

**MINISTER FOR ARTS, CULTURE and HERITAGE**

**and**

**CHIEF EXECUTIVE OF THE MINISTRY FOR CULTURE and HERITAGE**

**and**

**WAIKATO-TAINUI**

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***TAONGA TUKU IHO ACCORD***

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***20 FEBRUARY 2009***

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***TAONGA TUKU IHO ACCORD***

**THIS ACCORD is made between**

**THE MINISTER FOR ARTS, CULTURE AND HERITAGE (“MINISTER”)**

**and**

**THE CHIEF EXECUTIVE OF THE MINISTRY FOR CULTURE AND HERITAGE  
 (“CHIEF EXECUTIVE”)**

**and**

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

## **1. BACKGROUND**

### **Waikato Raupatu Claims Settlement Act 1995**

- 1.1 The Waikato Raupatu Claims Settlement Act 1995 gave effect to certain provisions of the deed of settlement between Her Majesty the Queen in right of New Zealand (“the Crown”) and Waikato dated 22 May 1995 and settled certain Raupatu claims made to the Waitangi Tribunal by Robert Te Kotahi Mahuta, the Tainui Maaori Trust Board and Ngaa Marae Toopu (Wai 30). The 1995 Act expressly excluded certain historical claims, including the claim to the Waikato River.
- 1.2 In the spirit of co-operation and good faith, and as foreshadowed in the 1995 Deed, Waikato-Tainui and the Crown entered into negotiations in respect of the claims of Waikato-Tainui concerning the Waikato River.
- 1.3 On 22 August 2008 Waikato-Tainui and the Crown signed the Deed of Settlement in Relation to the Waikato River (“deed of settlement”) and a Kiingitanga Accord, and have agreed to enter a new age of co-management over the Waikato River with an overarching purpose of the settlement to restore and protect the health and well-being of the Waikato River for future generations.
- 1.4 The deed of settlement includes, inter alia, provisions relating to how the Crown will recognise and provide for the co-management of the Waikato River. Waikato-Tainui and the Crown have agreed that accords will be entered into between Waikato-Tainui and various Ministers of the Crown to enhance the relationship between the Crown and Waikato-Tainui and facilitate the new era of co-management contemplated by the settlement.
- 1.5 To give effect to the obligations under clause 9.3 of the deed of settlement and clause 3.1 and the schedule of the Kingitanga Accord, and to further enhance the relationship between Waikato-Tainui, the Minister, and the Chief Executive (on behalf of the Ministry for Culture and Heritage (“Ministry”)), this Taonga Tuku Iho Accord is entered into by Waikato-Tainui, the Minister, and the Chief Executive.

## **TERMS OF THIS *TAONGA TUKU IHO* ACCORD**

### **2. JOINT STATEMENT OF ACKNOWLEDGEMENT**

2.1 The Minister and the Chief Executive acknowledge that to Waikato-Tainui, taonga tuku iho means those things that are highly prized and derived from the iwi, hapuu and whaanau. They are whakapapa connected and are passed on from one generation to the next. This includes:

- (a) tangible objects such as types of heirlooms, artifacts, carvings, land and fisheries; and
- (b) intangible substance such as language, spiritual beliefs, ideas and metaphysical gifts.

2.2 Waikato-Tainui acknowledge that for the provisions of this Accord relating to the Protected Objects Act 1975 (“the Act”), that taonga tūturu as a component of taonga tuku iho, is defined in section 2 of the Act..

### **3 PURPOSE**

3.1 The purpose of this *Taonga Tuku Iho* Accord is to:

- (a) reflect the commitment of the Crown (including the Minister and the Chief Executive) and Waikato-Tainui to enter a new era of co-management over the Waikato River with the overarching purpose of restoring and protecting the health and well-being of the Waikato River for future generations;
- (b) set out how Waikato-Tainui, the Minister, the Chief Executive and the Ministry will establish and maintain a positive, co-operative and enduring relationship regarding the management of Waikato-Tainui taonga tuku iho;
- (c) provide a framework and mechanisms to achieve co-management in respect of the protection, use and enhancement of Waikato-Tainui taonga tuku iho;
- (d) ensure that the Crown, through the Minister, the Chief Executive and the Ministry, provides recognition for the exercise of mana whakahaere by Waikato-Tainui in relation to their taonga tuku iho; and

## **TAONGA TUKU IHO ACCORD**

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- (e) recognise that Waikato-Tainui has an interest in all elements of its taonga tuku iho in its area of mana whakahaere and all taonga tuku iho of Waikato-Tainui origin.

