

WAIKATO-TAINUI  
and  
HER MAJESTY THE QUEEN  
in right of New Zealand

---

**Draft Agreement in Principle  
for the Settlement of the Historical Claims of  
Waikato-Tainui in relation to the  
Waikato River**

---

**26 May 2007**

## Preamble

### Background

- 1 The Waikato Raupatu Claims Settlement Act 1995 (the Act) gave effect to certain provisions of the Deed of Settlement between the Crown and Waikato dated 22 May 1995. The Deed settled the Raupatu claims made to the Waitangi Tribunal by Robert Te Kotahi Mahuta, the Tainui Maaori Trust Board and Ngaa Marae Toopu (Wai 30). The Deed of Settlement expressly excluded certain historical claims, including raupatu claims (the Wairoa and Waiuku land blocks), the West Coast Harbours and the Waikato River.
- 2 The Waikato River claim (being part of Wai 30) dated 16 March 1987 was filed in the Waitangi Tribunal by Robert Te Kotahi Mahuta on behalf of himself, Waikato-Tainui, the Tainui Maaori Trust Board and Ngaa Marae Toopu. In respect of the Waikato River, the claim states that Waikato-Tainui is prejudicially affected by the following acts, policies and omissions of the Crown:
  - “1. By which the ownership and mana of the Waikato River is denied to Waikato-Tainui.
  2. By which the waters of the Waikato River is desecrated, polluted, and depleted.
  3. In failing to recognise and protect Waikato-Tainui fisheries and lands in the Waikato River.
  4. By which Waikato-Tainui fisheries in the Waikato River have been depleted by pollution, over-fishing, and spiritual desecration.
  5. In providing a legislative framework for land use planning, water use planning and resource planning which fails to properly take into account Waikato-Tainui concerns for the Waikato River and which is inappropriate for the protection of Waikato-Tainui rights guaranteed by the Treaty.”
- 3 By the Deed of Settlement entered into between Her Majesty the Queen in right of New Zealand and Waikato in 1995, the Crown acknowledged that the position of Waikato in relation to the Waikato River is as follows:
  - ‘24.1.1 Waikato’s claim to the Waikato River arises as a result of the raupatu;
  - 24.1.2 Waikato have a special relationship with the Waikato River since the Waikato River is the ancestor of Waikato and the water is the life blood of the ancestor;
  - 24.1.3 the Waikato River determines the identity and wellbeing of Waikato and their rangatiratanga over the Waikato River is confirmed by the Treaty of Waitangi;

24.1.4 for Waikato the Waikato River means “the Waikato River from the Huka Falls to the mouth and includes its waters, banks and beds (and all minerals under them) and its streams, waterways, tributaries, lakes, aquatic fisheries, vegetation and floodplains as well as its metaphysical being”;

24.1.5 one of the issues which Waikato will raise in their claim relating to the Waikato River to the Waitangi Tribunal is the issue that the creation of the marginal strips by the Crown has divorced and continues to divorce Waikato further from the Waikato River and is inconsistent with the Treaty of Waitangi and Waikato will be claiming the marginal strips as part of their claim to the Waikato River;

24.1.6 this Deed will not affect any claims, rights and interests of Waikato in their relationship with the Waikato River.’

- 4 In the same Deed, Waikato acknowledge that the Crown’s acknowledgement in clause 24.1 and its agreement in clause 24.2, that it will ensure that the marginal strips adjacent to the Waikato River remain in Crown ownership until Waikato’s claim to the Waikato River is resolved, do not prejudice the Crown’s ability to dispute Waikato’s positions as outlined in that clause in the context of Waikato’s claim to the Waikato River, to argue that the marginal strips do not form part of the Waikato River or to contend that the definition of the Waikato River is narrower than that set out in clause 24.1.4.
- 5 In clause 24.4, “The Crown acknowledges that this Deed will not affect any claims of Waikato or any rights and interests which Waikato may have in their relationship with the Waikato River.”

#### **Crown Acknowledgements in the Waikato Raupatu Claims Settlement Act 1995**

- 6 The Preamble to the Act records that “In 1858 Pootatau Te Wherowhero was raised up as King to unite the iwi, and preserve their rangatiratanga and their economic and cultural integrity, under his authority in the face of increasing settler challenges”; and that “The New Zealand Government at the time perceived the Kiingitanga as a challenge to the Queen’s sovereignty and as a hindrance to Government land purchase policies, and did not agree to any role for, or formal relationship with, the Kiingitanga”.
- 7 The Preamble further records that: “In July 1863, after considered preparations by the New Zealand Government, military forces of the Crown unjustly invaded the Waikato south of the Mangatawhiri river, initiating hostilities against the Kiingitanga and the people. By April 1864, after persistent defence of their lands, Waikato and their allies had fallen back before the larger forces of the Crown and had taken refuge in the King Country”.
- 8 The Crown, in its Apology to Waikato as recorded in the Act, acknowledged that: “its representatives and advisers acted unjustly and in breach of the Treaty of Waitangi in its dealings with the Kiingitanga and Waikato in sending its forces across the Mangataawhiri in July 1863 and in unfairly labelling Waikato as rebels”; “the subsequent confiscations of land and resources were wrongful”; and

“the lands confiscated in the Waikato have made a significant contribution to the wealth and development of New Zealand, whilst the Waikato tribe has been alienated from its lands and deprived of the benefit of its lands”.

## THE RELATIONSHIP BETWEEN WAIKATO-TAINUI AND THE WAIKATO RIVER

*The River belongs to us just as we belong to the River. The Waikato tribe and the River are inseparable. It is a gift left to us by our ancestors and we believe we have a duty to protect that gift for future generations.*

R T Mahuta 1975

- 9 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 River is a single indivisible entity. 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. (Mana o te Awa - Appendix 1)

### The relationship of Waikato-Tainui and other River Iwi with the Waikato River

- 10 The Waikato River has its own powerful identity, its own mauri, and its own spiritual energy. The River iwi are woven together through whakapapa in a spiritual korowai. Tikanga relating to the Waikato River cannot be separated from Kiingitanga and Pai Maarire, the faith that sustains it. The values of the Kiingitanga reflect its long history of commitment to kotahitanga and its trusteeship of the kaupapa on behalf of the motu.
- 11 Ultimate authority and responsibility for the protection of the Waikato River was exercised by Pootatau Te Wherowhero as te awa tupuna representative, on behalf of the people, reflecting the whakataukii (saying):

*Ko Taupiri te maunga  
Ko Waikato te awa  
Ko Te Wherowhero te tangata  
Waikato Taniwharau  
He piko, he taniwha  
He piko, he taniwha*

