



Joint Management Agreement

Te Arawa River Iwi Trust
and Rotorua District Council

28th August 2012

"Working together we will succeed | Ma te mahitahi ka tutuki"



JOINT MANAGEMENT AGREEMENT

DATED: 21 September 2012

PARTIES

Te Arawa River Iwi Trust ("TARIT"), a trust established by deed on 20 May 2009. The trust represents Te Arawa River Iwi: Ngati Tahu-Ngati Whaoa, Ngati Kearoa Ngati Tuara and Tuhourangi Ngati Wahiao. AT - NW

Rotorua District Council ("Council"), a District Council duly constituted by the Local Government Act 2002.

Each one is a Party to this Agreement and together are referred to as the Parties.

BACKGROUND

On 22 August 2008 Waikato-Tainui and the Crown signed the Deed of Settlement in Relation to the Waikato River ("**Waikato-Tainui Deed**"), which directed 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 present and future generations.

On 4 September 2008, the trustees of TARIT, the Raukawa Settlement Trust and the Tuwharetoa Maori Trust Board entered into an agreement in relation to a co-management framework for the Waikato River with the Crown.

Subsequently, on 17 December 2009, the Crown and TARIT signed a deed in relation to a Co-Management Framework for the Waikato River which included provisions for joint management agreements ("the **Co-Management Deed**").

The Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 ("the **Act**") was enacted to give effect to the Co-Management Deed and as such this joint management agreement ("the **Agreement**") is being established pursuant to section 43 of the Act.

CONTEXT

The Waikato River flows from its source on the southern side of Ruapehu to te Puaha o Waikato (the mouth). The River and its catchment includes its waters, banks and beds and all minerals (under them) and its streams, waterways, tributaries, lakes, fisheries, vegetation, floodplains, wetlands, islands, springs, geothermal springs, water column, airspace, substratum and mauri.

1 The Waikato River and its catchment is a taonga of great cultural, historical, traditional and spiritual significance to the people of the Te Arawa River Iwi: Ngati Tahu-Ngati Whaoa, Ngati Kearoa, Ngati Tuara and Tuhourangi-Ngati Wahiao. The Te Arawa River Iwi rohe encompasses the Waikato River and its tributaries, from Te Waiheke o Huka to Pohaturoa.

The relationship between the iwi and the Waikato River and its tributaries gives rise to responsibilities to protect the river and all it encompasses. It is also the basis of the exercise by iwi of mana whakahaere in accordance with long established tikanga to ensure the wellbeing of the Waikato River. The Te Arawa River Iwi continue to exercise their mana along with customary rights and exert the rights and responsibilities of kaitiakitanga in relation to the Waikato Awa within their rohe. Te Arawa River Iwi and other iwi associated with the Waikato River have moved to protect the river through the co-management framework.

The Waikato River is of significant national and strategic importance to New Zealand's social, cultural, environmental and economic wellbeing. This agreement acknowledges the River within the Rotorua District Council boundary, as shown on the attached map at Appendix One

MATTERS AGREED

1. Purpose

- 1.1 The purpose of this JMA is to set out how the Parties will work together when carrying out the following duties, functions and exercising the following powers:
- (a) monitoring and enforcement activities (section 47 of the Act);
 - (b) preparing, reviewing, changing or varying a Resource Management Act 1991 (RMA) Planning Document, (section 48 of the Act);
 - (c) considering applications for resource consents under Part 6 of the RMA (section 49 of the Act); and
 - (d) providing for processes to explore customary activities (section 45(2) of the Act).

2. Scope

- 2.1 This Agreement only covers matters relating to the Waikato River and activities within its catchment affecting the Waikato River within the Rotorua District Council boundary and the rohe of Te Arawa River Iwi, as shown on the attached map at Appendix One.
- 2.2 The entire Agreement is subject to this scope provision.

3. Principles

- 3.1 The parties, in working together under this Agreement, will:
- (a) promote the purpose of the Act, to restore and protect the health and wellbeing of the Waikato River for present and future generations;
 - (b) respect the mana whakahaere rights and responsibilities of the iwi;

- (c) promote the principle of co-management;
- (d) act in good faith and in a spirit of co-operation;
- (e) be open, honest and transparent in their communications;
- (f) use their best endeavours to ensure the purpose of the Agreement is achieved in an enduring manner;
- (g) recognise the statutory frameworks that the agreement operates within.