### **4 ACCORD AREA**

- 4.1 This Accord will apply to all functions, responsibilities and actions of the Minister and the Chief Executive that affect the health and wellbeing of the Waikato River and its catchments from Karapiro to Te Puuaha o Waikato, including the Waipaa River from its junction with the Puuniu River to its junction with the Waikato River, being the parts of those rivers shown as located within the area marked "A" on the SO plan in part 6 of the schedule to the Waikato-Tainui deed of settlement (the "Accord Area").
- 4.2 The Minister and the Chief Executive acknowledge that Waikato-Tainui interests and the exercise of mana whakahaere by Waikato-Tainui extend beyond the Accord Area.
- 4.3 In the interests of achieving the principle of co-management, the parties will engage in good faith in accordance with the purpose and relationship principles of this Accord in respect of matters that impact on the exercise of the mana whakahaere of Waikato-Tainui outside the Accord Area.

### **5 PRINCIPLES UNDERLYING THIS ACCORD**

#### **5.1 THE FOLLOWING PRINCIPLES UNDERLIE**

- (a) the relationship of Waikato-Tainui with the Waikato River; and
- (b) this Taonga Tuku Iho Accord.

#### **5.2 TE MANA O TE AWA (THE SPIRITUAL AUTHORITY, PROTECTIVE POWER AND PRESTIGE OF THE RIVER)**

- (a) To Waikato-Tainui, the Waikato River is a tupuna (ancestor) which has mana (prestige) and in turn represents the mana and mauri (life force) of the tribe. The River has its own mauri, its own spiritual energy and its own powerful identity. It is a single indivisible being.
- (b) Respect for te mana o te awa (the spiritual authority, protective power and prestige of the Waikato River) is at the heart of the relationship

between the iwi 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 and 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 problems that surround them. Spiritually, to Waikato-Tainui, the Waikato River is constant, enduring and perpetual.

### 5.3 MANA WHAKAHAERE (AUTHORITY AND RIGHTS OF CONTROL)

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

### 5.4 HEALTH AND WELL-BEING

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

5.5 CO-MANAGEMENT

5.5.1 The Crown and Waikato-Tainui have committed to enter into a new era of co-management in respect of the Waikato River. The principle of co-management includes:

- (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.

5.5.2 To be effective, co-management must be implemented and achieved at a number of levels and across a range of management agencies, bodies and authorities, including (but without limitation) the following:

- (a) the development, amendment and implementation of strategies, policy, legislation and regulations that may potentially impact on the health and well-being of the Waikato River; and
- (b) the processes for granting, transfer, variation and renewal of consents, licenses, permits and other authorisations for all activities that potentially impact on the health and well-being of the Waikato River; and
- (c) include provision for effective Waikato-Tainui input and participation by engagement at an early stage in statutory and management processes, and other actions, that may affect the health and well-being of the Waikato River, including the planning and development of new and amended policies or management initiatives or decisions affecting or relating to the Waikato River. This is a positive obligation to provide for early and effective input from Waikato-Tainui, rather than simply an obligation to consult.

**5.6 INTEGRATION**

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

**5.7 TREATY OF WAITANGI**

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

**5.8 HONOUR AND INTEGRITY**

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

**5.9 TAONGA TUKU IHO**

The protection, use and enhancement of Waikato-Tainui taonga tuku iho forms an important component for the health and wellbeing of the Waikato River. It is also consistent with the key activities delivered by the Ministry. The purpose is to:

- (a) protect and promote the taonga tuku iho of Waikato-Tainui in the Accord area;
- (b) enhance the relationship between the Waikato-Tainui, its taonga tuku iho and the Waikato River; and
- (c) promote the use of Waikato-Tainui taonga tuku iho under the guidance of Waikato-Tainui tikanga and kawa.

**6. RELATIONSHIP PRINCIPLES**

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

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

**7. OBJECTIVES OF THE PARTIES**

7.1 JOINT OBJECTIVES:

- (a) Waikato-Tainui, the Minister, the Chief Executive and the Ministry are committed to the restoration and protection of the health and well-being of the Waikato River for future generations, as regards to taonga tuku iho and other matters governed by this Accord.
- (b) Waikato-Tainui, the Minister, the Chief Executive and the Ministry are committed to the better preservation, protection and management of taonga tūturu found within the Accord Area or identified as being of Waikato-Tainui origin.

