

2017

RURUKU WHAKATUPUA, 2014

WHANGANUI RIVER DEED OF SETTLEMENT BETWEEN THE CROWN AND WHANGANUI IWI

General background

The Whanganui River is New Zealand's longest navigable river, stretching for 290km from the slopes of Mount Tongariro to the Tasman Sea.

The Whanganui River is central to the existence of Whanganui iwi and their health and wellbeing. The Whanganui River has provided both physical and spiritual sustenance to Whanganui iwi and its hapū from time immemorial. Other iwi and hapū also have interests in parts of the Whanganui River and its tributaries.

The Whanganui River Deed of Settlement – *Ruruku Whakatupua* – is the culmination of over a century's effort by Whanganui iwi to protect and provide for its special relationship with the Whanganui River. *Ruruku Whakatupua* settles the historical Treaty of Waitangi claims of Whanganui iwi in relation to the Whanganui River.

Whanganui iwi were represented in negotiations by the Whanganui River Māori Trust Board, which is empowered by statute to negotiate the settlement of the claims of Whanganui iwi relating to the Whanganui River.

On 13 October 2011 Whanganui iwi and the Crown signed a record of understanding which provided a framework for the settlement negotiations in relation to the Whanganui River claims of Whanganui iwi.

On 30 August 2012, Whanganui iwi and the Crown signed an agreement, *Tūtohu Whakatupua*, which recorded the key elements of the agreed Te Awa Tupua framework for the Whanganui River.

Ruruku Whakatupua was initialled on 26 March 2014. It was then ratified by Whanganui iwi members and signed on 5 August 2014. It will be implemented following the passage of settlement legislation.

The Office of Treaty Settlements, with the support of the Ministry for the Environment, the Department of Conservation, Land Information New Zealand and other government agencies, represented the Crown in day-to-day negotiations.

Minister for Treaty of Waitangi Relations, Hon Christopher Finlayson, led the Crown in high-level discussions with Whanganui iwi.

Summary of the historical background to the Whanganui River claims of Whanganui iwi

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. A substantial Māori population was dispersed along the River and its major tributaries. In May 1840 fourteen Whanganui River rangatira signed the Treaty of Waitangi.

In 1848 the Crown purchased a block of 86,200 acres at Whanganui. The lower reaches of the Whanganui River ran through the middle of that block. From this point the Crown began to assert authority over the River within the boundaries of the purchase. Whanganui iwi however also continued to use and assert control of the River. From the late 1850s, legislation allowed local authorities to erect and manage structures on the River, but did not provide for Whanganui iwi involvement in the regulatory bodies.

In 1885 the Crown discussed with Whanganui Māori the 'improvement' of river rapids to help establish a steamer service. However, from 1887 Whanganui Māori protested against the scale and effect of the Crown's river works. They petitioned Parliament that steamers were destroying their eel weirs and fisheries, which provided an important food source. By 1891 most weirs had been destroyed.

In 1891 the Whanganui River Trust Act was passed to conserve the natural scenery and protect the navigability of the River. There was no provision for Māori membership on the Trust's board. The Act provided that it would not 'affect any rights conferred upon the Natives by the Treaty of Waitangi'. Whanganui iwi protested against the Trust's activities on the River by petitioning Parliament and obstructing river works. Between 1893 and the 1920s Parliament expanded the Trust's powers, including the right to extract and sell River gravel. The effects of gravel extraction and the provision of compensation have been ongoing concerns for Whanganui iwi.

In 1903 the Coal-mines Act Amendment Act 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 is the longest navigable river in New Zealand. There was no consultation with Whanganui iwi over the legislation.

During the twentieth century Whanganui iwi continued to assert their interests in the Whanganui River. In 1927 Whanganui iwi petitioned for compensation in recognition of their River rights and for the taking of gravel and land for scenery preservation, damage to pā tuna and utu piharau (eel and lamprey weirs) and the profits made by the steamer company. The Government authorised the Native Land Court to inquire into the petition. However, by 1937 this had not been completed and Whanganui iwi applied to the Native Land Court to investigate their claim to customary ownership of the River.