*Taupiri is the mountain  
Waikato is the river  
Te Wherowhero is the chief  
Waikato of a hundred chiefs  
At every bend a chief  
At every bend a chief*

- 12 This whakataukii indicates the strength of the many communities who lived along the banks of the Waikato River prior to the Raupatu, each exercising the responsibilities of mana whakahaere (authority, rights of control) in accordance with their tikanga (Mana Whakahaere – Appendix 2).
- 13 The Ngaati Tuuwharetoa paramount chief Tukino Te Heuheu also used this whakataukii to acknowledge the mana of Pootatau Te Wherowhero during the search for a king in the 1850s. Te Heuheu confirmed Te Wherowhero as the first Maaori King.
- 14 Te Heuheu safeguarded the source of the Waikato River at Tapuaeharuru on the south side of Mount Ruapehu. Waikato-Tainui refers to “Te matapuna wai o Tongariro - the headwaters of the Tongariro” - in recognition of the source of the Waikato River flowing through the waters of Taupo te moana - the Lake, to Te Taheke hukahuka - the Huka Falls. From here the waters become known as the Waikato River, which flows from the Huka Falls to Te Puuaha (the mouth). The historical relationship between the Houses of Pootatau and Te Heuheu is thus bound up with the Waikato River.

#### **Te Mana o te Awa**

- 15 To achieve recognition of the principle of Te Mana o Te Awa, Waikato-Tainui promotes the concept of a korowai, the protective cloak of Pootatau Te Wherowhero laid over te awa tupuna, to respect and care for the River.
- 16 The platted fibres of the korowai reflect the strands in the whakapapa which unite the iwi with their River and with one another. The whenu which tie the korowai are held by the representatives of the Houses of Pootatau and Te Heuheu. Although it was hoped that Te Arikini Dame Te Atairangikaahu would form one of the pillars, this role will now be taken up by Kiingi Tuheitia and Ariki Tumu Te Heuheu. The concept of the korowai is tikanga based, giving effect to the tikanga of mana whanaungatanga, kotahitanga, manaakitanga and mana whakahaere under leadership of Kiingitanga.

**[The Crown notes that this section reflects the Waikato-Tainui view of the relationship of Waikato River iwi with the River. The Crown notes that other iwi referred to in this section may hold different views and if so these may be recorded in this section.]**

#### **HISTORICAL ACCOUNT**

##### **Raupatu: War, Confiscation and the Waikato River**

- 17 Waikato-Tainui, as at 1840, possessed their River, from Huka Falls to Te Puuaha, and their lands in accordance with their tikanga along with other Waikato River iwi. The Treaty of Waitangi guaranteed in the Maori text “te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa” or 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”.

- 18 In July 1863, the Crown's military forces crossed the Mangataawhiri River. In the ensuing war of 1863-64, the Crown's forces attacked by both land and water. The Crown's armed steamers and barges played a crucial role in the invasion as they carried Crown forces and supplies up the Waikato River and into the Waipaa River, and shelled Waikato defences.
- 19 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. In 1864-65 military settlements, including Hamilton and Cambridge, were established on the Waikato River, and also on the Waipaa River.
- 20 Confiscation followed in 1865. The confiscation area extended from the Hauraki Gulf to Karapiro in the east, via Pukekura, Oraakau and the Puunui River to the south, and from Whaingaroa (Raglan) to Te Puuaha in the west. It enclosed much of the Waikato River, including many of its tributaries, and associated lakes and wetlands.

#### **The Waikato River after Raupatu**

- 21 From the time of the Raupatu, the Crown assumed control of, and exercised jurisdiction over, the Waikato River. In the first half of the twentieth century, it developed legislation that affected the River and established bodies that would have authority over the River and its ecosystems. 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. The Waikato Valley Authority was established to control the Waikato River and its tributaries. Waikato-Tainui did not have a formal role in the Crown's processes.
- 22 Following the Raupatu and the cessation of hostilities, the lands along the Waikato River were quickly developed into farms and towns. The Waikato River was used for farming, coal mining, power generation schemes, the discharge of waste, and domestic and industrial abstraction. The wetlands were drained, flood protection schemes were initiated and sand and shingle were removed. While all of these 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 WAIKATO-TAINUI EXPERIENCE OF RAUPATU**

- 23 For Waikato-Tainui, though Raupatu did not change their beliefs and values, nor their unique relationship with their ancestral River, its impact on te mana whakahaere exercised by their communities was immediate.

The greatest impact of the Raupatu has been the Crown's assumption of authority over, and management of the River. Waikato-Tainui were excluded from decision making: nor were they consulted as to their understanding of the

River and its ecosystems. Waikato-Tainui rights and interests (whether at law, equity, custom or by the Treaty of Waitangi or otherwise), and the authority and control that they exercised over the River and its resources, were denied.

The Crown failed to acknowledge the relationship of Waikato-Tainui with their River, and the responsibility of the iwi to protect the River. Waikato-Tainui beliefs and values were accorded neither recognition nor respect.

Though they have continued to assert their mana whakahaere in order to protect the Waikato River and all its resources under the mana of the Kiingitanga, according to their tikanga, Waikato-Tainui believe that their ability to meet their obligations to the Waikato River, as their Awa Tupuna (Ancestral River), and to ensure its well-being has been severely compromised. Waikato-Tainui feel this sense of injustice as strongly today as they did in the past.

## **CROWN ACKNOWLEDGEMENTS**

- 24 The Crown acknowledges that:
  - a The historical claims of Waikato-Tainui to the Waikato River arise as a result of the Raupatu of the 1860s and its consequences;
  - b The Crown's invasion of the Waikato in 1863 was by land and by the Waikato River. This was a double blow to Waikato-Tainui as by the Raupatu the Crown assumed authority over both the land and the River.
- 25 The Crown acknowledges that in occupying and subsequently confiscating Waikato land it unjustly, and in breach of the Treaty of Waitangi, denied Waikato-Tainui their rights and interests in, and mana whakahaere over, the Waikato River; and that Waikato-Tainui never willingly or knowingly relinquished those rights and interests, nor their authority over the Waikato River.
- 26 The Crown acknowledges the importance to Waikato-Tainui of the principle of te mana o te awa arising from their relationship with the Waikato River. To Waikato-Tainui the Waikato River is a tupuna which has mana and in turn represents the mana and mauri of Waikato-Tainui; that to Waikato-Tainui the Waikato River is a single indivisible entity that flows from the Huka Falls to Te Puuaha and includes its waters, banks, bed (and all minerals under it) and its streams, waterways, tributaries, lakes, aquatic fisheries, vegetation and floodplain as well as its metaphysical being with its own mauri. To Waikato-Tainui, their relationship with the Waikato River, and their respect for it, gives rise to their responsibilities to protect the mana and mauri of the River and to exercise their mana whakahaere in accordance with their long established tikanga. Their relationship with the River and their respect for it lies at the heart of their spiritual and physical wellbeing, and their tribal identity and culture.
- 27 The Crown acknowledges that it has failed to respect, provide for and protect the special relationship of Waikato-Tainui with the Waikato River.

