

MINISTER OF LOCAL GOVERNMENT

And

WAIKATO-TAINUI

LOCAL GOVERNMENT ACCORD

18 June 2010

LOCAL GOVERNMENT ACCORD

LOCAL GOVERNMENT ACCORD

THIS ACCORD is made between

THE MINISTER OF LOCAL GOVERNMENT (“MINISTER”)

And

WAIKATO-TAINUI TE KAUHANGANUI INCORPORATED, in its capacity as trustee of the WAIKATO RAUPATU RIVER TRUST (“WAIKATO-TAINUI”)

BACKGROUND

- A. The Waikato Raupatu Claims Settlement Act 1995 gave effect to certain provisions of the deed of settlement between Her Majesty the Queen in right of New Zealand (“the Crown”) and Waikato dated 22 May 1995 and settled certain Raupatu claims made to the Waitangi Tribunal by Robert Te Kotahi Mahuta, the Tainui Maaori Trust Board and Ngaa Marae Toopu (Wai 30). The 1995 Act expressly excluded certain historical claims, including the claim to the Waikato River.
- B. In the spirit of co-operation, compromise and good faith, and as foreshadowed in the 1995 Deed, Waikato-Tainui and the Crown entered into negotiations in respect of the claims of Waikato-Tainui concerning the Waikato River.
- C. By deed of settlement dated 22 August 2008 Waikato-Tainui and the Crown reached agreement on the terms of a settlement to enter a new age of co-management over the Waikato River with an overarching purpose to restore and protect the health and wellbeing of the Waikato River for future generations.
- D. The Crown is committed to restoring and protecting the health and wellbeing of the Waikato River for future generations and to the new era heralded by the 2008 deed. However, subsequent to the 2008 deed, the Crown requested to review the co-management arrangements to assess whether it was possible to better deliver the objectives and overarching purpose of the settlement.
- E. With the agreement of Waikato-Tainui, the Crown appointed an advisory panel. The Crown approached Waikato-Tainui with the advisory panel’s recommendations and Waikato-Tainui agreed to consider revisiting the arrangements in the 2008 deed.
- F. In the spirit of good faith and on the basis that the arrangements in the 2008 deed could be enhanced while preserving the integrity of the settlement, Waikato-Tainui and the Crown agreed on a revised deed of settlement dated 17 December 2009.
- G. The 2009 deed now supersedes the 2008 deed and contains the terms of settlement between the Crown and Waikato-Tainui in relation to the Waikato River.

LOCAL GOVERNMENT ACCORD

- H. The Kiingitanga Accord signed between the Crown and Waikato-Tainui on 22 August 2008 remains in full force and effect except to the extent that its requirements are expressly satisfied by the 2009 deed.
- I. Waikato-Tainui and the Crown have agreed that accords will be entered into between Waikato-Tainui and various Ministers of the Crown to enhance the relationship between the Crown and Waikato-Tainui and facilitate the new era of co-management contemplated by the settlement.
- J. To give effect to the obligations under clause 9.4 of the deed of settlement and clause 3.1 and the schedule of the Kiingitanga Accord, and to further enhance the relationship between Waikato-Tainui and the Minister this Accord is entered into by Waikato-Tainui and the Minister.

TERMS OF THIS ACCORD

1. PURPOSE

1.1. The purpose of this Accord is to:

- (a) reflect the commitment of the Crown and Waikato-Tainui to enter a new era of co-management over the Waikato River with the overarching purpose of restoring and protecting the health and wellbeing of the Waikato River for future generations;
- (b) set out how Waikato-Tainui and the Minister will establish and maintain a positive, co-operative and enduring relationship regarding local government matters that directly impact the health and wellbeing of the Waikato River in the Accord Area; and
- (c) ensure that the Crown, through the Minister will recognise the exercise of mana whakahaere by Waikato-Tainui in relation to the Waikato River.

2. SCOPE OF THIS ACCORD

- 2.1. This Accord applies to the functions, responsibilities and actions of the Minister, in respect to those aspects of the administration of Local Government that affect the health and wellbeing of the Waikato River from Karapiro to Te Puuaha o Waikato, including the Waipaa River from its junction with the Puuniu River to its junction with the Waikato River, and its catchment, being the parts of those rivers and the catchment marked "A" on the SO plan in part 6 of the schedule to the deed of settlement ("the Accord Area").
- 2.2. The Minister acknowledges that Waikato-Tainui interests and the exercise of mana whakahaere by Waikato-Tainui, extend beyond the Accord Area.
- 2.3. The parties may, on a case-by-case basis, agree to engage in accordance with the principle of co-management and the purpose and principles of this Accord, on matters that relate to their specific roles and responsibilities that impact on Waikato-Tainui's mana whakahaere outside the Accord area.

