

TAONGA TŪTURU PORTFOLIO ACCORD
Agreed between
The Crown, through the Minister for Arts, Culture and Heritage and the Chief
Executive of the Ministry for Culture and Heritage
and
Te Arawa River Iwi, through the Te Arawa River Iwi Trust

1 INTRODUCTION

- 1.1 This Accord sets out how the Minister for Arts, Culture and Heritage (“the Minister”), and the Chief Executive of the Ministry for Culture and Heritage (“the Chief Executive”) will interact with the Te Arawa River Iwi Trustees on matters specified in this Accord.
- 1.2 The Minister, the Chief Executive, and the Te Arawa River Iwi Trustees are committed, including through this accord, to establishing and maintaining a positive, cooperative and enduring relationship.
- 1.3 This portfolio accord should be read together with the Overarching Accord.

2 ACCORD AREA

- 2.1 This Accord applies across the Accord Area identified in the map included in Appendix A of the Overarching Accord.

3 ROLE OF THE PARTIES

3.1 SHARED OBJECTIVES

The Minister, and the Chief Executive, and the Trust are committed to establishing and maintaining a positive, cooperative and enduring relationship that actively contributes to the health and well-being of the Waikato River.

3.2 TE ARAWA RIVER IWI’S STATEMENT OF ROLE AND OBJECTIVES

Te Arawa River Iwi are the kaitiaki and guardians of their taonga and the tikanga associated with their taonga. Fulfilling this role requires the protection and enhancement of the relationship between Te Arawa River Iwi and their taonga and tikanga.

In addition to the shared objectives, the Trust has developed its own objectives in relation to their taonga. One of the Trust’s objectives is to develop a long-term taonga strategy to provide for the care and protection of their taonga. This includes cataloguing, restoring, archiving and storage of their taonga, as well as developing appropriate relationships where taonga are held by other organisations (such as museums).

Another objective is the enhancement of Te Arawa River Iwi’s relationship with their taonga and associated cultural practices. This involves the transmission of cultural

knowledge in relation to their taonga to the whanau, hapu and iwi of Te Arawa River iwi.

Fundamental to these matters is the protection and enhancement of the relationship between Te Arawa River Iwi and their taonga and tikanga.

Where appropriate, Te Arawa River Iwi may also wish to share this with the wider community and the Trust intends that its taonga strategy will benefit and enhance New Zealand's wider arts, culture and heritage sector.

3.3 CROWN ROLE:

- (a) The Minister and Chief Executive have certain functions, powers, and duties in terms of the Protected Objects Act 1975 ("the Act"). The purpose of the Act is to provide for the better protection of certain objects by, among other things, regulating the export of taonga tūturu, and by establishing and recording the ownership of ngā taonga tūturu found after the commencement of the Act, namely 1 April 1976.
- (b) In exercising functions and powers under the Protected Objects Act 1975, the Minister and the Chief Executive are seeking a relationship with the Trust consistent with the principles of te Tiriti o Waitangi/ the Treaty of Waitangi. The Minister and Chief Executive recognise that the Trust has an interest in the preservation, protection and management of their taonga tūturu, which arises from their mana within their rohe.

3.4 CHIEF EXECUTIVE ROLE:

3.4.1 General

In exercising functions, powers and duties under the Act, the Chief Executive will consult, notify and provide information to the Trust within the requirements of the Act. From the date this Accord is issued, the Chief Executive will:

- (a) notify the Trust in writing of any taonga tūturu found within the Accord Area or identified as being of Te Arawa River Iwi origin found elsewhere in New Zealand;
- (b) provide for appropriate examination and recording of any taonga tūturu found within the Accord Area or identified as being of Te Arawa River Iwi origin found elsewhere in New Zealand;
- (c) notify the Trust in writing of its right to lodge a claim with the Chief Executive for ownership of any taonga tūturu found within the Accord Area or identified as being of Te Arawa River Iwi origin found elsewhere in New Zealand;
- (d) allow for Te Arawa River Iwi kaitiakitanga as temporary custodians of any taonga tūturu found within the Accord Area or identified as being of Te Arawa River Iwi origin found elsewhere in New Zealand, until ownership is determined, on such conditions agreed between the Trust and the Chief Executive as to the care of the taonga tūturu;