- 28 The Crown acknowledges that the deterioration of the health of the Waikato River, while the Crown had authority over the Waikato River, has been a source of distress for the Waikato-Tainui people.
- 29 The Crown acknowledges and respects the deeply felt obligation of Waikato-Tainui to protect te mana o te awa. The Crown seeks a Settlement that will recognise and sustain the special relationship Waikato-Tainui have with the Waikato River. The Crown undertakes to provide assistance to Waikato-Tainui and to work with Waikato-Tainui to assist the restoration of their mana whakahaere.
- 30 The Crown acknowledges that Waikato-Tainui wish to promote the concept of a korowai (cloak) to bring the River tribes together as an affirmation of their common purpose to protect te mana o te awa.

#### **CONCLUDING STATEMENT BY THE CROWN AND WAIKATO-TAINUI**

- 31 The Crown and Waikato-Tainui acknowledge the importance of entering a new age of Co-management over the Waikato River to restore the health and wellbeing of the River for future generations.
- 32 By this settlement, the Crown seeks to enhance the relationship between the Crown and Waikato-Tainui and to restore the honour of the Crown. The Crown and Waikato-Tainui will act to protect the integrity of the settlement, and ensure that they act in a manner that is consistent with and achieves Co-management.

#### **Redress**

- 33 The redress offered by the Crown for the settlement of the Waikato River claim of Waikato-Tainui includes:
- a Crown Acknowledgements set out in paragraphs 24-30 above;
  - b Waikato-Tainui Statement set out in paragraph 36;
  - c Guardians Establishment Committee;
  - d Guardians of the Waikato River;
  - e Waikato River Statutory Board;
  - f Protocols with Ministers of the Crown;
  - g Lands;
  - h Financial Redress; and
  - i Settlement Implementation Funding.
- 34 This redress is set out in further detail below.



35 For the purposes of the redress in this settlement, Co-management includes:

- a the highest level of good faith engagement; and
- b consensus decision-making as a general rule;

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

### **Statement of Significance of the Waikato River to Waikato-Tainui**

36 The deed of settlement and settlement legislation will contain the following statement of significance of the Waikato River to Waikato-Tainui:

“The Waikato River is our tupuna (ancestor) which has mana (spiritual authority and power) and in turn represents the mana and mauri (life force) of Waikato-Tainui; the Waikato River is a single indivisible entity that flows from the Huka Falls to Te Puuaha (the mouth) and includes its waters, banks, bed (and all minerals under it) and its streams, waterways, tributaries, lakes, aquatic fisheries, vegetation and floodplain as well as its metaphysical being with its own mauri. Our relationship with the Waikato River, and our respect for it, gives rise to our responsibilities to protect the mana and mauri of the River and to exercise our mana whakahaere (authority, rights of control) in accordance with long established tikanga (values, ethics, governing conduct). Our relationship with the River and our respect for it, lies at the heart of our spiritual and physical wellbeing, and our tribal identity and culture.”

### **He Whakamaarama Na Ngaa Iwi o Waikato-Tainui mo Te Awa o Waikato.**

Tirohia Te Pukapuka Whakaaetanga me Ngaa Pukapuka Whakatau Tikanga mo aua whakamaarama.

“No maatou tenei tupuna, Te Awa o Waikato. He tupuna whai mana, he tupuna maurituutahi no ngaa Iwi o Waikato-Tainui. Rere mai ai oona wai i te Wairere o Huka (Huka Falls) puta atu ki te Moana Taapokopoko a Taawhaki (The Tasman Sea) i Te Puuaha o Waikato (the mouth of the Waikato River). Mai i te Wairere o Huka ki te Puuaha, hono haere ai ngaa wai o te Awa o Waikato i ngaa awaawa (waterways, tributaries, streams); i ngaa parenga (banks); i ngaa roto (lakes); i ngaa nohoanga ika wai Maaori (fresh water fisheries); i ngaa tupunga otaota (growth, vegetation); i ngaa maania (floodplains) me oona tohu a-wairua. Na tenei hononga o maatou o ngaa Iwi o Waikato-Tainui ki to maatou tupuna, Te Awa o Waikato, me to maatou whakaaro nui anoo hoki ki a ia, ka whakamanawa maatou ki te tiaki i te mana me te mauri o taua Awa.

Ka puumau tonu maatou, kia tika tonu taa maatou hapai i te Mana Whakahaere o te Awa o Waikato i raro anoo i ngaa tikanga tuku iho a ngaa Iwi katoa. Na tenei whakaaro nui, mai i o maatou tuupuna o ngaa Iwi o Waikato-Tainui, ki to maatou Awa, i puumau ai enei tumanako a maatou mo to maatou orange a-wairua, a-tinana, me o maatou tikanga a-Iwi me oona whakahaere i waenga i ngaa Iwi katoa.”

### **Waikato-Tainui Objectives for the Waikato River**

- 37 The deed of settlement and settlement legislation will contain a statement of the objectives of Waikato-Tainui for the Waikato River as follows:
- a the restoration, maintenance and enhancement of the health and wellbeing of the Waikato River;
  - b the restoration and protection of the relationship of Waikato-Tainui and other Waikato River iwi with the Waikato River, including their economic, social, cultural, and spiritual relationships;
  - c the integrated and holistic management of the natural, physical, cultural and historic resources of the Waikato River;
  - d 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 River;
  - e the recognition and avoidance of adverse cumulative effects, and potential cumulative effects, of activities undertaken both on the Waikato River and within its catchment on the health and wellbeing of the River;
  - f the recognition that the Waikato River is degraded and should not be required to absorb further degradation as a result of human activities; and
  - g the protection and enhancement of significant fisheries, flora and fauna.

