



# Deed of

Deed of Settlement between  
the Crown and Waikato-Tainui  
in relation to the Waikato River

# Settlement

## General Background

Waikato-Tainui are one of four principal iwi who comprise the Tainui waka. Waikato-Tainui encompasses 33 hapuu, 68 marae and at present, more than 57,000 tribal beneficiaries.

To Waikato-Tainui, the Waikato River is of significant cultural and historical importance, viewed as a tuupuna (ancestor) which has mana (spiritual authority and power), and in turn, represents the mana and mauri (life force) of Waikato-Tainui. Therefore, for Waikato-Tainui, the river and the people are one and the same, and it is from the river that the tribal name "Waikato" is derived.

In 1865, Waikato-Tainui suffered raupatu (land confiscation) whereby the Crown assumed control of, and exercised jurisdiction over, the Waikato River. Waikato-Tainui were therefore, excluded from their traditional decision making rights and interests to the Waikato River and its resources. Furthermore, their mana whakahaere (authority, exercise of rights and responsibilities of Waikato-Tainui) which they exercised in order to protect the Waikato River and all its resources were denied. The Crown also failed to respect, provide for and protect the special relationship Waikato-Tainui have with the river. Collectively, these actions and omissions exacerbated the degradation of the river and its environs.

An account of the historical background agreed between the Crown and Waikato-Tainui in relation to the Waikato River is included in the Deed of Settlement, along with acknowledgments of Crown breaches of the Treaty of Waitangi.

The Crown recognised the mandate of Waikato-Tainui to negotiate the settlement of their historical Treaty claims in relation to the Waikato River in May 2005. The Crown signed Terms of Negotiation with Waikato-Tainui on 20 December 2006.

On 16 December 2007, the Crown and Waikato-Tainui signed an Agreement in Principle. The Deed of Settlement was then ratified by the members of Waikato-Tainui and signed on 22 August 2008.

In 2009, the Crown decided to review aspects of the co-management arrangements for the Waikato River. Waikato-Tainui agreed to revisit the co-management arrangements and subsequently agreed to the updated co-management arrangements in the Deed as they further enhanced the overarching purpose of the Settlement.

The key aspects of the new arrangements are included in this summary.

The Deed of Settlement will be implemented following the passage of settlement legislation.

Waikato-Tainui negotiations were led by Mr Tukoroirangi Morgan and Lady Raina Mahuta. The Minister for Treaty of Waitangi Negotiations, Hon Christopher Finlayson, represented the Crown in high-level negotiations with Waikato-Tainui.

## Summary of the Historical Background to the Waikato-Tainui River claim

Waikato-Tainui, as at 1840, possessed their river, and their lands in accordance with their tikanga along with other Waikato River iwi.

In July 1863, the Crown's military forces invaded Waikato-Tainui territory. They made extensive use of the Waikato and Waipaa Rivers during the ensuing war of 1863-64.

In December 1863, Crown forces occupied Ngaaruawaahia, the home of the King and the political centre of the Kiingitanga. During the war, many communities who supported the Kiingitanga were driven out of the Waikato.

Confiscation of Waikato lands followed in 1865. The Waikato confiscation area extended from the Hauraki Gulf to Karapiro in the east, via Pukekura, Orakau and the Puuniu River to the south, and from Whaaingaroa (Raglan) to Te Puuaha o Waikato in the west.

From the time of the raupatu, the Crown assumed control of, and exercised jurisdiction over, the Waikato River. During the 1950s and 1960s, the Crown began to address the pollution of the river, the impact of flooding on the area and the lack of consistent policy regarding the river. Waikato-Tainui did not have a formal or decision-making role, on the bodies that were established.

Following the raupatu and the cessation of hostilities, new settlers occupied the confiscated lands, and farms and towns were developed along the Waikato River. Although many of the subsequent uses of the Waikato River contributed to the economic growth of New Zealand, they also contributed to the pollution and deterioration of the health of the Waikato River and have significantly impacted on the fisheries and plant life of the river.

The greatest impact of the raupatu has been the Crown's assumption of authority over, and management of the river. Waikato-Tainui was excluded from decision making and were not consulted as to their understanding of the river and its ecosystems.

Waikato-Tainui saw the decline of their rich fisheries, particularly eels and whitebait, which for generations had been central to their way of life.

Kiingitanga leaders have long sought to achieve justice for the raupatu, and its consequences for the Waikato River. Waikato-Tainui have always maintained the importance of their unique relationship with the River, and the need to respect and restore its well-being.