4. Term

- 4.1 The Parties agree and acknowledge that under the Act this Agreement will commence on the Commencement Date and will remain in force in perpetuity with the exception of those parts of the agreement set out at clauses 6.7 – 6.15.
- 4.2 The parties agree and acknowledge that the matters set out at clauses 6.7 – 6.15 may be terminated wholly or partly by one party giving the other party 20 working days written notice.
- 4.3 Before either party exercises the right in clause 4.2 the parties must work together to seek to resolve the issue giving rise to the wish to terminate in a manner consistent with the principles set out in section 46 of the Act and in accordance with the Disputes Resolution process set out in the Agreement.
- 4.4 Termination under clause 4.2 does not affect the remaining part of the Joint Management Agreement.

5. Monitoring and Enforcement

- 5.1 The parties will establish and implement a jointly agreed monitoring framework by 31 December 2013.
- 5.2 The jointly agreed monitoring framework will be designed to give effect to Te Ture Whaimana through the restoration and protection of the health and wellbeing of the Waikato River, incorporating matauranga Maori. The framework will set out the priorities, programme and methodology for monitoring of the matters set out in section 35(2)(a)-(e) of the RMA and the role of the Trust in the five yearly review provided for in section 35(2A) of the RMA.
- 5.3 The matters to be discussed and agreed in the development of the jointly monitoring framework include:
 - a) The extent of and frequency of monitoring of the Waikato River and its catchment;
 - b) Integration of the Te Arawa River Iwi Cultural Health Indicators into the monitoring framework and reporting of the Waikato River and its catchment;
 - c) The response to any monitoring or enforcement needs identified in the Upper Waikato River Integrated Management Plan and the TARIT Environmental Management Plan, once such plans are complete; and

- d) The development of joint recommendations between the Council and TARIT in response to joint monitoring framework findings. The recommendations may include proposals to change existing policy and/or methods, undertake s 128 RMA resource consent condition reviews or undertake enforcement in response to the joint monitoring framework and reporting;
 - e) The potential for person(s) nominated by the Trust to participate, at the direction of Council, in enforcement action under the RMA. Those people must receive appropriate training;
 - f) Council staff engaged in monitoring and enforcement action to have appropriate training to understand the joint monitoring framework, particularly the Cultural Health Indicators, Te Arawa River Iwi State of the Environment Report and the TARIT Environmental Management Plan.
- 5.4 The initial meeting between the parties to agree a programme to achieve the monitoring framework (clause 5.2) will be held by 31 December 2012.
- 5.5 On the establishment of the joint monitoring framework, subsequent meetings between Council and TARIT staff will be held at least twice a year to review the joint monitoring framework including:
- a) on-going priorities for monitoring;
 - b) the methods and extent of the monitoring;
 - c) the potential for further iwi participation in monitoring; and
 - d) appropriate responses to address the outcomes of the monitoring including the potential review of planning documents and enforcement under the RMA.
- 5.6 The Council will report to TARIT on the enforcement action they have taken. This will be in a manner consistent with internal Council reporting and the joint monitoring framework.
- 5.7 Council and TARIT each bears its own costs for the establishment, implementation and maintenance of the joint monitoring framework.

6. Planning Documents

- 6.1 Section 6 – Planning documents applies to the processes below, to the extent that the relevant plan change or variation relates to Te Ture Whaimana.

District Plan Change or Variation – Engagement

- 6.2 Council and TARIT will meet at least once a year to discuss any possible plan changes or variations, as described in clause 6.3.
- 6.3 Before a public plan change or variation commences, Council and TARIT will convene a joint working party to discuss and recommend to the Council:

- (a) The process to be adopted for the change or variation; and
 - (b) The general form and content of any document to be drafted for the purposes of consultation or notification under clause 5 of Schedule 1 of the RMA.
- 6.4 The Trust and the Council will decide jointly on the final recommendation to the Council on:
- (a) Whether to commence a review of, and whether to make an amendment to, a planning document; and
 - (b) The content of the planning document to be notified.

Private Plan Change or Variation – Engagement

- 6.5 Where the Council receives a request for a change to a district plan under clause 21 of Schedule 1 of the RMA, the Council:
- (a) Will actively encourage applicants to consult early with TARIT and its affiliates prior to the lodgement of an application and invite the Trust to participate in formal pre-lodgement meetings, as appropriate;
 - (b) Will, where appropriate, advise applicants of the need for their assessment of effects to address effects on tangata whenua and encourage applicants to complete Cultural Impact Assessments;
 - (c) Will provide TARIT with a copy of any application as soon as practicable and within ten working days of receiving the application;
 - (d) Will take into account, and give appropriate weight to, any comments and/or reports received from TARIT within statutory timeframes when reporting and making decisions on applications, including any reporting and recommendations on direct referral requests.
- 6.6 TARIT will direct applicants to representatives of Ngati Tahu-Ngati Whaoa, Ngati Kearoa Ngati Tuara and Tuhourangi-Ngati Wahiao where applicable.