### **Guardians Establishment Committee**

- 38 As soon as practicable after the signing of the Agreement in Principle, the Crown and Waikato-Tainui shall establish a committee to be called the Guardians Establishment Committee made up of:
- a five members to represent Waikato-Tainui;
  - b four members appointed by Ministers of the Crown to represent the interests of all New Zealanders in the Waikato River; and
  - c one member nominated by Environment Waikato to represent the regional community interest.
- 39 The purpose of the Guardians Establishment Committee is to:
- a develop an initial Vision for the Waikato River which is based on and incorporates the intent of:
    - i Waikato-Tainui's Objectives for the Waikato River (as outlined in paragraph 37 above);
    - ii any additional Objectives to represent the interests of all New Zealanders; and

- iii any amendments to those Objectives as are considered necessary by the Guardians Establishment Committee, following appropriate public consultation.
- b inform the Crown, Waikato-Tainui and other parties as to the nature and content of provisions to be included in an initial Strategy that is to implement and promote the Vision, including, without limitation, addressing the following:
  - i processes and methods to improve the quality of the Waikato River;
  - ii opportunities for Waikato-Tainui and each Waikato River Iwi to exercise rights and interests in the Waikato River;
  - iii the public's use of, and access to, the Waikato River; and
  - iv the recognition of the duration and terms of existing consents, licences, authorisations and other rights in relation to the Waikato River.
- 40 Once agreed, the Vision will be included in the deed of settlement and the settlement legislation.
- 41 The Guardians Establishment Committee will act in a manner that is consistent with and achieves Co-management.
- 42 When developing the initial Strategy the Guardians Establishment Committee will:
  - a investigate opportunities with local authorities, management agencies and regulatory authorities for undertaking Co-management related to the Waikato River; and
  - b engage with local authorities on how to implement the recommendations of the Waikato River Statutory Board.
- 43 Any outcomes will be recorded in the deed of settlement and the settlement legislation as appropriate.

### **Guardians of the Waikato River**

- 44 The deed of settlement and the settlement legislation will provide for the establishment of the permanent Guardians of the Waikato River (the Guardians). The Guardians is a model promoted by Waikato-Tainui in which the Crown and other Waikato River iwi are invited to participate. The Guardians will:
  - a assist each Waikato River iwi to exercise mana whakahaere over the Waikato River;
  - b work to achieve an integrated and co-ordinated approach to the management of the Waikato River;
  - c act consistently with the Vision; and

- d act in a manner that is consistent with and achieves Co-management.
- 45 The Guardians will be a statutory body consisting of:
- a a number of members to represent Waikato-Tainui and other iwi with interests along the Waikato River;
  - b an equal number of members comprising:
    - i members appointed by Ministers of the Crown to represent the interests of all New Zealanders in the Waikato River; and
    - ii a member nominated by Environment Waikato, to represent the regional community interest.
- 46 The functions of the Guardians will be to:
- a finalise and approve the initial Strategy to implement the Vision including, without limitation, to promote:
    - i processes and methods to improve the quality of the Waikato River;
    - ii opportunities for Waikato-Tainui and each Waikato River Iwi to exercise rights and interests in the Waikato River;
    - iii the public's use of, and access to, the Waikato River;
    - iv the recognition of the duration and terms of existing consents, licences, authorisations and other rights in relation to the Waikato River; and
    - v the spirit of the Waikato River Treaty settlement between Waikato-Tainui and the Crown;
  - b as necessary, develop arrangements to achieve Co-management with persons (including management agencies and regulatory authorities) exercising powers or carrying out functions under any Act that affects the Waikato River;
  - c share and review information on the state of the Waikato River;
  - d consider documents about the management of the Waikato River such as iwi and hapuu management plans in any review or updating of the Vision and Strategy;
  - e promote and monitor the inclusion of the Vision and Strategy in policies, plans and processes related to the Waikato River, including proposing how the methods contained in the Strategy could be provided for in those policies, plans and processes;
  - f regularly monitor and, if necessary, amend the Strategy to ensure that it is enabling progress towards the Vision;

- g report at least every 5 years to the Crown and relevant iwi authorities on the progress being made towards achieving the Vision;
  - h review the Vision at least every 10 years and, if the Guardians agree, recommend to Waikato-Tainui and the Crown, any amendment to it; and
  - i undertake public consultation on any proposed changes to the Vision and incorporate appropriate changes when it is appropriate to do so.
- 47 The Guardians' responsibilities under paragraphs 44 to 46 above, will apply to the Waikato River and activities in its catchment affecting the Waikato River from Huka Falls to Te Puuaha and, the Waipa River from its junction with the Puniu River to its junction with the Waikato River as shown on the attached map. The mana whakahaere of each of the Waikato River iwi remains with each iwi, reflecting the whakataukii 'he piko, he taniwha, he piko, he taniwha'.
- 48 The deed of settlement and the settlement legislation as appropriate will set out how the Guardians will achieve Co-management and will include dispute resolution procedures.

### **Provisions of the Settlement Legislation**

- 49 The deed of settlement and the settlement legislation will provide that:
- a under the Resource Management Act 1991:
    - i Environment Waikato will give effect to the Vision in accordance with the relevant provisions of the Strategy, to the extent that the Vision's content has a bearing on the resource management issues affecting the Waikato River, in the preparation and change of regional policy statements and regional plans. (As District plans are required to give effect to the regional policy statement this will mean that the Vision will also be incorporated into District plans);
    - ii in respect of resource consent applications relating to the Waikato River, the Vision and Strategy are deemed to be matters that must be had regard to in accordance with s 104 (1);
    - iii the Minister for the Environment will have particular regard to the Vision in accordance with any relevant provisions of the Strategy as they relate to issues under the Resource Management Act, and will engage with the Guardians to achieve Co-Management when considering whether to issue a national policy statement that relates to the Waikato River; and
    - iv the Minister for the Environment will have particular regard to the Vision in accordance with any relevant provisions of the Strategy as they relate to issues under the Resource Management Act, and will engage with the Guardians to achieve Co-Management before recommending to the Governor-General the making of any national environmental standards that relate to the Waikato River.

- b under the Conservation Act 1987:
  - i when the Director-General of Conservation prepares any draft conservation management strategy, conservation management plan, national park management plan or fresh water fisheries management plan in respect of an area through which the Waikato River flows, the Director-General will have particular regard to the Vision in accordance with the relevant provisions of the Strategy and will engage with the Guardians to achieve Co-management;
  - ii when the New Zealand Conservation Authority or any conservation board approves or otherwise considers any conservation management strategy, conservation management plan, national park management plan or fresh water fisheries management plans in respect of an area through which the Waikato River flows, it will have particular regard to the Vision for the Waikato River in accordance with the relevant provisions of the Strategy and will engage with the Guardians to achieve Co-management;
- c under the Fisheries Act 1996 the Vision and the relevant provisions of the Strategy are plans for the purpose of s 11(2) of the Fisheries Act 1996; and
- d the Crown will consult with Waikato-Tainui in the development of new legislation impacting on the Waikato River, with a view to agreeing what action should be taken to ensure that the Vision and Strategy are appropriately addressed in such legislation.