- (e) despite clause 3.3.1(d) above, there may be situations where the Chief Executive considers that other arrangements are more appropriate. If so, the Chief Executive may make other arrangements, but must:
 - (i) notify the Trust in writing of the proposed alternative arrangements and reasons for them; and
 - (ii) seek and have regard to the views of the Trust on those arrangements; and
 - (iii) notify the Trust in writing of the final arrangements and the reasons for them; and
 - (iv) notify the Trust in writing of its right to apply directly to the Māori Land Court for determination of the actual or traditional ownership, rightful possession or custody of any taonga tūturu found within the Accord Area or identified as being of Te Arawa River Iwi origin found elsewhere in New Zealand, or for any right, title, estate, or interest in any such taonga tūturu; and
 - (v) notify the Trust in writing of any application to the Māori Land Court from any other person for determination of the actual or traditional ownership, rightful possession or custody of any taonga tūturu found within the Accord Area or identified as being of Te Arawa River Iwi origin found elsewhere in New Zealand, or for any right, title, estate, or interest in any such taonga tūturu.

3.4.2 Applications for Ownership

- (a) If the Trust lodges a claim of ownership of any taonga tūturu found within the Accord Area or identified as being of Te Arawa River Iwi origin found elsewhere in New Zealand with the Chief Executive, there are no competing claims of ownership, and the Chief Executive is satisfied that the claim is valid, the Chief Executive will apply to the Registrar of the Māori Land Court for an order confirming ownership of the taonga tūturu by the Trust.
- (b) If there is a competing claim or claims lodged in conjunction with the Trust's claim of ownership, the Chief Executive will consult with the Trust for the purpose of resolving the competing claims, and if satisfied that the competing claims have been resolved and that a resolution is valid, apply to the Registrar of the Māori Land Court for an order confirming ownership of the taonga tūturu.
- (c) If the competing claims for ownership of any taonga tūturu found within the Accord Area or identified as being of Te Arawa River Iwi origin found elsewhere in New Zealand cannot be resolved, the Chief Executive, at the request of the Trust, may facilitate an application to the Māori Land Court for determination of the ownership of the taonga tūturu.

3.4.3 Applications for Custody

If no ownership application is made to the Māori Land Court for any taonga tūturu found within the Accord Area or identified as being of Te Arawa River Iwi origin found elsewhere in New Zealand by the Trust or any other person, the Chief Executive will:

- (a) notify the Trust in writing where there is any request from any other person for the custody of the taonga tūturu;
- (b) seek and have regard to the views of the Trust where there is any request from any other person for the custody of the taonga tūturu; and
- (c) notify the Trust in writing of the decision made by the Chief Executive on the custody of the taonga tūturu.

3.4.4 Export Applications

- (a) For the purpose of seeking an expert opinion from the Trust on any export applications to remove any taonga tūturu of Te Arawa River Iwi origin from New Zealand, the Chief Executive will register the Trust on the Ministry for Culture and Heritage's Register of Expert Examiners.
- (b) Where the Chief Executive receives an export application to remove any taonga tūturu of Te Arawa River Iwi origin from New Zealand, the Chief Executive will consult the Trust as an Expert Examiner on that application, and notify the Trust in writing of his or her decision.

3.4.5 Registration as a collector of nga taonga tūturu

- (a) The Chief Executive will register the Trust as a Registered Collector of nga taonga tūturu.

