Ngā Tāngata Tiaki o Whanganui ratifies and confirms all acknowledgements and agreements made in the deed of settlement and all rights and powers exercised, all waivers given, all amendments agreed to, and any other actions taken in relation to the deed of settlement by Whanganui Iwi and by the mandated negotiators and agrees to be bound by them.

2 CONFIRMATION BY CROWN

2.1 The Crown, by signing this deed, confirms that it is satisfied that Ngā Tāngata Tiaki o Whanganui is an appropriate body to which the Crown will provide the redress under this deed.

3 INTERPRETATION

3.1 In this deed, unless the context requires otherwise, "**deed of settlement**" means the deed referred to in Background A.

3.2 Terms defined in the deed of settlement have the same meanings in this deed, unless the context requires otherwise.

3.3 The rules of interpretation set out in Part 13 of the deed of settlement apply in the interpretation of this deed.

SIGNED on _____ 2014)
for and on behalf of **NGĀ TĀNGATA TIAKI O**)
WHANGANUI by the Ngā Tāngata Tiaki o)
Whanganui trustees in the presence of:)

Signature of Witness

Witness Name

Occupation

Address

SIGNED on 2014)
for and on behalf of **THE CROWN**)
by the Minister for Treaty of Waitangi)
Negotiations in the presence of:)

Hon Christopher Finlayson QC

Signature of Witness

Witness Name

Occupation

Address