50 As soon as practicable after signing the Agreement in Principle, the Crown and Waikato-Tainui will confer to identify other existing legislation impacting on the Waikato River and agree whether the settlement legislation needs to provide for the Vision and Strategy to be appropriately addressed under such legislation.

### **Waikato River Statutory Board**

- 51 The Crown will consult with Environment Waikato to agree on the establishment of a Waikato River Statutory Board with a view to the Board being established through the deed of settlement and settlement legislation. It is anticipated that the Waikato River Statutory Board will be a statutorily formed body of four Waikato-Tainui representatives and four current Environment Waikato councillors.
- 52 Before the deed of settlement is signed, an agreement setting out how the Waikato River Statutory Board will operate to achieve Co-management, including the dispute resolution procedures that will apply, will need to be developed and agreed by Waikato-Tainui and Environment Waikato. Elements of this agreement may be incorporated into the settlement legislation as appropriate.
- 53 The purpose of the Waikato River Statutory Board is to assist the implementation of the Vision and those parts of the Strategy that relate to Environment Waikato's responsibilities through enabling Waikato-Tainui's effective participation in

decision-making under the Resource Management Act and the Local Government Acts that affect the Waikato River.

54 Following enactment of the settlement legislation the Waikato River Statutory Board will:

- a evaluate, at least every ten years, the Regional Policy Statement and Regional Plans in respect to the Waikato River and its catchment to determine whether the Regional Policy Statement and Regional Plans are sufficient to give effect to the Vision in accordance with the relevant portions of the Strategy and, if necessary, recommend changes to the Regional Policy Statement and Regional Plans;
- b evaluate Environment Waikato's Long Term Council Community Plan, Annual Plan, Regional Pest Management Strategy, Management Plans, Bylaws and other Strategies that affect the Waikato River to determine whether they are sufficient to give effect to the Vision in accordance with the relevant parts of the Strategy, and if necessary, recommend changes to these plans and other statutory instruments;
- c identify, evaluate and, where appropriate, scope implementation of non-regulatory measures that would assist achievement of the Vision and Strategy;
- d prior to public notification of any planning document, plan change, Management Plans, Bylaw, Strategy or variation proposed by Environment Waikato under the Resource Management Act or Local Government Acts or any other relevant legislation that affects the Waikato River and activities in its catchment affecting the Waikato River downstream from Karapiro Dam to Te Puuaha and the Waipa River from its junction with the Puniu River to the Waipa's junction with the Waikato River, prepare a report evaluating whether the provisions of the document will assist the achievement of the Vision in accordance with the relevant parts of the Strategy;
- e evaluate District Plans, Long Term Council Community Plans and other statutory instruments of territorial authorities that affect the Waikato River and activities in its catchment to determine whether they assist the achievement of the Vision in accordance with the relevant parts of the Strategy and where changes are recommended, agree with Environment Waikato the process for advocating these changes to the relevant territorial authorities;
- f arrange for the independent audit of a representative sample of resource consents granted by Environment Waikato that affect the Waikato River from Huka Falls to Te Puuaha to assess whether resource consent decisions will assist the achievement of the Vision and are consistent with the Regional Policy Statement and Regional Plan;
- g report on the results of the audit and recommend any subsequent changes to Regional Council operating procedures, existing policies or plans or,

where justified under the Resource Management Act, recommend the review of standard consent conditions; and

- h develop criteria to guide Environment Waikato operational decision-making on issues such as the appointment of commissioners to consent, plan, and policy hearing committees.

- 55 Except for the selection of a sample of resource consents for audit purposes under paragraph 54 (f) the Waikato River Statutory Board's responsibility will apply to the Waikato River, activities in its catchment affecting the Waikato River downstream from the Karapiro Dam to Te Puuaha and the Waipa River from its junction with the Puniu River to the Waipa's junction with the Waikato River as shown on the attached map.

### **Waikato River Trust**

- 56 The Crown notes that Waikato-Tainui will establish the Waikato River Trust as the governance structure to act for Waikato-Tainui in relation to the redress to be provided by the Crown. The Trustee of the Waikato River Trust will be Te Kauhanganui o Waikato Incorporated through its executive committee. The Trustee of the Waikato River Trust will:
  - a receive, hold and manage any financial redress and other settlement assets provided under the deed of settlement and the settlement legislation;
  - b exercise the powers and functions conferred on Waikato-Tainui under the deed of settlement and settlement legislation.

### **Protocols with Ministers**

- 57 As soon as practicable after the signing of the Agreement in Principle, the Crown and Waikato-Tainui will consult in relation to various Ministers of the Crown issuing protocols to Waikato-Tainui regarding issues that affect the Waikato River with a view to agreeing appropriate provisions to be included in the deed of settlement, the settlement legislation and other relevant legislation. It is envisaged that the protocols will reflect the intention of the settlement to achieve Co-management, and will be drafted and agreed between Waikato-Tainui and the Crown before any deed of settlement is signed.

### **Intention of the settlement**

- 58 It is acknowledged that the Crown and Waikato-Tainui have different concepts and views regarding "ownership" of the Waikato River, and that this settlement is not intended to resolve these differences but is primarily concerned with management of the Waikato River to restore the health and wellbeing of the Waikato River for future generations and to recognise the special relationship of Waikato-Tainui with the Waikato River. Nothing in the settlement:
  - a extinguishes or limits any aboriginal title, or customary rights, that Waikato-Tainui may have;



- b is, or implies, an acknowledgement by the Crown that any aboriginal title, or any customary right, exists;
- c (except as expressly provided in or under the deed of settlement) affects any right that Waikato-Tainui, or the Crown, may have including any right arising:
  - i according to tikanga or custom law;
  - ii from Te Tiriti o Waitangi/the Treaty of Waitangi or its principles;
  - iii under legislation;
  - iv at common law (including in relation to aboriginal title or customary law);
  - v from a fiduciary duty;
  - vi or otherwise.

It is acknowledged that clause 59 is not intended to derogate from the statement of differences between the Crown and Waikato-Tainui as to “ownership” of the Waikato River.