Hearings for Public Plan Change or Variation

- 6.7 Where a hearing is to be held on a public plan change or variation that relates to Te Ture Whaimana, the hearings panel will comprise:
- (a) A number of members appointed by the Council;
 - (b) The same number of hearing commissioners appointed by Council from the register described at clause 6.12; and
 - (c) An independent chairperson agreed by the iwi and the Council, appointed by Council.
- 6.8 If consensus is not reached on the appointment of the independent chairperson, the Council list of independent commissioners will be used, in consultation with TARIT.

- 6.9 Despite clause 6.8, in the event that only one commissioner is to be appointed to conduct the hearing, the parties will jointly agree that commissioner to be appointed by Council. If agreement cannot be reached, Council will appoint the commissioner, in consultation with TARIT.
- 6.10 The hearing members must be accredited under a programme approved and notified under section 39A of the RMA.
- 6.11 There will be a register of hearing commissioners selected by TARIT. TARIT will work with other iwi in the compilation of the register. The register may then also be used in scenarios that arise beyond the scope of this Agreement.
- 6.12 If there is no one on the register available for a hearing, the iwi may nominate another person, as agreed with the Council.
- 6.13 Conflicts of interest shall be considered and identified as soon as possible and brought to the attention of the Council and TARIT.
- 6.14 For the avoidance of doubt, the final decision to appoint hearing commissioners and the final decision on the plan change rests with Council.

Hearings for Private Plan Change or Variation

- 6.15 Where a hearing is to be held on a private plan change or variation that relates to Te Ture Whaimana, the parties will follow the process set out in clauses 6.7 – 6.14.

7. Resource Consents

Resource Consents Scope

- 7.1 This Part applies to any application lodged with Council for resource consent within the Rotorua District, or where Council intends to review the conditions of an existing resource consent, for the use of or activities on the surface of the water in the Waikato River within the rohe.
- 7.2 For applications beyond the scope of clause 7.1, the parties will work together to develop an engagement process, based on the procedures below.

Resource Consents Engagement

- 7.3 For any application or condition review within the scope of clause 7.1, Council:
- (a) Will encourage applicants to consult early with TARIT and its affiliates prior to the lodgement of an application. The Council will provide a guideline to applicants (see clause 13.4), as well as contact details for TARIT. The Council will also invite the Trust to participate in formal pre-lodgement meetings, as appropriate;

- (b) Will advise applicants of the need for their assessment of effects to address effects on tangata whenua and encourage applicants to complete Cultural Impact Assessments, where appropriate;
 - (c) Will provide a copy of any application within five working days of receiving the application;
 - (d) Will make TARIT aware of any review of the consent conditions of any resource consent described in clause 7.1 above, no later than five working days after advising the consent holder of the review, and invite formal comment from TARIT;
 - (e) Will take into account, and give appropriate weight to, any comments and/or reports received from TARIT within statutory timeframes when reporting and making decisions on applications.
- 7.4 For any application or condition review specified under clause 7.1 TARIT will:
- (a) Regarding clause 7.3(a), direct applicants to representatives of Ngati Tahu-Ngati Whaoa, Ngati Kearoa Ngati Tuara and Tuhourangi-Ngati Wahiao where applicable; and
 - (b) Regarding clauses 7.3(c) and (d), aim to provide comments to Council within five working days.
- 7.5 The parties will develop a guideline for resource consent applicants. The guideline will contain information on Te Ture Whaimana and the co-management framework. The guideline will be completed by 31 December 2013.

Joint Development of Criteria to Assist Council Decision Making

- 7.6 The parties will jointly develop and agree criteria to assist Council decision making for best practice for pre-application processes and decisions under sections 87E, 88(3), 91, 92, 95 to 95(F), 127 and 128 of the RMA.
- 7.7 These criteria are additional to, and must not derogate from, the criteria that Council must apply under the RMA and do not impose on Council to change, cancel or review consent conditions.
- 7.8 The criteria will be agreed within two years of the commencement date.

8. Customary Activities

- 8.1 The parties will explore whether customary activities:
- (a) Can be carried out by Te Arawa River Iwi on the Waikato River, without the need for a statutory authorisation from the Council; and
 - (b) Can be provided for as permitted activities in the district plan.

9. Dispute Resolution

9.1 The Parties agree and acknowledge that for this Agreement to be effective the resolution of issues between them must be addressed in a constructive, co-operative and timely manner that is consistent with the Agreement's Principles.