3.4.6 Board Appointments

- (a) The Chief Executive shall:
 - (i) notify the Trust of any upcoming ministerial appointments to Boards that the Minister for Arts, Culture and Heritage appoints to;
 - (ii) add the Trust's nominees onto the Ministry for Culture and Heritage's Nomination Register for Boards that the Minister for Arts, Culture and Heritage appoints to; and
 - (iii) notify the Trust of any ministerial appointments to Boards that the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

3.4.7 Provision of Cultural and/or Spiritual practices and Professional Services

- (a) When the Chief Executive requests cultural and/or spiritual practices to be undertaken by the Trust within the Accord Area, the Chief Executive will make a contribution, subject to prior mutual agreement, to the costs of undertaking such practices.
- (b) Where appropriate, the Chief Executive will consider using the Trust as a provider of professional services.
- (c) The procurement by the Chief Executive of any services set out in clauses 3.3.7 (a) and (b) is subject to the Government's Mandatory Rules for Procurement by Departments, all government good practice policies and guidelines, and the Ministry's purchasing policy.

3.4.8 History publications relating to Te Arawa River Iwi

- (a) The Chief Executive shall:
 - (i) provide the Trust with a list of all history publications commissioned or undertaken by the Ministry that relates substantially to Te Arawa River Iwi, and will supply these on request; and
 - (ii) where reasonably practicable, consult with the Trust during work that the Ministry undertakes that relates substantially to Te Arawa River Iwi.
- (b) The Trust accepts that the author, after genuinely considering the submissions and/or views of the Trust, and confirming and correcting any factual mistakes identified by the Trust, is entitled to make the final decision on the material of the historical publication.

3.4.9 Funding and Tribal Initiatives

- (a) The Chief Executive will make best endeavours to notify the Trust of any awards and funds, to which applications can be made, which are administered by the Ministry, for example the Commemorating Waitangi Day Fund, and provide details of the application process and deadlines.

3.4.10 Changes to Policy and Legislation Affecting this Accord

- (a) If the Chief Executive consults with Māori generally on policy development or any proposed legislative amendment to the Act that impact upon this Accord, the Chief Executive shall:
 - (i) notify the Trust of the proposed policy development or proposed legislative amendment upon which Māori generally will be consulted;
 - (ii) make available to the Trust the information provided to Māori as part of the consultation process referred to in this clause; and
 - (iii) report back to the Trust on the outcome of any such consultation.

3.4.11 Consultation

- (a) Where the Chief Executive is required to consult under this Accord, the basic principles that will be followed in consulting with the Trust in each case are:
 - (i) ensuring that the Trust is consulted as soon as reasonably practicable following the identification and determination by the Chief Executive of the proposal or issues to be the subject of the consultation;
 - (ii) discuss whether a working party should be created between the Ministry and the Trust to progress issues arising;
 - (iii) providing the Trust with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
 - (iv) (iv) ensuring that sufficient time is given for the participation of the Trust in the decision making process, including the preparation of submissions by the Trust, in relation to any of the matters that are the subject of the consultation;
 - (v) ensuring that the Chief Executive will approach the consultation with the Trust with an open mind, and will genuinely consider the submissions of the Trust, in relation to any of the matters that are the subject of the consultation; and
 - (vi) meeting with the Trust, if requested, in order to discuss the issue and to seek to reach an agreed outcome;
 - (vii) (vi) report back to the Trust, either in writing or in person, on any decisions made that relate to that consultation.

3.4.12 Other Matters

- (a) The Chief Executive will also:
 - (i) discuss with the Trust concerns and issues notified by the Trust about the Act;
 - (ii) review the implementation of this Accord from time to time, or at the request of the Trust, unless otherwise agreed in writing by both the Trust and the Chief Executive;
 - (iii) assist the Trust with the objects identified in clause 3.2 by inviting Te Papa Tongarewa, and selected regional museums to establish a relationship with Te Arawa River Iwi.