The Whanganui iwi claim to ownership of the bed of the Whanganui River proceeded through the courts from 1938 until 1962. Several courts found that Whanganui iwi had held the bed of the River under their customs and usages at 1840. In 1949 the Supreme Court ruled that the Coal-mines Act Amendment Act 1903 had vested the riverbed in the Crown. However, a subsequent Royal Commission in 1950 found that, but for that legislation, Whanganui iwi would be the customary owners of the riverbed and recommended compensation for gravel extraction. Following further litigation, the Court of Appeal ruled in 1962 that Māori customary ownership of the riverbed had been extinguished by the granting of Crown titles to riparian blocks.

In 1958 a Crown Order in Council authorised the diversion of water from the Whanganui River and other rivers into the proposed Tongariro Power Scheme (TPS). The Crown did not consult with Whanganui iwi about this decision or the diversions before they started in 1971. Whanganui iwi have consistently opposed the TPS and maintained their view that the diversions and reduced flows have damaged the health and wellbeing of the Whanganui River and adversely affected their cultural and spiritual values.

In 1988 the Whanganui River Māori Trust Board was established by statute to negotiate for the settlement of all outstanding Whanganui iwi claims over the Whanganui River. In 1990 the Trust Board lodged the Whanganui River claim with the Waitangi Tribunal on behalf of all who affiliate to Whanganui iwi.

From the 1870s to the present, Whanganui iwi have continually sought justice for their claims, grievances and for protection of the Whanganui River.

to could quite - good, concise summary

time line

3rd



Overview

Ruruku Whakatupua, the Whanganui River Deed of Settlement, provides for the full and final settlement of all historical Treaty of Waitangi claims of Whanganui Iwi in relation to the Whanganui River which arise from Crown acts or omissions before 21 September 1992.

The Deed of Settlement has two parts and comprises two documents:

- (a) Ruruku Whakatupua – Te Mana o Te Awa Tupua
- (b) Ruruku Whakatupua – Te Mana o Te Iwi o Whanganui.

Ruruku Whakatupua – Te Mana o Te Awa Tupua is primarily directed towards the establishment of a new legal framework (Te Pā Auroa nā Te Awa Tupua) for the Whanganui River that is centred on the legal recognition of the Whanganui River from the mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements, as an indivisible and living whole – Te Awa Tupua.

Ruruku Whakatupua – Te Mana o Te Iwi o Whanganui is primarily directed towards Whanganui Iwi and the recognition and further development of the relationship between Whanganui Iwi and the Whanganui River through both cultural and financial redress.

Ruruku Whakatupua – Te Mana o Te Awa Tupua

Te Pā Auroa nā Te Awa Tupua provides a new legal framework for the Whanganui River centred on Te Awa Tupua. The settlement provides that Te Pā Auroa nā Te Awa Tupua is a relevant consideration for any person making statutory decisions relating to the Whanganui River or activities in the catchment affecting the River. Te Pā Auroa comprises the following seven principal elements.

1. Legal recognition of Te Awa Tupua

Under the settlement Te Awa Tupua will be recognised in legislation as 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.

Te Awa Tupua will also be recognised as a legal person. Reflecting the view of the River as a living and integrated whole, Te Awa Tupua will have its own legal personality with all the corresponding rights, duties and liabilities of a legal person.

2. Tupua te Kawa (Te Awa Tupua values)

Under the settlement, a set of intrinsic values – Tupua te Kawa – will be established and recognised. Tupua te Kawa comprise the following four values which represent the essence of Te Awa Tupua:

- (a) **Ko te Awa te mātapuna o te ora** (*The River is the source of spiritual and physical sustenance*)

Te Awa Tupua is a spiritual and physical entity that supports and sustains both the life and natural resources within the Whanganui River and the health and wellbeing of the iwi, hapū and other communities of the River.