9.2 The dispute resolution process is:

- (a) If the Parties cannot reach agreement or if one Party considers that there has been a breach of the Agreement, then that Party may give notice to the other Party that they are in dispute.
- (b) As soon as practicable upon receipt of the notice, the Council and TARIT's representative(s) will meet to work in good faith to resolve the issue.
- (c) If the dispute has not been resolved within 20 working days of receipt of the notice, the Chief Executive of the Council and the General Manager of TARIT will meet to work in good faith to resolve the issue.
- (d) If the dispute has still not been resolved within 30 working days of a meeting between the Chief Executive of the Council and the General Manager of TARIT, and as a matter of last resort, the respective Chairs (or nominee) will meet to work in good faith to resolve the issue.

10. Suspension and termination

10.1 Suspension and/or termination of this agreement is subject to the provisions of the Act.

11. Waiver of Rights

11.1 TARIT may give written notice to the Council that it waives a right provided for in this Agreement.

11.2 TARIT must specify the extent and duration of the waiver in the notice.

11.3 TARIT may at any time revoke a notice of waiver by written notice to the Council.

12. Guardianship

12.1 A co-governance committee will be established to be the guardian of this Agreement.

12.2 The committee will be made up of equal numbers of representatives from the Council and the Trust who will meet annually.

12.3 There will be co-chairs presiding over the meetings; each of the Parties will elect a co-chair to represent the Council and the Trust.

12.4 The role of the co-governance committee is to ensure that this Agreement is being implemented to the satisfaction of both Parties and in accordance with the principles set out in Clause 3.

12.5 Staff members may be invited to attend the meetings for technical support.

12.6 The Parties will nominate a senior staff member to be the key contact and to oversee the implementation of this Agreement.

13. Implementation, Review and Amendment

13.1 The initial review of this Agreement will take place no later than two years after the commencement date. The review will be a meeting of trustees and councillors to assess the Agreement and its implementation, particularly relating to planning documents, monitoring and opportunities for iwi to contribute to decision-making.

13.2 Subsequent reviews will be held at the request of either the Council or TARIT.

13.3 The Parties will work together to encourage greater use of commissioners from the iwi register. This will help with relationship and capability building. At the annual meeting of the co-governance committee the parties will discuss opportunities to achieve this goal, including opportunities for mentoring.

13.4 The Parties agree that this Agreement is a living document which should be updated and adapted to take account of future developments.

13.5 If the Parties agree to amend the Agreement then changes will be made by way of written variation to this Agreement.

13.6 The Council and TARIT will provide written notice of the changes and a copy of the amended Agreement to the Minister for the Environment.

14. Costs

14.1 Each Party will bear their own costs in relation to their separate activities and contributions to the Agreement as set out for in the Act. Separate costs relate to:

- (a) Monitoring and Enforcement (Clause 5);
- (b) Planning Documents (Clause 6);
- (c) Resource Consents (Clause 7); and
- (d) Information sharing (Clause 16)

15. Exercise of Powers

15.1 The Council may carry out functions or exercise powers on its own account and not in accordance with the Agreement if:

- (a) An emergency situation arises, for example an oil spill; or
- (b) A statutory timeframe for the carrying out of the function or the exercise of the power is not able to be complied with under this Agreement.

- 15.2 As soon as practicable the Council will provide TARIT with written notice of carrying out this function or exercise of power.

16. Information Sharing

- 16.1 The Council will make available to TARIT all information held by the Council (subject to the Local Government and Official Information and Meetings Act 1987) where that information is requested by TARIT for the purposes of assisting them to exercise their mana whakahaere in respect of the Waikato River and enabling TARIT to exercise their rights fully under this Agreement.
- 16.2 TARIT may make available to the Council, information where appropriate, and when requested by the Council, to enable to fulfil its statutory obligations and obligations under this Agreement.

17. Communication

- 17.1 The Council and TARIT will establish and maintain effective and efficient communication with each other on a continuing basis by:
- (a) TARIT providing, and the Council maintaining, contact details for TARIT personnel responsible for engagement under this Agreement;
 - (b) The Council providing, and TARIT maintaining, contact details for the Council personnel responsible for engagement under this Agreement; and
 - (c) Identifying and educating staff who will be working closely with each other from each respective Party and informing them of the obligations under this Agreement.

18. Extension to JMA

- 18.1 The Parties acknowledge that s 54 of the Act provides for the Council and TARIT to extend this Agreement to cover duties, functions or powers that are in addition to those provided for under this legislation. The Parties agree that they will enter into discussions to extend this Agreement to cover other matters such as (but not limited to):
- (a) Research opportunities;
 - (b) Joint projects;
 - (c) Secondments and internships; and
 - (d) Staff education and awareness training.