In 1973, the Electricity Department began construction of a power station at Huntly that would use water from the Waikato River in its cooling processes. Little consideration was given in the planning stages to Waikato-Tainui values and rights.

A Kiingitanga leader, Robert Te Kotahi Mahuta, appealed against the granting of water rights for the power station. In 1976 he applied to have the Maaori Land Court investigate the title of the riverbed. The case was adjourned indefinitely.

In the early 1970s, there were limited avenues for redress available to iwi. They argued at the newly established Waitangi Tribunal that the raupatu had been the first step in a process of continuing loss. In their 1985 report, the tribunal upheld their view, stating that "the claim in respect of current concerns cannot be severed from the earlier events of the past".

From 1985, a new commitment by the Crown to addressing historical grievances brought hope to Waikato-Tainui that their raupatu claim, which affected both lands and the river, might be resolved. Waikato-Tainui negotiated their land raupatu claim directly with the Crown and reached settlement in 1995, excluding and preserving their claims in respect of the Waikato River.

The principles of te mana o te awa and mana whakahaere that have long sustained the Waikato River claim underlie the new regime to be implemented by this settlement.

# Settlement

## Summary of the Waikato River Settlement

### Overview

The Waikato River Settlement is the final settlement of all Waikato-Tainui's historical claims relating to the Waikato River resulting from acts or omissions by the Crown prior to 21 September 1992 and includes:

- An agreed historical account and Crown acknowledgements;
- A commitment by the Crown and Waikato-Tainui to enter a new era of co-management over the Waikato River;
- The Crown's recognition of the significance of the Waikato River to Waikato-Tainui; and
- Arrangements for the Waikato River comprising:
  - the key direction-setting document for the Waikato River called 'The Vision and Strategy' or 'Te Ture Whaimana';
  - the establishment of a new co-governance entity, the Waikato River Authority and a clean-up trust for the Waikato River;
  - co-management arrangements for Waikato-Tainui;
- Recognition and provision for river-related customary activities undertaken by members of Waikato-Tainui and provision for a cultural harvest plan;
- The Kiingitanga Accord and other accords as agreed in the 2008 settlement; and
- Other provisions including the gifting to Waikato-Tainui of sites of significance, provision for co-management of river-related land, a commitment to engage over dispositions and the rights of first refusal in relation to the Huntly power station and a coal mining licence as agreed in the 2008 settlement.

The benefits of the settlement will be available to all members of Waikato-Tainui wherever they live.

### Crown acknowledgements

The Crown acknowledges that its past dealings with Waikato-Tainui in relation to the Waikato River breached the Crown's obligations under the Treaty of Waitangi. These include:

- The Crown's raupatu (invasion and war by land and by the Waikato River, and subsequent confiscation of Waikato lands) in the 1860s which denied Waikato-Tainui their rights and interests in the Waikato River;
- The failure of the Crown to respect, provide for and protect the special relationship Waikato-Tainui have with the river; and
- The degradation of the river that has occurred while the Crown has had authority over the river causing distress to Waikato-Tainui.

### Background

- The Waikato River claim arose from the Crown's raupatu in the 1860s. The river claim was excluded from the 1995 land settlement with Waikato-Tainui and was set aside for future negotiation.
- Representatives of the Crown and Waikato-Tainui signed a Deed of Settlement to settle the historical claims of Waikato-Tainui over the Waikato River on 22 August 2008.
- In 2009 the Crown decided to review aspects of the co-management arrangements for the Waikato River to assess whether it was possible to do better and, with the agreement of Waikato-Tainui, appointed an advisory panel.
- Following an advisory panel's recommendations, Waikato-Tainui and the Crown agreed to the enhanced co-management arrangements.
- The key aspects of the new arrangements are as follows:
  - a 'Vision and Strategy' document which will have special and unique legislative status as the key direction-setting document for the river;
  - a single co-governance entity; and
  - joint management agreements.
- The revised 2009 Waikato River Deed of Settlement supersedes the 2008 Waikato River Deed of Settlement.
- All other aspects of the existing 2008 Waikato River Deed of Settlement for the Waikato River remain unaffected.

### Vision and Strategy

The 'Vision and Strategy' is the key direction-setting document for the Waikato River. It focuses on restoring and protecting the health and wellbeing of the river for future generations.

It will be:

- incorporated directly into the Waikato regional policy statement;
- reviewed by the new Waikato River Authority to add targets and methods as necessary;
- given effect under the Resource Management Act 1991 and conservation and other relevant legislation; and
- given the status of a statement of general policy under conservation legislation.