- (b) **E rere kau mai te Awa nui mai te Kahui Maunga ki Tangaroa** (*The great River flows from the mountains to the sea*)

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

- (c) **Ko au te Awa, ko te Awa ko au** (*I am the River and the River is me*)

The iwi and hapū of the Whanganui River have an inalienable interconnection with, and responsibility to, Te Awa Tupua and its health and wellbeing.

- (d) **Ngā manga iti, ngā manga nui e honohono kau ana, ka tupu hei Awa Tupua** (*The small and large streams that flow into one another and form one River*)

Te Awa Tupua is a singular entity composed of many elements and communities, working collaboratively to the common purpose of the health and wellbeing of Te Awa Tupua.

Decision makers under the primary legislation affecting the Whanganui River must recognise and provide for both the legal status of Te Awa Tupua and Tupua Te Kawa.

3. Te Pou Tupua

Under the settlement the position of Te Pou Tupua will be established to act as the human face of Te Awa Tupua. Two people will be appointed jointly from nominations made by iwi with interests in the Whanganui River and the Crown.

The role of Te Pou Tupua is to act and speak on behalf of Te Awa Tupua, uphold the legal status of Te Awa Tupua and Tupua te Kawa, and promote and protect the health and wellbeing of Te Awa Tupua. Te Pou Tupua will also carry out relevant 'landowner' functions and administer Te Korotete o Te Awa Tupua.

Te Pou Tupua will be supported by Te Karewao, an advisory committee comprising representatives of Whanganui Iwi, other iwi with interests in the River and local authorities.

Te Pou Tupua will enter into relationships with relevant agencies, local government and the iwi and hapū of the River to help Te Pou Tupua both apply Tupua te Kawa and perform its functions.

The Crown will provide an annual contribution of \$200,000 for 20 years to support Te Pou Tupua and Te Karewao.

4. Te Heke Ngahuru ki Te Awa Tupua (Te Awa Tupua Strategy)

A strategy document, Te Heke Ngahuru ki Te Awa Tupua, will be developed, directed to the future environmental, social, cultural and economic health and wellbeing of Te Awa Tupua. Te Heke Ngahuru will identify issues and provide a strategy and recommended actions for addressing those issues.

Decision makers under the primary legislation affecting the Whanganui River must have particular regard for Te Heke Ngahuru.

Te Heke Ngahuru will be developed through a collaborative, public process by a strategy group, Te Kōpuka nā Te Awa Tupua, and will be reviewed at least every 10 years.

5. Te Kōpuka nā Te Awa Tupua (Te Awa Tupua Strategy Group)

Te Kōpuka nā Te Awa Tupua will be a strategy group comprising representatives of iwi, central and local government, and other groups with interests in the River, including the primary sector, recreational users and environmental groups.

important
to be by physical
elements
of river
protected under
law.

In addition to developing Te Heke Ngahuru, Te Kōpuka's functions will include monitoring its implementation as well as providing a forum for discussing issues related to the health and wellbeing of Te Awa Tupua. It may also receive delegated functions from local authorities.

The Crown will provide a one-off contribution of \$430,000 to the cost of establishing Te Kōpuka and the development of Te Heke Ngahuru.

6. Vesting of the Crown-owned bed of the Whanganui River

The Crown-owned parts of the bed of the Whanganui River and its tributaries will vest in Te Awa Tupua through the settlement legislation. The vesting includes any pakohe, gravel, sand and shingle.

The vesting will not affect or prevent the recognition of any aboriginal title or customary rights of iwi and hapū relating to the River.

7. Te Korotete o Te Awa Tupua (Te Awa Tupua fund)

A \$30 million fund, Te Korotete o Te Awa Tupua, will be established to support the health and wellbeing of Te Awa Tupua. Te Korotete will be held in the name of Te Awa Tupua and administered by Te Pou Tupua. Applications will be open on a contestable basis to any person or group wishing to advance an initiative related to the health and wellbeing of Te Awa Tupua.