18.2 The progression and timing of these other matters will be subject to both Parties approval by their respective board/council.

19. Definitions and Interpretation

In this Agreement, unless the context requires otherwise:

19.1“**Act**” means the Ngati Tuwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010.

19.2“**Agreement**” means this Joint Management Agreement between the Parties.

19.3“**Affiliates**” means the Ngati Tahu-Ngati Whaoa Runanga Trust, Te Runanga o Ngati Kearoa Ngati Tuara and the Tuhourangi Tribal Authority.

19.4“**Commencement Date**” means the date this Agreement is signed by both Parties.

19.5 “**Planning Document**” has the same meaning as Resource Management Act 1991 Planning Document as set out in the Act.

19.6“**RMA**” means the Resource Management Act 1991.

19.7“**Rohe**” means the tribal area and is shown on the attached map

19.8“**TARIT Environmental Management Plan**” means the environmental plan that TARIT prepare and serve on the Council and other agencies.

19.9“**Te Ture Whaimana**” means the Vision and Strategy for the Waikato River and has the same meaning given to it under the Act.

19.10“**Upper Waikato River Integrated Management Plan**” has the same meaning as set out in the Act, namely it is a plan that achieves an integrated approach between the Council, TARIT and all other concerned iwi and agencies as to the management of aquatic life, habitats and natural resources within the Waikato River.

19.11“**Working days**” has the same meaning as defined in the RMA.

19.12 **Interpretation:** In the construction and interpretation of this Agreement, unless the context otherwise requires:

- (a) the introduction, headings and marginal notes do not affect interpretation of the Agreement;
- (b) where possible the same definitions under the Act have been utilised;
- (c) words importing one gender include other genders and a singular includes the plural and vice versa;
- (d) a reference to a clause is a reference to a clause of this Agreement;
- (e) at times the Act may need to be read in conjunction with this Agreement.

(f) a statute includes that statute as amended from time-to-time and any regulations, other Orders in Council, and other instruments issued or made under that statute from time-to-time, as well as legislation passed in substitution for that statute; and

(g) a reference to one Party giving written notice to the other, means that Party doing so in writing or in electronic form.

[Signature]

Bened

Forest J.P.

Daaka

[Signature]

H. Taiea

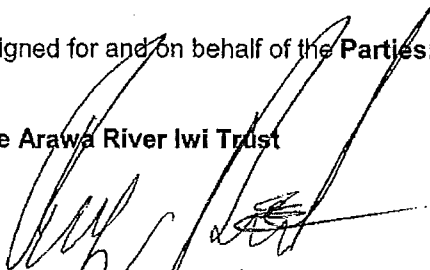
J. Moreau

Ruth Omeri

EXECUTED BY:

Signed for and on behalf of the Parties:

Te Arawa River Iwi Trust



Roger Fikla



Eugene Berryman-Kamp



Wally Lee

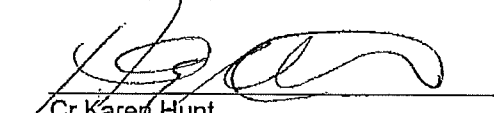
Rotorua District Council



Mayor Kevin Winters

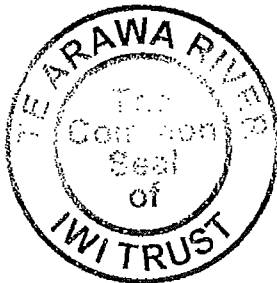


Cr Maureen Waaka



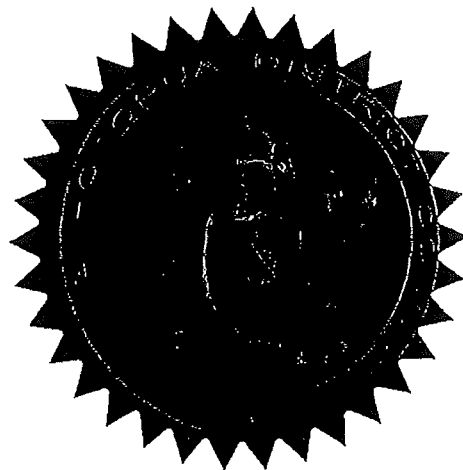
Cr Karen Hunt

(TARIT official logo/stamp/seal)



(RDC official logo/stamp/seal)


Peter Guerin



Appendix One: Map of the TARIT rohe within the Council boundaries and the Waikato River Catchment (Part Area B SO 409144)