3.5 THE ROLE OF THE MINISTER

- (a) The Minister has functions, powers and duties under the Act and may consult, notify and provide information to the Trust within the limits of the Act. In

circumstances where the Chief Executive originally consulted the Trust as an Expert Examiner, the Minister may consult with the Trust where a person appeals the decision of the Chief Executive to:

- (i) refuse permission to export any taonga tūturu, or ngā taonga tūturu, from New Zealand; or
 - (ii) impose conditions on the approval to export any taonga tūturu or ngā taonga tūturu, from New Zealand.
- (b) The Ministry will notify the Trust in writing of the Minister's decision on an appeal in relation to an application to export any taonga tūturu where the Trust was consulted as an Expert Examiner.

4 IMPLEMENTATION AND APPLICATION

4.1 The Chief Executive will meet with the Governance Entity to develop a strategy to implement this Accord as soon as reasonably possible after the signing of this Accord, and within 6 months. This strategy shall include but is not limited to:

4.1.1 any matters raised in this Accord;

4.1.2 reporting processes to be put in place, if agreed by both parties;

4.1.3 recognition of the special relationship that Te Arawa River Iwi has with its taonga tūturu;

4.1.4 developing a communications Accord; and

4.1.5 establishing review processes and associated timeframes for this Accord.

4.2 The implementation strategy described in clause 4.1 of this Accord will have effect from the date agreed by both parties and specified in the strategy.

4.3 The parties, as far as reasonably practical, will provide opportunities for their relevant personnel to meet with each other, including arranging annual meetings (if requested by either party) to discuss and (if possible) resolve any issue that has arisen in the past 12 months.

5 STAFF AWARENESS

5.1 From the date of signing this Accord the parties will as reasonably practicable work together to:

(a) train relevant employees to ensure that they are aware of the purpose, content and implications of this Accord; and

(b) arrange for the relevant employees to be educated on:

- the values and practices of each party; and

- the purpose, content and implications of this Accord.

5.2 Each party will identify staff who will be working closely with staff of the other party, and inform those staff of the contents of this Accord and their responsibilities and roles under it.

5.3 Where there are areas of mutual interest, the Chief Executive may consider opportunities to collaborate with the Trust through wananga, internships or other similar initiatives.

6 REVIEW AND AMENDMENT

6.1 This Accord is a living document, and it should be updated and adapted to take account of future developments and additional co-management opportunities.

6.2 If requested by either party, the first review of this Accord will take place no later than three years from the Settlement Date. Thereafter the Accord will be reviewed on a three-yearly basis, if requested by either party.

6.3 Where the parties cannot reach agreement on any review or variation proposal they will use the escalation processes set out in clause 9 of this Accord.

6.4 The Trust and the Crown may only vary this Accord by agreement in writing.

7 ADDITIONAL REDRESS MECHANISMS

7.1 The Minister and Chief Executive agree to explore and have ongoing discussions with the Trust regarding the development of additional redress mechanisms, as appropriate and necessary to enhance their relationship with each other.

8 ESCALATION OF MATTERS

8.1 If one party considers that there has been a breach of this Accord then that party may give written notice to the other that they are in dispute. The following process shall be undertaken once notice is received by either party to this accord:

(a) Within 20 working days of being given written notice, the relevant contact person from the Ministry and a representative of the Trust will meet to work in good faith to resolve the issue.

(b) If the dispute has not been resolved within 20 working days of receipt of the process set out in 10.1(a), the Chief Executive and Chief Executive Officer for the Trust will meet to work in good faith to resolve the issue.

(c) If the dispute has still not been resolved within 20 working days of the process outlined in 10.1(b) the Minister and the Chair of the Trust, or a representative appointed by the trustees of the Trust, will meet to work in good faith to resolve the issue. The parties recognise that this clause is subject to the limitations outlined in the Overarching Accord.

9 DEFINITIONS AND INTERPRETATION

9.1 This protocol shall be interpreted in a manner that best furthers the overarching purpose of the co-management deed. Terms and expressions that are not defined in this protocol but are defined in the co-management deed have the meaning that they have in the co-management deed.