Other Te Awa Tupua arrangements

In addition to the key elements of Te Pā Auroa nā Te Awa Tupua outlined above, Ruruku Whakatupua – Te Mana o Te Awa Tupua also provides for:

- the protection of the name 'Te Awa Tupua' from misuse, or from use without the consent of Te Pou Tupua
- the establishment of the Te Awa Tupua register, maintained by Te Pou Tupua, of accredited hearing commissioners who may be appointed to consider certain resource consent applications relating to the Whanganui River
- a collaborative process (involving iwi, Maritime New Zealand, and central and local government) to identify how to improve the regulation of activities on the surface of the River
- the establishment of a fisheries coordination group (involving iwi, Fish and Game New Zealand, and central and local government) to advance the protection, management and sustainable use of freshwater fisheries in the catchment
- a collaborative process (involving iwi and the Ministry for Primary Industries) to explore the development of a regulatory mechanism to provide for customary food gathering
- interim custodian arrangements, pending the review of the Protected Objects Act 1975, in Te Awa Tupua for taonga tūturu found in the Whanganui River.

Ruruku Whakatupua – Te Mana o Te Iwi o Whanganui

Ruruku Whakatupua – Te Mana o Te Iwi o Whanganui contains an iwi narrative, an agreed historical account, Crown acknowledgements and apology, and cultural and financial redress for Whanganui Iwi.

Crown acknowledgements and apology

Based on the agreed historical account, the Crown acknowledgements recognise the acts and omissions of the Crown in relation to the Whanganui River, including its failure to protect the interests of Whanganui Iwi, and the adverse effects and prejudice caused to Whanganui Iwi.

The Crown apology is the Crown's formal apology for Treaty breaches as the Crown seeks to atone for past wrongs and build a renewed relationship with Whanganui Iwi.

Te Pākukururu: Whanganui Iwi – Crown relationship Agreement

Whanganui Iwi and the Crown have agreed to work together to develop an overarching relationship document, Te Pākukururu, which will help both parties as they work together to implement and give effect to the settlement. Te Pākukururu will represent the mutual commitment of the Crown and Whanganui Iwi to Te Awa Tupua.

Whanganui Iwi standing

The settlement recognises that Whanganui Iwi has not only an interest in, and responsibility to, Te Awa Tupua and its health and wellbeing, but that its interest is greater than and separate from the interest of the public generally. The Whanganui Iwi governance entity will have the statutory right to lodge submissions and participate in hearing processes relating to the Whanganui River.

Customary activities

The settlement acknowledges that the exercise of customary activities by Whanganui Iwi is an integral part of their relationship with the River. Certain identified customary activities (including the launching of waka, the collection of river stones and pakohe, the use of the River for customary practices, and the erection and use of traditional fisheries structures) will be able to be carried out by Whanganui Iwi without the need for consent or other authorisation under certain statutes.

Other cultural redress

Ruruku Whakatupua – Te Mana o Te Iwi o Whanganui also contains other cultural redress, including:

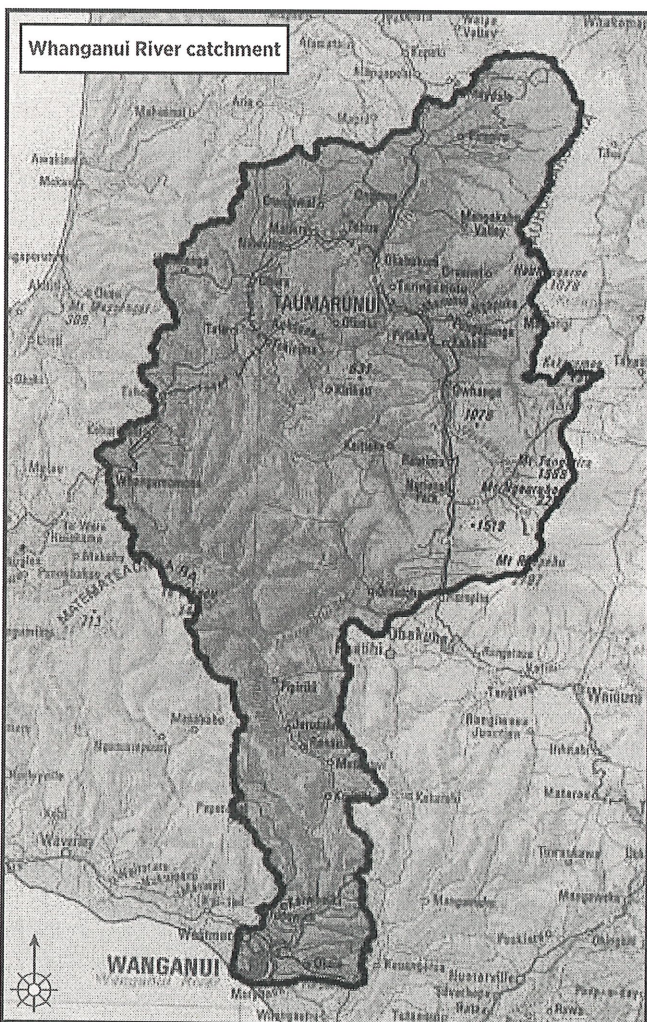
- Crown recognition of the significance of ripo (rapids) to the relationship of each hapū of Whanganui Iwi with the River and to the relationship of Whanganui Iwi collectively with the River
- place name changes to the Whātaumā Stream (previously Whataumu Stream) and the Ōrongotea Stream (previously Orongatea Stream)
- agreement to progress a social services project (involving Whanganui Iwi and relevant agencies) directed to improved collaboration of health and related social services within the Whanganui region.

Financial redress

This settlement includes the payment of financial redress to Whanganui Iwi in recognition of the settlement of their claims and to help them advance the future health and wellbeing of both the Whanganui River and its people.

Whanganui Iwi will receive financial redress comprising:

- a financial redress payment of \$80 million (together with interest that has been accumulating since Ruruku Whakatupua was initialled in March 2014)
- an additional payment of \$1 million for transitional and implementation matters relating to the establishment of Te Pā Auroa Nā Te Awa Tupua.



Questions and answers

What is the total cost to the Crown?

The total cost to the Crown of the settlement redress outlined in the Deed of Settlement comprises \$81 million (plus interest accrued since the initialling of the Deed of Settlement), \$30 million for the establishment of Te Korotete, \$200,000 per year for 20 years for Te Pou Tupua, and \$430,000 for the establishment of Te Heke Ngahuru.

Is there any private land involved?

No. In accordance with Crown policy, no private land is involved.

Will Whanganui Iwi own the riverbed?

No, the Crown-owned parts of the riverbed will be vested in Te Awa Tupua and the 'landowner' role performed by Te Pou Tupua. Any private property rights, aboriginal title or customary rights that may exist in the riverbed will be preserved.

Are the public's rights affected?

No, existing public access and use of the Whanganui River, including navigation rights, will be preserved and not affected by the vesting of the bed of the River.

When will the settlement take effect?

The settlement will take effect following enactment of the settlement legislation.

Does Whanganui Iwi have the right to come back and make further claims?

Not in relation to the Whanganui River. The Deed of Settlement will be a final and comprehensive settlement of all the historical (relating to events before 21 September 1992) Treaty of Waitangi claims of Whanganui Iwi in relation to the Whanganui River. The settlement legislation, once passed, will prevent Whanganui Iwi from re-litigating those Treaty claims before the Waitangi Tribunal or the courts.

The settlement package will still allow Whanganui Iwi or members of Whanganui Iwi to pursue Treaty claims against the Crown for acts and omissions after 21 September 1992 in relation to the Whanganui River.

Who benefits from the settlement?

All members of Whanganui Iwi wherever they may now live will benefit from the settlement as a whole. The Te Awa Tupua framework will also bring benefits to the Whanganui River and its health and wellbeing.

Does the settlement affect water rights or create ownership of water?

No. Issues in relation to rights and interests in water are preserved under the settlement and the vesting of the Crown-owned riverbed does not create or transfer any proprietary interests in water.

This and other settlement summaries are also available at www.ots.govt.nz