## Waikato River Authority

The new arrangements provide for a single entity to be called the Waikato River Authority established through the settlement legislation with 50:50 Crown-Maori membership with one Crown member nominated by Environment Waikato and one nominated by relevant territorial authorities.

Its purpose will be to:

- provide direction through the 'Vision and Strategy' to achieve the restoration and protection of the health and wellbeing of the Waikato River for future generations;
- promote an integrated, holistic and co-ordinated approach to the implementation of the 'Vision and Strategy' and the management of the Waikato River; and
- fund rehabilitation initiatives for the Waikato River in its role as trustee for the Waikato River Clean-Up Trust.

## Co-management Agreements

The co-management agreements comprise:

- joint management agreements;
- participation in specific and defined river-related resource consent decision-making;
- recognition of a Waikato-Tainui environmental plan;
- provision for regulations relating to fisheries and other matters managed under conservation legislation; and
- an integrated river management plan.

## Customary Activities

The arrangements under the Deed will provide direct statutory mechanisms to recognise and exempt customary activities that are fundamental to the relationship Waikato-Tainui has with the river.

## Cultural Harvest

The settlement legislation will permit Waikato-Tainui to authorise iwi members to harvest flora material for cultural purposes in accordance with an agreed flora cultural harvest plan.

## Kiingitanga Accord

The Kiingitanga accord between Waikato-Tainui and the Crown sets out the joint commitments of the parties to an enhanced relationship, to support integrated co-management and to protect the integrity of the settlement.

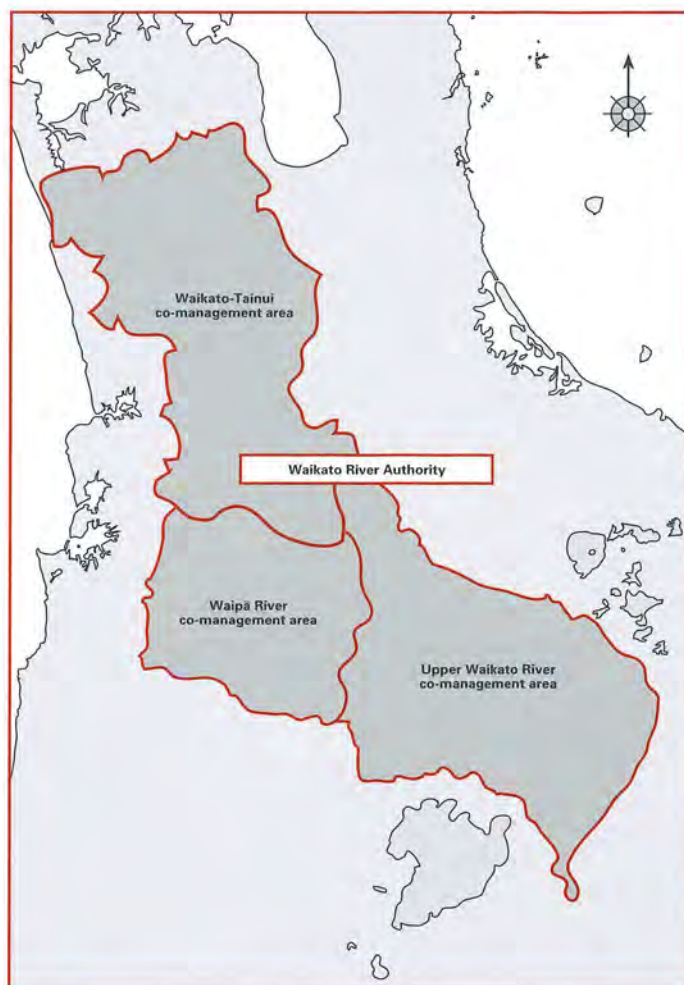
The Accord includes commitments to:

- develop and agree portfolio-specific accords with the Minister of Conservation, Fisheries, Land Information, Environment, Arts, Culture and Heritage, Local Government, Agriculture, Biosecurity, Energy and with the Commissioner of Crown Lands; and
- explore accords between Waikato-Tainui and other Ministers and agencies after the Deed is signed, and to support Waikato-Tainui to establish memoranda of understanding with councils and other relevant agencies.

## Other provisions

The arrangement provides for:

- the vesting of specified sites of cultural significance;
- the vesting back to Waikato-Tainui of defined parcels of land administered by Environment Waikato for soil conservation and river control purposes. Waikato-Tainui will immediately gift all but nine to Environment Waikato who will continue to manage them for soil conservation and river control purposes;
- a list of other Crown-owned river-related lands that will be subject to co-management arrangements with Waikato-Tainui; and
- the rights of first refusal in the 2008 settlement to remain in respect of both the leasehold estate in the Huntly power station and an existing mining licence.