9.2 This protocol is subject to and should be read together with the Overarching Accord.

9.3 In this Accord, unless the context requires otherwise:

- (a) **Accord Area** has the same meaning given in clause 2(a);
- (b) **Act** means the Protected Objects Act 1975;
- (c) **Chief Executive** means the Chief Executive of the Ministry for Culture and Heritage and includes any authorised employee of the Ministry for Culture and Heritage acting for and on behalf of the Chief Executive;
- (d) **Expert examiner** has the same meaning as in section 2 of the Act and includes a body corporate or an association of persons;
- (e) **Register of expert examiners** means the register of expert examiners established and maintained by the chief executive pursuant to section 7B(2) of the Act.

(f) **Found** has the same meaning as in section 2 of the Act and means:

in relation to any taonga tūturu, means discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the taonga tūturu and which suggest that the taonga tūturu was last in the lawful possession of a person who at the time of its finding is no longer alive; and 'finding' and 'finds' have corresponding meanings;

(e) **Taonga tuturu means to Te Arawa River Iwi, those things or objects that:**

- (i) relate to Te Arawa River Iwi culture, history or society; and
- (ii) was or appears to have been:
 - (a) manufactured or modified in New Zealand by Te Arawa River Iwi;
or
 - (b) brought into New Zealand by Te Arawa River Iwi; or
 - (c) found outside of New Zealand but relate to Te Arawa River Iwi culture, history or society; or
 - (d) provided by papatuanuku and used by Te Arawa River Iwi; or
 - (e) used by Te Arawa River Iwi; and

- (f) is more than 50 years old
- (f) **nga taonga tūturu** has the same meaning as in section 2 of the Act and means two or more taonga tūturu;
- (g) **taonga tūturu** has the same meaning as in Section 2 of the Act and means an object that –
 - (i) relates to Māori culture, history, or society; and
 - (ii) was, or appears to have been,—
 - (a) manufactured or modified in New Zealand by Māori; or
 - (b) brought into New Zealand by Māori; or
 - (c) used by Māori; and
 - (iii) is more than 50 years old;
- (h) Subject to clause 9.1, the rules of interpretation in the Co-management Deed apply to the interpretation of this Accord.

SIGNED as a deed

SIGNED by

**THE MINISTER FOR ARTS, CULTURE
AND HERITAGE**

in the presence of :

Hon Christopher Finlayson

WITNESS

Name:

Date: 3 December 2010

SIGNED for and on behalf of **HER MAJESTY THE
QUEEN** in the right of the Government of New
Zealand by **RIPEKA MARGARET EVANS** acting
pursuant to powers delegated to her by the Chief
Executive of the Ministry for Culture and Heritage
pursuant to section 41 of the State Sector Act 1988
in the presence of :

Ripeka Margaret Evans

WITNESS

Name:

Date: 3 December 2010

SIGNED for and on behalf
OF TE ARAWA RIVER IWI TRUST

in the presence of :

Roger Pikia

WITNESS

Name:

Date: 3 December 2010

SIGNED for and on behalf
OF TE ARAWA RIVER IWI TRUST

in the presence of :

Rawiri Te Whare

WITNESS

Name:

Date: 3 December 2010

SIGNED for and on behalf
OF TE ARAWA RIVER IWI TRUST

in the presence of :

Eru George

WITNESS

Name:

Date: 3 December 2010

SIGNED for and on behalf
OF TE ARAWA RIVER IWI TRUST

in the presence of :

Eugene Berryman

WITNESS

Name:

Date: 3 December 2010

SIGNED for and on behalf
OF TE ARAWA RIVER IWI TRUST

in the presence of :

John Waaka

WITNESS

Name:

Date: 3 December 2010

SIGNED for and on behalf
OF TE ARAWA RIVER IWI TRUST

in the presence of :

Maureen Waaka

WITNESS

Name:

Date: 3 December 2010