### **Disposition of Waikato River**

- 59 The settlement legislation will include a provision that there shall be no disposition of the Waikato River except in good faith consultation and negotiation with Waikato-Tainui and the Guardians and subject to such conditions as may be negotiated between Waikato-Tainui and the Crown. To Waikato-Tainui, “disposition” includes the following:
- a transfers, leases, licences, easements and creation or vesting of reserves;
  - b any policy or act which in effect is privatisation of the waters of the Waikato River;
  - c any policy or act which permits tradeability of water permits or rights;
  - d any extension of the 35 year limitation period for the grant of water permits under the Resource Management Act; and
  - e any policy or act which in effect creates rights of property in the Waikato River.
- 60 The Crown will consult with Waikato-Tainui and the Guardians in relation to any policies relating to or affecting water use or allocation rights in relation to the Waikato River.
- 61 The Crown and Waikato-Tainui agree to identify categories of disposition that clause 59 will apply to. These categories will be recorded in the deed of settlement.
- 62 Clauses 59 and 60 apply to the Waikato River from Karapiro to Te Puuaha.

### **Land administered by the Ministry for the Environment**

- 63 The Crown offers to transfer to Waikato-Tainui land of the Crown administered by the Ministry for the Environment adjacent to the Waikato River from Karapiro to Te Puuaha subject to confirmation that the land is not subject to prior statutory obligations.

### **Financial matters**

- 64 The Crown and Waikato-Tainui agree that following the release of this document, financial matters relating to the settlement will be negotiated.

### **Other matters**

- 65 As soon as practicable after the signing of the Agreement in Principle, the Crown and Waikato-Tainui shall consult and agree a process in relation to resolving the following matters with a view to those matters being dealt with under the deed of settlement and settlement legislation:
- a identification of lands of the Crown adjacent to the Waikato River;
  - b transfer of relevant Crown land;
  - c memorialised lands;
  - d marginal strips;
  - e development of specific regulations to cover the management of fisheries, flora, fauna and other resources; and
  - f to identify, consider and agree upon suitable redress to apply to sites of important cultural, spiritual, social or waahi tapu significance.

### **Review clause**

- 66 The deed of settlement will provide for representatives of the Crown to meet with representatives of Waikato-Tainui.
- a The purpose of the meetings shall be to review the operations and outcomes of the Guardians, the Waikato River Statutory Board and the other measures taken pursuant to the deed of settlement and settlement legislation and to consider what appropriate action might be taken so that the integrity of the settlement is protected.
  - b Participants in the meetings are to be:
    - i three individuals nominated by Waikato-Tainui;
    - ii the Prime Minister (or any Ministers nominated by him or her);
    - iii the Minister for the Environment (or another Minister nominated by him or her);

- iv the Chairperson of Environment Waikato (or another Councillor nominated by him or her); and
  - v any other participants that Waikato-Tainui and the Crown agree should attend a particular meeting.
- c The first meeting is to be held on a date to be agreed by Waikato-Tainui and the Crown that is within six months of the first submission of the Guardian's report under paragraph 46 (g) and subsequently within six months of each following report from the Guardians.
- d A review of these meetings is to be held 15 years after the first meeting to discuss whether the meetings have been successful in achieving their purpose and whether changes to meeting arrangement should be made to assist with achieving this purpose and whether or not there is still a need to hold the meetings.

## **Conditions**

- 67 This draft Agreement in Principle has been prepared on a without prejudice basis, is subject to negotiation of financial matters, and is also subject to amendment following consultation, negotiation, and additional information becoming available.

## **Approval by Waikato-Tainui and the Crown**

- 68 Any draft Agreement in Principle document agreed by the Waikato-Tainui Co-Negotiators and the Minister in Charge of Treaty of Waitangi Negotiations requires approval by:

- a Te Kauhanganui; and
- b Cabinet.

- 69 If these approvals are obtained then an Agreement in Principle can be entered into by authorised representatives of Waikato-Tainui and the Crown.

## **Not Bound until Deed of Settlement**

- 70 If Waikato-Tainui and the Crown agree to enter into an Agreement in Principle, they agree that:

- a an Agreement in Principle will not be binding;
- b any agreements concerning Waikato River claims reached with Waikato-Tainui in subsequent negotiation discussions will not be binding until embodied in a deed of settlement;
- c any overlapping claims issues must be addressed to the Crown's satisfaction before it can enter into a deed of settlement;
- d settlement legislation will be needed to implement certain aspects of any deed of settlement entered into by the Crown and Waikato-Tainui.

## **Appendix 1: Te Mana o te Awa (the Spiritual Authority, protective power and prestige of the River)**

### **Principle**

Te Mana o te Awa is one of the key principles of the Waikato River claim, which seeks respect for:

Te Awa Tupuna (ancestral river)

- Whakapapa (genealogy) and unity of the River tribes
- The unique relationship of the people with the River
- Responsibilities of Waikato-Tainui and other River tribes to protect the mana of the River

The following discussion of Te mana o te Awa is drawn from the statements of kaumaatua, senior Kiingitanga spokesmen and esteemed kuia (some of whom have since passed on). They are statements of great importance because they embody beliefs that are familiar to thousands of Waikato-Tainui people and other River tribes, guiding their actions from day to day. Such beliefs are not normally expressed publicly, but they are recorded here to underline Waikato-Tainui's special relationship with their River, which is at the heart of the River claim.

#### *Te Awa Tupuna*

The River is a tupuna (ancestor) of Waikato-Tainui which has mana and which in turn represents the mana (spiritual authority, protective power and prestige) and mauri (life force) of the tribe. The River is a single indivisible entity. In the words of the late kaumaatua Kamira Henry Haggie: 'The River is a being, a mother, complete and whole body comprising the water, the bed and the banks from its source to the sea. The life of the River and thus of the tribe is in its intactness –no limb struck from its body or the head separate from the heart.' And Sir Robert Te Kotahi Mahuta spoke of: 'Ngaa awa itiiti e pa ana ki te wai o Waikato, ko ngaa uaua o to taatou awa. To taatou awa he manawa.' (All the little streams and rain that flow into the Waikato River are like the veins of the body. The River is our heart.)

The River has its own powerful identity, its own mauri, its own spiritual energy.

Waikato-Tainui and other River tribes share this relationship with the River, which lies at the heart of their tribal identity.

#### *Whakapapa and Unity of the River tribes*

The River is a tupuna, thus the River iwi, as kuia Ngahinaturae Te Uira expressed it, are woven through whakapapa in a spiritual korowai (cloak); they celebrate their tribal connections through the rhythms of the whenua (land) and the awa.