7.2 WAIKATO-TAINUI OBJECTIVES FOR THE WAIKATO RIVER INCLUDE:

- (a) the restoration and protection of the health and well-being of the Waikato River;

## **TAONGA TUKU IHO ACCORD**

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- (b) the restoration and protection of the relationship of Waikato-Tainui with the Waikato River, including their economic, social, cultural, and spiritual relationships;
- (c) the integrated, holistic and co-ordinated approach to 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 catchments on the health and well-being 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;
- (g) the protection and enhancement of significant sites, fisheries, flora and fauna; and
- (h) the application to the above of both matauranga Maaori and latest available scientific methods.

### **8. ROLE OF THE PARTIES**

#### **8.1 WAIKATO-TAINUI ROLE:**

The role of Waikato-Tainui in respect to this Accord includes:

- (a) the preservation, protection and management of its taonga tuku iho through Waikato-Tainui tikanga and kaitiakitanga as set out in this Accord;
- (b) input in the policy and decision-making processes set out in this Accord; and
- (c) the sharing of information.

**8.2 CROWN ROLE:**

- (a) The Minister and Chief Executive have certain functions, powers, and duties in terms of 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 ngaa taonga tūturu found after the commencement of the Act, namely 1 April 1976.
- (b) In exercising such functions and powers under the Act, the Minister and the Chief Executive are seeking a relationship with Waikato-Tainui consistent with the principles of te Tiriti o Waitangi/ the Treaty of Waitangi. The Minister and Chief Executive recognise that Waikato-Tainui have an interest in relation to the preservation, protection and management of its taonga tūturu, which arises from their mana in its rohe of the Waikato River.

**8.3 CHIEF EXECUTIVE ROLE:**

**8.3.1 General**

The Chief Executive has certain functions, powers and duties in terms of the Act and will consult, notify and provide information to Waikato-Tainui within the limits of the Act. From the date this Accord is issued, the Chief Executive will;

- (a) notify Waikato-Tainui in writing of any taonga tūturu found within the Accord Area or identified of Waikato-Tainui 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 Waikato-Tainui origin found elsewhere in New Zealand;
- (c) notify Waikato-Tainui 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 Waikato-Tainui origin found elsewhere in New Zealand;
- (d) allow for Waikato-Tainui kaitiakitanga as temporary custodians of any taonga tūturu found within the Accord Area or identified as being of

## TAONGA TUKU IHO ACCORD

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Waikato-Tainui origin found elsewhere in New Zealand, until ownership is determined, on such conditions agreed between Waikato-Tainui and the Chief Executive as to the care of the taonga tūturu;

- (e) despite clause 8.3.1(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 the Chief Executive must:
  - (i) notify Waikato-Tainui in writing of those arrangements and reasons for them; and
  - (ii) seek and have regard to the views of Waikato-Tainui on those arrangements; and
  - (iii) notify Waikato-Tainui in writing of the final arrangements and the reasons for them.
  - (iv) notify Waikato-Tainui in writing of its right to apply directly to the Maaori 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 Waikato-Tainui origin found elsewhere in New Zealand, or for any right, title, estate, or interest in any such taonga tūturu; and
  - (v) notify Waikato-Tainui in writing of any application to the Maaori 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 Waikato-Tainui origin found elsewhere in New Zealand, or for any right, title, estate, or interest in any such taonga tūturu.

### 8.3.2 Applications for Ownership

- (a) If Waikato-Tainui lodges a claim of ownership of any taonga tūturu found within the Accord Area or identified as being of Waikato-Tainui 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

## TAONGA TUKU IHO ACCORD

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Maaori Land Court for an order confirming ownership of the taonga tūturu by Waikato-Tainui.

- (b) If there is a competing claim or claims lodged in conjunction with a Waikato-Tainui claim of ownership, the Chief Executive will consult with Waikato-Tainui 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 Maaori 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 Waikato-Tainui origin found elsewhere in New Zealand, cannot be resolved, the Chief Executive, at the request of Waikato-Tainui, may facilitate an application to the Maaori Land Court for determination of the ownership of the taonga tūturu.

### 8.3.3 Applications for Custody

If no ownership application is made to the Maaori Land Court for any taonga tūturu found within the Accord Area or identified as being of Waikato-Tainui origin found elsewhere in New Zealand by Waikato-Tainui or any other person, the Chief Executive will:

- (a) notify Waikato-Tainui 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 Waikato-Tainui where there is any request from any other person for the custody of the taonga tūturu; and
- (c) notify Waikato-Tainui in writing of the decision made by the Chief Executive on the custody of the taonga tūturu.