3. PRINCIPLES UNDERLYING THIS ACCORD

3.1. The following principles underlie:

- (a) the relationship of Waikato-Tainui with the Waikato River; and

LOCAL GOVERNMENT ACCORD

- (b) this Local Government Accord.

3.2. Te Mana o te Awa (the spiritual authority, protective power and prestige of the river)

- (a) To Waikato-Tainui, the Waikato River is a tupuna (ancestor) which has mana (prestige) and in turn represents the mana and mauri (life force) of the tribe. The Waikato River has its own mauri, its own spiritual energy, and its own powerful identity. It is a single indivisible being.
- (b) Respect for te mana o te awa (the spiritual authority, protective power and prestige of the Waikato River) is at the heart of the relationship between the tribe and their ancestral River. Waikato-Tainui regard their River with reverence and love. It gave them their name and is the source of their tribal identity. Over generations, Waikato-Tainui have developed tikanga (values, ethics governing conduct) which embody their profound respect for the Waikato River and all life within it. The Waikato River sustains the people physically and spiritually. It brings them peace in times of stress, relief from illness and pain, and cleanses and purifies their bodies and souls from the many problems that surround them. Spiritually, to Waikato-Tainui, the Waikato River is constant, enduring, and perpetual.

3.3. Mana whakahaere (authority and rights of control)

- (a) Mana whakahaere refers to the authority that Waikato-Tainui and other Waikato River iwi have established in respect of the Waikato River over many generations. Mana whakahaere entails the exercise of rights and responsibilities to ensure that the balance and mauri (life force) of the Waikato River are maintained. It is based in the recognition that if we care for the River, the River will continue to sustain the people.
- (b) In customary terms mana whakahaere is the exercise of control, access to and management of the Waikato River, including its resources, in accordance with tikanga (values, ethics governing conduct). For Waikato-Tainui, mana whakahaere has long been exercised under the mana of the Kiingitanga.

3.4. Health and wellbeing

- (a) The principle of health and wellbeing reflects the overarching purpose of the Settlement, which is to restore and protect the health and wellbeing of the Waikato River.
- (b) The health and wellbeing of Waikato-Tainui and its special relationship with the Waikato River is inherently connected with the health and wellbeing of the Waikato River.

3.5. Co-management

- (a) The Crown and Waikato-Tainui have committed to enter into a new era of co-management in respect of the Waikato River. The principle of co-management includes:
 - i the highest level of good faith engagement; and
 - ii consensus decision-making as a general rule;

LOCAL GOVERNMENT ACCORD

while having regard to statutory frameworks and the mana whakahaere of Waikato-Tainui and other Waikato River iwi.

- (b) To be effective, co-management must:
- i be implemented and achieved at a number of levels and across a range of management agencies, bodies and authorities, including (but without limitation) to the following:
 - a. the development, amendment and implementation of strategies, policy, legislation and regulations that may impact on the health and wellbeing of the Waikato River; and
 - b. the processes for granting, transfer, variation and renewal of consents, licences, permits and other authorisations for all activities that impact on the health and wellbeing of the Waikato River; and
 - ii include provision for effective Waikato-Tainui input and participation by engagement at an early stage in statutory and management processes, and other actions, that may affect the health and wellbeing of the Waikato River, including the planning and development of new and amended policies or management initiatives or decisions affecting or relating to the Waikato River. This is a positive obligation to provide for early and effective input from Waikato-Tainui, rather than simply an obligation to consult.

3.6. Integration

Arising from the principles of te mana o te awa and mana whakahaere, and inter-related to the principle of co-management, is the principle of integration. The health and wellbeing of the Waikato River and successful co-management requires effective integration of management between the relevant government agencies, Crown entities, local authorities and non-governmental agencies who have roles and responsibilities in respect of the Waikato River.

3.7. Treaty of Waitangi

Te Tiriti o Waitangi/the Treaty of Waitangi and its principles apply to this Accord and the relationship between the Crown and Waikato-Tainui reflected in this Accord.