## Questions and Answers

### 1. What is the total cost to the Crown?

The financial package provides for:

- **Sir Robert Mahuta Endowment:** The Crown will make a contribution of \$20 million to the Waikato Endowed Colleges Trust;
- **River initiatives funds:** The Crown will provide \$50 million as a fund for initiatives to restore and protect the relationship of Waikato-Tainui with the Waikato River (including its economic, social, cultural and spiritual relationships) and the protection and enhancement of significant sites, fisheries, flora and fauna (in the lower reaches of the Waikato River); and
- **Co-governance funding:** The Crown will provide \$1 million per year for 30 years to fund the Waikato-Tainui's participation in the co-governance processes in this settlement.

In order to enable the restoration and protection of the whole Waikato River the Crown has committed \$7 million per year for 30 years to a contestable clean-up fund.

### 2. Is there any private land involved?

No private properties are included in the settlement.

### 3. Are the public's rights affected?

No. The settlement specifically provides for public access to the Waikato River while protecting and enhancing the health and wellbeing of the Waikato River.

### 4. Are any place names changed?

No.

### 5. How does this relate to the Waikato-Tainui Raupatu (or 'Land') claim settled in 1995?

The Waikato River claim arose from the Crown's raupatu (confiscation) in the 1860s which denied the rights and interests of Waikato-Tainui in the Waikato River. The river claim was excluded from the 1995 land settlement with Waikato-Tainui and was set aside for future negotiation. This negotiation is now complete.

### 6. Why is there a separate Deed of Settlement for the Waikato River?

The Crown and Waikato-Tainui agreed to separate the land and river negotiations. The Waikato River Settlement is not an enhanced aspect of the 1995 settlement, rather a separate part of Waikato-Tainui's settlement which has now been completed.

### 7. How does this relate to the Waikato-Tainui River Deed signed on 22 August 2008?

The revised 2009 Waikato River Deed of Settlement supersedes the 2008 Waikato River Deed of Settlement. The Government approached Waikato-Tainui in 2009 with a proposal to review the arrangements regarding the model negotiated in 2008. While much of the Deed remains the same, the key differences in the revised Deed include legislative effect being given to the 'Vision and Strategy', clear arrangements for the Waikato River Authority and practical, efficient co-management arrangements.

### 8. Does the settlement create any special rights for Waikato-Tainui?

The settlement enables Waikato-Tainui to have a high-level governance role over the Waikato River. In practice, this means decisions about the river will be made in conjunction with local authorities. Waikato-Tainui will not, however, have any veto rights over the river.

### 9. How does this settlement affect other river iwi?

Other iwi on the Waikato River will be represented on the Waikato River Authority and will participate in the co-governance arrangements. These iwi are Raukawa, Te Arawa River Iwi, Maniapoto and Ngāti Tuwharetoa.

### 10. Will the settlement affect any recreation on the river such as boating, rowing, swimming or fishing?

No. Recreational activities on the river will continue under current laws. Over time, as the health of the river is restored, all of these activities should be enhanced by the agreement.

### 11. Will the settlement affect trout fishing or its management?

No. Sport fish and sport fishing are not affected.

### 12. Will the agreement affect dairy-farmers or the hydroelectric dams on the river?

To an extent, yes. The agreement is designed to involve a wider range of community representatives in the clean up of the river. The Waikato communities, including farmers and other stakeholders, agree that the health of the river is important.

### 13. Does Waikato-Tainui have the right to come back and make further claims about the behaviour of the Crown in the 19th and 20th centuries?

No. Both parties agree that the Deed of Settlement is fair in the circumstances and will be a final settlement for all the historical (pre-1992) Waikato River claims of Waikato-Tainui. The settlement legislation, once passed, will prevent Waikato-Tainui from re-litigating the claim before the Tribunal or the courts.

The settlement package will still allow Waikato-Tainui, or members of Waikato-Tainui, to pursue claims against the Crown for acts or omissions after 21 September 1992, including claims based on the continued existence of aboriginal title or customary rights. The Crown also retains the right to dispute such claims or the existence of such title rights.

### 14. Who benefits from the settlement?

All members of Waikato-Tainui wherever they live. In the long term, the Waikato River will be a primary beneficiary. As result, the Waikato community will benefit from a healthier river.