### 8.3.4 Export Applications

- (a) For the purpose of seeking an expert opinion from Waikato-Tainui on any export applications to remove any taonga tūturu of Waikato-Tainui origin from New Zealand, the Chief Executive will register Waikato-Tainui on the Ministry for Culture and Heritage's Register of Expert Examiners.

## TAONGA TUKU IHO ACCORD

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- (b) Where the Chief Executive receives an export application to remove any taonga tūturu of Waikato-Tainui origin from New Zealand, the Chief Executive will consult Waikato-Tainui as an Expert Examiner on that application, and notify Waikato-Tainui in writing of his or her decision.

### 8.3.5 Registration as a collector of ngaa taonga tūturu

The Chief Executive will register Waikato-Tainui as a Registered Collector of ngaa taonga tūturu.

### 8.3.6 Board Appointments

The Chief Executive shall:

- (a) notify Waikato-Tainui of any upcoming ministerial appointments on Boards which the Minister for Arts, Culture and Heritage appoints to;
- (b) add Waikato-Tainui nominees onto the Ministry for Culture and Heritage's Nomination Register for Boards, which the Minister for Arts, Culture and Heritage appoints to; and
- (c) notify Waikato-Tainui of any ministerial appointments to Boards which the Minister for Arts, Culture and Heritage appoints to, where these are publicly notified.

### 8.3.7 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 Waikato-Tainui 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 Waikato-Tainui as a provider of professional services.
- (c) The procurement by the Chief Executive of any such services set out in Clauses 8.3.7(a) and (b) are subject to the Government's Mandatory Rules for Procurement by Departments, all government good practice policies and guidelines, and the Ministry's purchasing policy.

8.3.8 History publications relating to Waikato-Tainui

The Chief Executive shall:

- (a) provide the Governance Entity with a list of all history publications commissioned or undertaken by the Ministry that relate substantially to Waikato-Tainui, and will supply these on request; and
- (b) discuss with the Governance Entity any work the Ministry undertakes that deals specifically or substantially with Waikato-Tainui.

8.3.9 Funding and Tribal Initiatives

The Chief Executive will make best endeavours to notify Waikato-Tainui 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.

8.3.10 Changes to Policy and Legislation Affecting this Accord

If the Chief Executive consults with Maaori generally on policy development or any proposed legislative amendment to the Act that impacts upon this Accord, the Chief Executive shall:

- (a) notify Waikato-Tainui of the proposed policy development or proposed legislative amendment upon which Maaori generally will be consulted;
- (b) make available to Waikato-Tainui the information provided to Maaori as part of the consultation process referred to in this clause; and
- (c) report back to Waikato-Tainui on the outcome of any such consultation.

8.3.11 Consultation

Where the Chief Executive is required to consult under this Accord, the basic principles that will be followed in consulting with Waikato-Tainui in each case are:

- (a) ensuring that Waikato-Tainui 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;

## TAONGA TUKU IHO ACCORD

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- (b) discuss whether a working party should be created between the Ministry and Waikato-Tainui to progress issues arising;
- (c) providing Waikato-Tainui with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
- (d) ensuring that sufficient time is given for the participation of Waikato-Tainui in the decision making process, including the preparation of submissions by Waikato-Tainui, in relation to any of the matters that are the subject of the consultation;
- (e) ensuring that the Chief Executive will approach the consultation with Waikato-Tainui with an open mind, and will genuinely consider the submissions of Waikato-Tainui, in relation to any of the matters that are the subject of the consultation; and
- (f) report back to Waikato-Tainui, either in writing or in person, on any decisions made that relate to that consultation.

### 8.3.12 Other Matters

The Chief Executive will also:

- (a) discuss with Waikato-Tainui concerns and issues notified by Waikato-Tainui about the Act;
- (b) review the implementation of this Accord from time to time, or at the request of Waikato-Tainui, unless otherwise agreed in writing by both Waikato-Tainui and the Chief Executive; and
- (c) as far as reasonably practicable train relevant employees within the Ministry on this Accord to ensure that they are aware of the purpose, content and implications of this Accord.