For Tainui, that unity is also expressed in the Kiingitanga. For nearly a hundred and fifty years Kiingitanga has shaped and given purpose to the lives of all those who support it; its kaupapa (purpose) unites people from many marae and many iwi. In the words of kuia Iti Rawiri:

“This is a responsibility that has been passed on to us from our tuupuna, a responsibility that we have passed on to our children and mokopuna...Waikato are the kaitiaki of the Kiingitanga so we must take care of the Kiingitanga by taking care of the people. This care, this aroha, this mahi is what makes us strong and keeps us strong...the Kiingitanga is aroha ki te tangata, manaaki i te tangata, whaangai i te tangata, he rangimaarie i ngaa waa kaatoa.”

Thus the values of the Kiingitanga reflect its long history of commitment to kotahitanga (unity), and the mutual support of the people and leadership in their trusteeship of the kaupapa on behalf of all the motu (the whole country).

Ultimate authority and responsibility for protection of the River was exercised by Pootatau Te Wherowhero on behalf of the people, hence the whakataukii (saying):

<i>Ko Taupiri te maunga</i>	<i>Taupiri is the mountain</i>
<i>Ko Waikato te awa</i>	<i>Waikato is the river</i>
<i>Ko Te Wherowhero te tangata</i>	<i>Te Wherowhero is the chief</i>
<i>Waikato Taniwharau</i>	<i>Waikato of a hundred chiefs</i>
<i>He piko, he taniwha</i>	<i>At every bend a chief</i>
<i>He piko, he taniwha</i>	<i>At every bend a chief</i>

This whakataukii indicates the strength of the many communities which lived along the banks of the River prior to Raupatu, each exercising the responsibilities of mana whakahaere in accordance with their tikanga (tribal rules/custom).

The Ngaati Tuuwharetoa paramount chief Tukino Te Heuheu IV also used this whakataukii to acknowledge the mana of Pootatau Te Wherowhero during the search for a king in the 1850s. Te Heuheu confirmed Te Wherowhero as the first Maaori King.

Te Heuheu safeguarded the source of the Waikato River at Tapuwaeharuru on the south side of Mt Ruapehu. Waikato-Tainui refer to “Te maataapuna wai o Tongariro – the headwaters of the Tongariro” – in recognition of the source of the Waikato River flowing through the waters of Taupo – te moana – the lake, to Te Taheke hukahuka – the Huka Falls. From here the waters become known as the Waikato River, which flows from the Huka Falls to Te Puuaha – the mouth. The historical relationship between the Houses of Pootatau and Te Heuheu is thus bound up in their relationship with the River.

#### *Unique Relationship of Waikato-Tainui with the River*

The claim of Waikato-Tainui seeks recognition of the unique relationship of Waikato-Tainui with the Waikato River. The relationship of Waikato-Tainui with the River lies at the heart of their spiritual and physical well-being, and their identity. After the Raupatu, it was a source of comfort and hope. The mana of the River is acknowledged in the korero of kaumaatua and kuia:

The late kuia Mite Kukutai: 'Te Wai e rere iho nei –te awa o Waikato- he wai oranga, he wai tinana o Waikato, oranga ngakau, oranga wairua. Koinei to maatou wai kai a Waikato. Kaumaatua ake maatou i te wai o Waikato.'

The late Mere Taka, kuia of Mangatangi marae: 'To us, the people of Tainui, the River has a very deep significance, to our way of life today. To us, Waikato is the River for cleansing oneself, of blessing, and the River...is one of our guardians...to us, the generation of today.'

Kuia Iti Rawiri of Te Awamaarahi marae: 'The Waikato River is a tupuna and looks after us throughout our lives. The River feeds us, nurtures us, and takes care of us, healing our hurts and protecting us from harm. The River's spiritual powers are as important today as they were in the past. The power of the River does not change or dwindle with the passing of the year...If people were going on a journey, they would go to the River first before leaving the area. This is still practised today. When people were sick, we would send them to the River to anoint themselves and be healed. This is still practised today. To us, the most important thing about the River is the water's healing power.'

Tikanga relating to the River cannot be separated from Kiingitanga and Pai Maarire, the faith that sustains it. Spiritual and legal protections are embodied in Kiingitanga and Pai Maarire which celebrate all that God has created, uniting families and Kiingitanga communities.

#### *Responsibilities of the River tribes*

As the ancestor of Waikato Tainui, the Waikato River has its own mana. The River protects the people, but it is also the responsibility of the people to protect the River and its wairua (spirit). Otherwise, in the words of the late Pumi Taituha, if the wairua of the River are violated, the River suffers, becomes sick, and if ignored, will die.

To the old people, the changes in water quality in the River and its lakes and streams, the loss of fish, eels and plants, the replacement of golden sand by mud, are all evidence of the sickness of the River.

Kaumatua Hare Puke, speaking for Tainui and the Kiingitanga, has stated: 'We are the guardians and protectors of the River. We have a duty to try to make people understand that the assault on the River, our ancestor, must stop.'

#### **Aspirations**

To achieve recognition of the principle of Te Mana o te Awa, Waikato-Tainui promotes the concept of a Korowai, a protective cloak laid over te awa tupuna, to respect and care for the River.

The plaited fibres of the Korowai reflect the strands in the whakapapa which unite the iwi with their River and with one another. The whenu (shoulder sash), which tie the korowai are held by the representatives of the Houses of Pootatau and Te Heuheu. Although it was hoped that Te Arikinui Dame Te Atairangikaahu would form one of the pillars, this role will now be taken up by Kiingi Tuheitia and Ariki Tumu Te Heuheu.

Thus the Korowai concept is tikanga based, giving effect to the tikanga of mana, whanaungatanga (kinship, relationship), kotahitanga (unity), manaakitanga (hospitality,

to care for) and mana whakahaere (authority, control) under the leadership of Kiingitanga.

Within the Korowai other River tribes are thus assured of negotiating their own settlement outcomes with the Crown.

For all New Zealanders the Korowai allows the continuation of public access, navigation, recreation and fishing provided there is mutual respect for this concept.

The Korowai will ensure that the responsibilities, obligations and preservation of a whole and healthy Waikato River are carried by all.

## **Appendix 2: Te Mana Whakahaere (Authority, rights of control)**

### **Principle**

Mana whakahaere refers to the authority that Waikato-Tainui and other River tribes have established in respect of the River over many generations. Mana whakahaere entails the exercise of rights and responsibilities to ensure that the balance and mauri (life force) of the River are maintained. It is based in recognition that if we care for the River, the River will continue to sustain the people.