3.8. Honour and integrity

Underpinning this Settlement is the principle of honour and integrity. Waikato-Tainui and the Crown have entered into this settlement in good faith relying on the commitments of each other contained in the Deed and this Accord with the intention of achieving a full, fair and durable settlement of the Raupatu claims of Waikato-Tainui in relation to the Waikato River.

3.9. Local Government

The restoration and protection of the health and wellbeing of the Waikato River is consistent with local authorities' responsibility to take appropriate account of the principles of Te Tiriti o Waitangi/the Treaty of Waitangi and to maintain and improve opportunities for Waikato-Tainui to contribute to local government decision-making processes. In particular to ensure

LOCAL GOVERNMENT ACCORD

that any options involving a significant decision by the Minister of Local Government in relation to the Waikato River take into account the relationship of Waikato-Tainui and their culture and traditions with their ancestral land, water, sites, wahi tapu, valued flora and fauna and other taonga.

4. RELATIONSHIP PRINCIPLES

4.1 Waikato-Tainui and the Minister agree to abide by the following relationship principles when implementing this Accord and exercising their various roles and functions under this Accord:

- a) working in a spirit of co-operation;
- b) ensuring early engagement on issues that may directly affect the health and wellbeing of the Waikato River that the Secretary of Local Government is directed by the Minister to work on;
- c) operating a 'no surprises' approach;
- d) acknowledging that the relationship is evolving, not prescribed;
- e) respecting the independence of the parties and their individual mandates, roles and responsibilities impacting on the Waikato River;
- f) recognising and acknowledging that the parties benefit from working together by sharing their vision, knowledge and expertise; and
- g) committing to the highest level of engagement as indicated in this Accord and consistent with the principle of co-management.

5. ROLES AND OBJECTIVES

5.1. Joint Objective

Waikato-Tainui and the Minister are committed to the restoration and protection of the health and wellbeing of the Waikato River for future generations.

5.2. Waikato-Tainui Role

- (a) To Waikato-Tainui:
 - i the Waikato River is a tupuna (ancestor) which has mana (spiritual authority and power) and in turn represents the mana and mauri (life force) of Waikato-Tainui; and
 - ii the Waikato River is a single indivisible being that flows from the Huka Falls to Te Puuaha o Waikato (the mouth) and includes its waters, banks and beds (and all minerals under them) and its streams, waterways, tributaries, lakes, aquatic fisheries, vegetation, flood plains, wetlands, islands, springs, water column, airspace and substratum as well as its metaphysical being with its own mauri.

LOCAL GOVERNMENT ACCORD

- (b) The Waikato-Tainui relationship with the Waikato River, and Waikato-Tainui's respect for it:
- i gives rise to Waikato-Tainui responsibilities to protect te mana o te awa and to exercise mana whakahaere in accordance with long established tikanga to ensure the well being of the Waikato River; and
 - ii lies at the heart of Waikato-Tainui's spiritual and physical wellbeing and tribal identity and culture.

5.3. Waikato-Tainui Objectives

- (a) As relevant to local government matters, Waikato-Tainui's objectives for the Waikato River include:
- i the restoration and protection of the health and wellbeing of the Waikato River;
 - ii the restoration and protection of the relationship of Waikato-Tainui with the Waikato River, including their economic, social, cultural, and spiritual relationships;
 - iii the integrated, holistic and co-ordinated approach to management of the natural, physical, cultural and historic resources of the Waikato River;
 - iv the adoption of a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River, and in particular those effects that threaten serious or irreversible damage to the Waikato River;
 - v the recognition and avoidance of adverse cumulative effects, and potential cumulative effects, of activities undertaken both on the Waikato River and within its catchments on the health and wellbeing of the Waikato River;
 - vi the recognition that the Waikato River is degraded and should not be required to absorb further degradation as a result of human activities;
 - vii the protection and enhancement of significant sites, fisheries, flora and fauna; and
 - viii the application to the above of both Maatauranga Maaori and latest available scientific methods.

5.4. Crown Role and Objectives

- (a) The Minister has primary responsibility for legislation concerned with the system of local government in New Zealand. However, the Minister is not answerable for decisions of local authorities and except in extreme circumstances, cannot intervene in their decisions.
- (b) The Minister's objective is to ensure that all local government-related legislation continues to provide for a democratic and effective local government system.