### 8.4 THE ROLE OF THE MINISTER

- (a) The Minister has functions, powers and duties under the Act and may consult, notify and provide information to Waikato-Tainui within the limits of the Act. In circumstances where the Chief Executive originally consulted Waikato-Tainui as an Expert Examiner, the Minister may

## **TAONGA TUKU IHO ACCORD**

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consult with Waikato-Tainui 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 Waikato-Tainui in writing of the Minister's decision on an appeal in relation to an application to export any taonga tūturu where Waikato-Tainui was consulted as an Expert Examiner.

### **9 COMMUNICATION BETWEEN THE PARTIES**

9.1 The Chief Executive and Waikato-Tainui will establish and maintain effective and efficient communication with each other on a continuing basis by:

- (a) Waikato-Tainui providing, and the Ministry maintaining, information on the Waikato-Tainui personnel responsible for Accord matters relating to the Waikato River, including their addresses and contact details;
- (b) the Ministry providing, and Waikato-Tainui maintaining, information on primary Ministry contacts responsible for Accord matters relating to the Waikato River;
- (c) providing reasonable opportunities for their relevant personnel to meet with each other, including arranging annual meetings to discuss and (if possible) resolve any issue that has arisen in the past 12 months; and
- (d) identifying staff who will be working closely with staff of the other party, and informing those staff of the contents of this Accord and their responsibilities and roles under it.

### **10 INFORMATION SHARING**

10.1 Waikato-Tainui and the Chief Executive recognise the benefit of mutual information exchange. To this end, the Ministry and Waikato-Tainui will as far as possible exchange any information that is relevant to, and will assist with the integrated management of, the resources of the Waikato River and its catchment.

## **TAONGA TUKU IHO ACCORD**

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- 10.2 The Ministry will make available to Waikato-Tainui all existing information held by, or reasonably accessible to, the Ministry where that information is requested by Waikato-Tainui for the purposes of assisting them to exercise their mana whakahaere in respect of the Waikato River, particularly where that information is necessary for enabling Waikato-Tainui to exercise their rights fully under this Accord.
- 10.3 The obligations in clauses 10.1 and 10.2 of this Accord do not apply to information that the Minister or Chief Executive is legally prevented from providing (for example, information that is the subject of an obligation of confidentiality or non-disclosure) or to information that the Minister or Chief Executive may withhold under the Official Information Act 1982.

### **11 IMPLEMENTATION, APPLICATION AND SCOPE**

- 11.1 The implementation and application of this Accord will be carried out in accordance with the timeframes and priorities agreed between Waikato Tainui, and the Chief Executive.
- 11.2 The Minister, and the Chief Executive, and Waikato-Tainui 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.
- 11.3 This Accord will apply to all functions, responsibilities and actions of the Minister and the Chief Executive that affect the health and well-being of the Waikato River and its catchments from Karapiro to Te Puuaha o Waikato, including the Waipaa River from its junction with the Puuniu River to its junction with the Waikato River, being the parts of those rivers shown as located within the area marked "A" on the SO plan in part 6 of the schedule to the Waikato-Tainui Deed of Settlement (the Accord Area).

### **12 STAFF AWARENESS**

- 12.1 From the date of signing this Accord the Chief Executive will as reasonably practicable (as resources allow) arrange for the relevant employees to be educated on:
- (a) the values and practices of Waikato-Tainui; and
  - (b) the purpose, content and implications of this Accord.

**13 ADDITIONAL REDRESS MECHANISMS**

The Minister and Chief Executive agree to explore and have ongoing discussions with Waikato-Tainui regarding the development of additional redress mechanisms, as appropriate and necessary.

**14 ESCALATION OF MATTERS**

14.1 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 15 working days of being given written notice, the relevant contact person from the Ministry and Claims and Environment Manager 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 notice referred to in 14.1(a), the Chief Executive and Chief Executive Officer for the Waikato Raupatu River Trust will meet to work in good faith to resolve the issue.
- (c) If the dispute has still not been resolved within 30 working days of receipt of the notice referred to in clause 14.1(a) and where the matter is of such significance and the dispute remains outstanding despite the above process having been followed, provided it is not inconsistent with statutory obligations and the parties agree, the Minister and a representative appointed by the trustees of the Waikato Raupatu River Trust will meet to work in good faith to resolve this issue. The parties recognise that this clause is subject to clause 16.

**15 REVIEW AND AMENDMENT**

15.1 The Minister and the Chief Executive and Waikato-Tainui agree that this Accord is a living document which should be updated and adapted to take account of future developments and additional co-management opportunities.