In customary terms it is the exercise of control, access to and management of the River, including its resources in accordance with tikanga (values, ethics governing conduct), by each of the communities along the River. For Waikato Tainui or Tainui iwi, mana whakahaere has long been exercised under the mana of the Kiingitanga.

In these negotiations with the Crown, mana whakahaere still provides a way forward for all River communities. The Guardians are intended to assist each river tribe in the exercise of its mana whakahaere in the 21st century, but no more than that. The tribes are not being asked to surrender their mana whakahaere to the Guardians. Through their own management of River resources, and their own projects and programmes, the tribes will continue to exercise their mana whakahaere in accordance with tikanga as they always have. But through the Guardians they will also be able to act collectively as a united body to ensure the future health and well-being of the River.



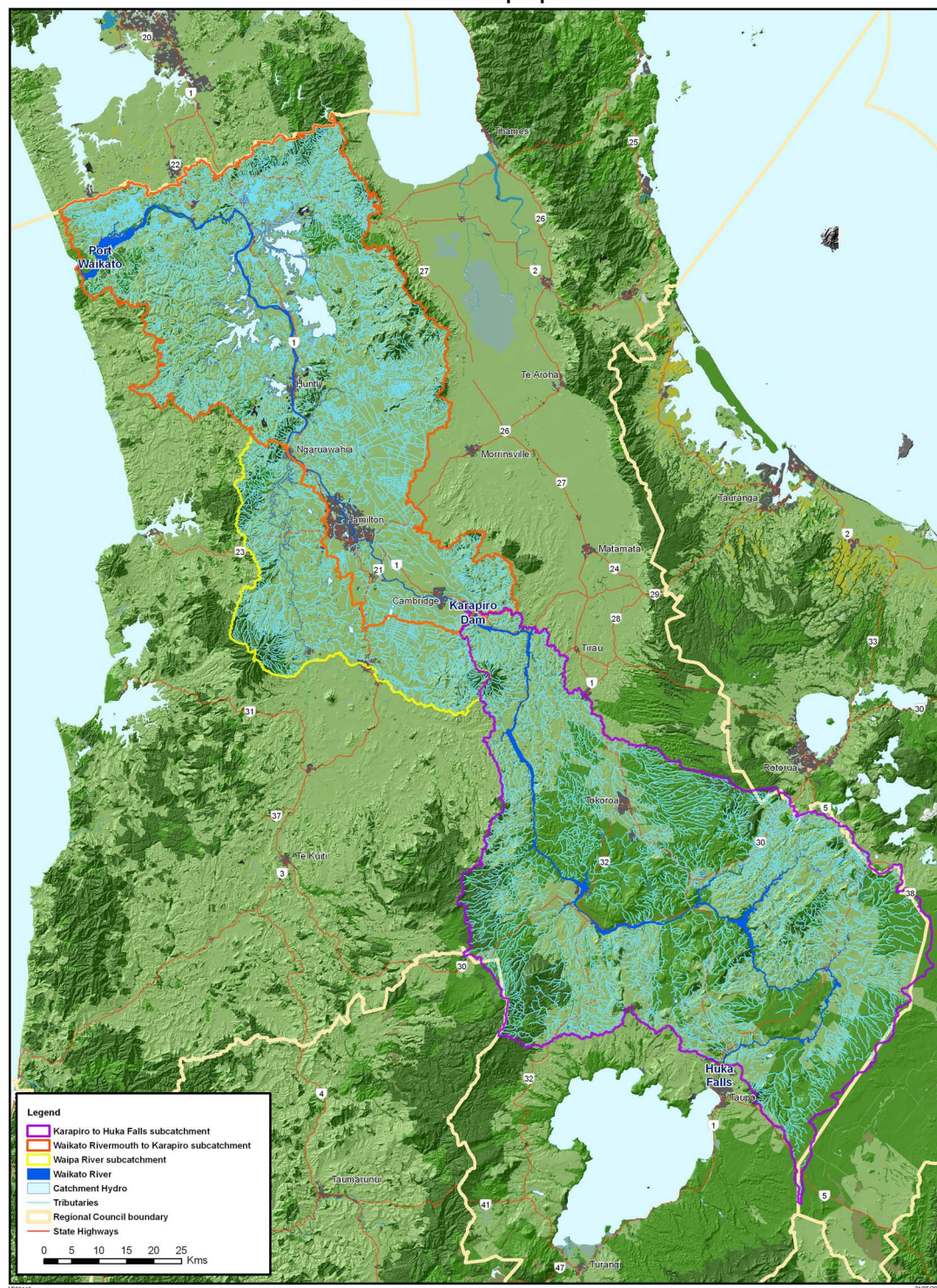
## Appendix 3: Glossary

Te awa tupuna:	ancestral river
whakapapa:	genealogy
Mana:	spiritual authority, protective power and prestige
Mauri:	and life force, not simply its own, but also representing the life force of that of the tribes along its waterways.
Nga awa itiiti:	the little streams
Nga uaua:	veins
Manawa:	heart
Korowai:	cloak
Whenua:	land
Kaupapa:	purpose
Kaitiaki:	caregiver, caretaker
Aroha ki te tangata:	care for the people.
Manaaki i te tangata:	be hospitable to the people
He rangimarie i ngaa waa katoa:	of peaceful and caring nature at all times
Kotahitanga:	unity
motu:	country
whakataukii:	saying, proverb
maunga:	mountain
tikanga:	tribal rules and customs
te maataapuna wai o Tongariro:	the headwaters of Tongaririo
Moana o Taupo:	Taupo lake
Te Taheke hukahuka:	The Huka Falls
Te Puuaha:	The mouth, that is, Port Waikato
te wai e rere iho nei:	this Water that flows towards us

Te Awa o Waikato:	The Waikato River
he wai oranga:	It is water with healing properties
oranga wairua:	including spiritual healing
koinei to maatou wai kai:	we use the water of Waikato for our food accompaniment
kaumatua ake maatou i te wai o Waikato:	the water of Waikato helps us throughout our nurturing and growing lives to adulthood.
Pai Marire:	prayers of faith
whenu:	shoulder sash
whanaungatanga	kinship relationship
manaakitanga	hospitality, to care for
mauri:	life force
tikanga:	ethics, values, governing conduct
Te Puuaha:	Te Puuaha o Waikato (The mouth of the Waikato River where it meets with the Tasman Sea.)

*Glossary provided by Ngahina Turae Te Uira*

**Map 1**      **To accompany Draft Agreement in Principle**  
For consultation purposes





**Map 2**      **To accompany Draft Agreement in Principle**  
For consultation purposes