LOCAL GOVERNMENT ACCORD

6. IMPLEMENTATION AND APPLICATION

- 6.1. In implementing this Accord, Waikato-Tainui and the Minister give effect to the purpose, joint objectives and relationship principles of this Accord.
- 6.2. Within 6 months of the signing of this Accord, Waikato-Tainui and the Minister, or his / her chosen delegates, will agree the timeframes and priorities for the implementation and application of this Accord.

7. AGREEMENTS

- 7.1. In order to achieve all parties' objectives in respect of this Accord, the Minister and Waikato-Tainui have agreed on a number of matters regarding the Waikato River which are set out in this Accord.
- 7.2. The Minister will recognise and have particular regard to the Waikato-Tainui Environmental Plan when considering local government matters relating to the health and wellbeing of the Waikato River and where agreed, to matters that impact on Waikato-Tainui's mana whakahaere.
- 7.3. Information sharing
 - (a) Each party will, at the request of the other, share relevant information that the party holds or develops that is relevant to the health and wellbeing of the Waikato River.
 - (b) In entering into this commitment the parties acknowledge that:
 - i The obligations in this section of this Accord do not apply to information that the Crown is legally prevented from providing (for example information that is the subject of an obligation of confidentiality or non-disclosure) or to information that may be withheld under the grounds set out under the Official Information Act 1982;
 - ii it may not always be possible to share information or to share information at the time requested because of issues of confidentiality or sensitivity of the information, or because of internal protocols and processes relating to the distribution or release of information; and
 - iii each party owes to the other the duty to advise of any potential conflict of interest that may result from the disclosure of the information to the party and the parties will consider whether and if so how that conflict can be managed.

LOCAL GOVERNMENT ACCORD

7.4. Staff Awareness

- (a) From the date of signing this Accord the Minister will encourage the Secretary for Local Government to arrange for relevant staff (and in particular those who are regularly involved in work relating to or impacting on the Waikato River) to be educated on:
 - i. the values and practices of Waikato-Tainui; and
 - ii. this Accord and its implementation.

7.5. Local Government Legislation

- (a) Where the Minister of Local Government initiates a review of:
 - i The Local Government Act 2002
 - ii The Local Government (Rating) Act 2002
 - iii The Local Electoral Act 2001

that may have a direct impact on the health and wellbeing of the Waikato River and/or the statutory arrangements in place for the co-governance of the Waikato River, the Minister of Local Government will engage with Waikato-Tainui.

8. COMMUNICATION BETWEEN THE PARTIES

8.1. The Minister and Waikato-Tainui will establish and maintain effective and efficient communication with each other on a continuing basis, by:

- (a) Waikato-Tainui providing, and the Minister maintaining, information on the Waikato-Tainui personnel responsible for local government matters relating directly to the Waikato River, including their addresses and contact details;
- (b) the Minister providing, and Waikato-Tainui maintaining, information on primary Crown contacts responsible for local government matters relating to the Waikato River;
- (c) identifying staff who will be working closely with staff of the other party, and informing those staff of the contents of this Accord and their responsibilities and roles under it.

8.2. Where the parties are required to engage with each other under this Accord, the basic principles that will be followed are:

- (a) ensuring that the parties engage with each other as soon as reasonably practicable following the identification or determination of the proposal or issues to be the subject of the engagement;
- (b) providing the other party with sufficient information to undertake informed discussions and make submissions in relation to any of the matters that are subject of the engagement;

LOCAL GOVERNMENT ACCORD

- (c) ensuring that sufficient time is given for the effective participation of the other party, including the preparation of submissions in relation to any of the matters that are subject of the engagement;
- (d) ensuring that both parties will approach the engagement with an open mind and genuinely consider the views and/or concerns that the other party may have in relation to any of the matters that are subject to the engagement; and
- (e) if requested by one party, meeting with the other party to discuss possible options for resolution of the relevant matter and seeking to reach a consensus on what is required to address the issue.
- (f) if consensus is not able to be reached within an agreed timeframe, continuing to exercise the relevant power or function, or undertake the relevant process consistent with the relevant statutory framework.