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

## **TAONGA TUKU IHO ACCORD**

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- 15.3 Where the parties cannot reach agreement on any review or variation proposal they will use the escalation processes contained in clause 14 of this Accord.
- 15.4 Waikato-Tainui and the Crown may only vary this Accord by agreement in writing.
- 15.5 In respect of the exercise of rights and obligations under this Accord:
- (a) any right of Waikato-Tainui will be exercised through the Waikato Raupatu River Trust; and
  - (b) where the Minister, or the Chief Executive, is required to engage, or otherwise interact, with Waikato-Tainui (including, without limit, making available information, consulting, informing Waikato-Tainui of certain matters, seeking advice, providing notice or assistance, or meeting with Waikato-Tainui), the Minister or, the Chief Executive will satisfy that obligation by engaging, or otherwise interacting, with the Waikato Raupatu River Trust.

## **16 LIMITS OF ACCORD**

- 16.1 This Accord does not override or limit:
- (a) legislative rights, powers or obligations;
  - (b) the functions, duties and powers of the Minister, Chief Executive and any Ministry officials under legislation including but not limited to the Protected Objects Act 1975 and the State Sector Act 1988;
  - (c) the ability of the Crown to introduce legislation and change government policy;
  - (d) the ability of the Crown to interact or consult with any other person, including any iwi, hapu, marae, whanau or their representative; or
  - (e) the legal rights and obligations of Waikato-Tainui.
- 16.2 This Accord does not have the effect of granting, creating or providing evidence of an estate or interest in, or rights relating to, land or any other resource held, managed or administered by the Crown.

**17 DEFINITIONS AND INTERPRETATION**

17.1 The provisions of this Accord shall be interpreted in a manner that best furthers the purpose of this Accord and is consistent with the principles set out in Clause 5 of this Accord.

17.2 In this Accord, unless the context requires otherwise:

- (a) terms defined in the Deed of Settlement and the settlement legislation have the same meaning in this Accord;
- (b) **settlement legislation** means the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Bill;
- (c) **Accord area** has the same meaning given in clause 4 of this Accord;
- (d) **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;
- (e) **Crown** means Her Majesty The Queen in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement;
- (f) **expert examiner** has the same meaning as in Section 2 of the Act and means a body corporate or an association of persons;
- (g) **register of expert examiners** means the register of expert examiners established and maintained by the chief executive pursuant to section 7B(2) of the Protected Objects Act 1975.
- (h) **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;

## TAONGA TUKU IHO ACCORD

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- (i) **Waikato-Tainui** means Waikato-Tainui Te Kauhanganui Incorporated in its capacity as trustee of the Waikato Raupatu River Trust;
- (j) **taonga tuku iho** means to Waikato-Tainui, those things that are highly prized and derived from iwi, hapuu and whaanau. They are whakapapa connected and are passed on from one generation to the next. This includes:
  - (i) tangible objects such as types of heirlooms, artefacts, carvings, land and fisheries; and
  - (ii) intangible substance such as language, spiritual beliefs, ideas and metaphysical gifts.
- (k) **ngā taonga tūturu** has the same meaning as in section 2 of the Act and means two or more taonga tūturu;
- (l) **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;
- (m) Subject to clause 17.1, the rules of interpretation in the Deed of Settlement apply to the interpretation of this Accord.

**SIGNED** as a deed

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

in the presence of:

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Hon Christopher Finlayson

WITNESS

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Name:

Date: 20 February 2009

**SIGNED** for and on behalf of **HER MAJESTY  
THE QUEEN** in right of the Government of  
New Zealand by **BRODIE JOHN STUBBS**  
acting pursuant to powers delegated to him  
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:

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Brodie John Stubbs

WITNESS

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Name:

Date: 20 February 2009

**TAONGA TUKU IHO ACCORD**

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**SIGNED** for and on behalf  
of **WAIKATO-TAINUI** by  
Lady Raiha Mahuta  
in the presence of:

\_\_\_\_\_  
Lady Raiha Mahuta

WITNESS

\_\_\_\_\_  
Name:

Date: 20 February 2009

**SIGNED** for and on behalf  
of **WAIKATO-TAINUI** by  
Tukoroirangi Morgan  
in the presence of:

\_\_\_\_\_  
Tukoroirangi Morgan

WITNESS

\_\_\_\_\_  
Name:

Date: 20 February 2009