9. ESCALATION OF MATTERS

- 9.1. Should the parties be unable to agree on any matter in this Accord, one party will give notice to the other that they are in dispute.
- 9.2. Within five days of being given notice, the nominated representative(s) appointed by the trustees of the Waikato Raupatu River Trust and the nominated representative(s) appointed by the Minister and will meet to negotiate a way of resolving the matter.
- 9.3. If the matter has not been resolved within 20 days, the nominated representative(s) appointed by the trustees of the Waikato Raupatu River Trust and the nominated representative(s) appointed by the Minister will meet to negotiate a way of resolving the matter.
- 9.4. Where a matter is of such significance that it requires the immediate attention of the Minister and Waikato-Tainui and the Minister and Waikato-Tainui agree, then this matter will be escalated for resolution between the Minister and a nominated representative(s) appointed by the trustees of the Waikato Raupatu River Trust. This nominated position may include the Statutory Advisory Committee.
- 9.5. For the purpose of this section, "a matter of such significance" can include any unresolved matters discussed in clause 9.1.

10. REVIEW AND AMENDMENT

- 10.1. The Minister and Waikato-Tainui agree that this Accord is a living document which should be updated and adapted to take account of future developments and additional co-management opportunities.
- 10.2. The first review of this Accord will take place no later than two years from the signing of this Accord. Thereafter the Accord will be reviewed on a two yearly basis. The review of this Accord will be part of the implementation strategy set out in clause 6.2 and will be agreed between all parties.
- 10.3. Where the parties cannot reach agreement on any review or variation proposal they will use the escalation processes contained in clause 9 of this Accord.

LOCAL GOVERNMENT ACCORD

10.4. Waikato-Tainui and the Crown may only vary this Accord by agreement in writing.

10.5. In respect of the exercise of rights and obligations under this Accord:

- (a) any right of Waikato-Tainui will be exercised through the Waikato Raupatu River Trust; and
- (b) where the Minister is required to engage, or consult, with Waikato-Tainui (including, without limit, making available information, informing Waikato-Tainui of certain matters, seeking advice, providing notice or assistance, or meeting with Waikato-Tainui), the Minister, or his/her delegates, will satisfy that obligation by engaging or consulting or otherwise interacting with the Waikato Raupatu River Trust.

11. LIMITS OF ACCORD

11.1. This Accord does not override or limit:

- (a) legislative rights, powers or obligations; or
- (b) the functions, duties and powers of the Minister under legislation or delegation; or
- (c) the ability of the Crown to introduce and pass legislation and change government policy; or
- (d) the ability of the Crown or local government to interact or consult with any other person, including iwi, hapu, marae, whanau or their representative; or
- (e) the legal rights and obligations of Waikato-Tainui and the Minister.

11.2. This Accord does not have the effect of granting, creating or providing evidence of an estate or interest in, or rights relating to, land or any other resource held, managed or administered by the Crown.

11.3. Resourcing of activities under this Accord should be within the existing resource limits and align with the Government priorities of the day.

12. DEFINITIONS AND INTERPRETATION

12.1. The provisions of this Accord shall be interpreted in a manner that best furthers the purpose of this Accord and is consistent with the principles set out in clause 3 of this Accord.

12.2. In this Accord, unless the context requires otherwise:


- (a) terms defined in the deed of settlement and the settlement legislation have the same meaning in this Accord;
- (b) Deed of Settlement means the Deed of Settlement in relation to the Waikato River signed on 17 December 2009; and
- (c) settlement legislation means Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

LOCAL GOVERNMENT ACCORD

12.3. Subject to clause 11.1, the rules of interpretation in the deed of settlement apply to the interpretation of this Accord.

SIGNED as a deed on 18 June 2010


SIGNED by
THE ASSOCIATE MINISTER OF LOCAL GOVERNMENT



Hon John Carter

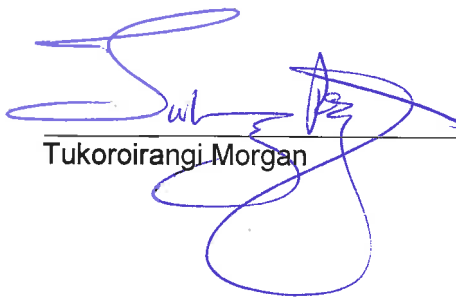
in the presence of:

WITNESS



Name: J M VIDAL
Date: 18/6/10


SIGNED for and on behalf
of **WAIKATO-TAINUI** by



Tukoroirangi Morgan

in the presence of:

WITNESS



Name: T. PAKI
Date: 18/6/10