



# JOINT MANAGEMENT AGREEMENT

Te Arawa River Iwi Trust  
and Waikato Regional Council





# JOINT MANAGEMENT AGREEMENT

DATED: 28<sup>th</sup> August 2012

## PARTIES

1. **Te Arawa River Iwi Trust (TARIT)**, a trust established by a deed dated 20 May 2009, to represent Ngati Tahu-Ngati Whaoa, Ngati Kearoa Ngati Tuara and Tuhourangi Ngati Wahiao.
2. **Waikato Regional Council (the Council)**, a Regional Council duly constituted by the Local Government Act 2002.

Each one a Party and together referred to as the Parties.

## BACKGROUND

- A. On 22 August 2008 Waikato-Tainui and the Crown signed a Deed of Settlement in Relation to the Waikato river 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 future generations.
- B. 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.
- C. 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**).
- D. The Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (the **Upper Waikato River Act**) was enacted to give effect to the Co-Management Deed. This joint management agreement (this **Agreement**) is established pursuant to section 43 of the Upper Waikato River Act.

## CONTEXT:

- E. The Waikato river flows from its source on the south side of Ruapehu to te Puaha o Waikato (the mouth) and 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.
- F. 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.
- G. The Te Arawa River Iwi relationship with the Waikato river and its tributaries and their respect for it gives rise to responsibilities to protect the Waikato river and all it encompasses and to exercise mana whakahaere in accordance with long established tikanga to ensure the wellbeing of the Waikato river. 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 river within their Rohe.

## MATTERS AGREED:

### 1. Purpose

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

### 2. Scope

- 2.1 This Agreement covers matters relating to the Waikato river and activities within its catchment affecting the Waikato river that occur within the Rohe.

### 3. Term

- 3.1 The Parties agree and acknowledge that under the Upper Waikato River Act this Agreement will commence on the Commencement Date and will remain in force for perpetuity.

### 4. Principles

- 4.1 The Parties acknowledge and agree that in working together they will:
- (a) Give appropriate weight to the relevant matters and documents provided for under the Upper Waikato River Act, including:
    - (i) Promoting the overarching purpose of the Upper Waikato River Act, to restore and protect the health and wellbeing of the Waikato river for present and future generations;
    - (ii) Te Ture Whaimana for the Waikato river;
    - (iii) The Upper Waikato River Integrated River Management Plan; and
    - (iv) The TARIT Environmental Management Plan;
  - (b) Respect the mana whakahaere rights and responsibilities of Te Arawa River Iwi;
  - (c) Act in a manner consistent with the principles of Te Tiriti o Waitangi / The Treaty of Waitangi;
  - (d) Promote the principle of co-management;
  - (e) Reflect a shared commitment to:
    - (i) Working together in good faith and a spirit of co-operation;
    - (ii) Being open, honest and transparent in communications; and
    - (iii) Using best endeavours to ensure that the purpose of this Agreement is achieved in an enduring manner;

- (f) Recognise that this Agreement operates within statutory frameworks and that complying with those statutory frameworks, meeting statutory timeframes, and minimising delays and costs are important.

## 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 principles. The framework will set out the priorities, programme and methodology for monitoring 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 Parties acknowledge that the Council has a long-standing monitoring network for national and regional state of the environment reporting and trend analysis. The Parties will endeavour to ensure compatibility between any new monitoring and Council's existing monitoring obligations.
- 5.4 The matters to be discussed and agreed in the development of the jointly agreed monitoring framework include:
  - (a) The extent 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;
  - (d) The development of joint recommendations between the Council and TARIT in response to monitoring framework findings. The recommendations may include proposals to change existing policy and/or methods, undertake section 128 RMA resource consent condition reviews or undertake enforcement in response to monitoring 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; and
  - (f) Council staff engaged in monitoring and enforcement action to have appropriate training to understand the monitoring framework, particularly the cultural health indicators, Te Arawa River Iwi state of the environment report and the TARIT Environmental Management Plan.
- 5.5 An initial meeting between the Parties will be held by 31 December 2012, to agree on a programme to achieve a fully integrated monitoring framework.
- 5.6 Following the establishment of the monitoring framework, subsequent meetings between Council and TARIT staff will be held at least twice a year to review the 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.

- 5.7 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 monitoring framework.
- 5.8 Council and TARIT each bears its own costs for the establishment, implementation and maintenance of the monitoring framework.

## 6. RMA Planning Documents

### 6.1 Preparation, Review, Change or Variation of RMA Planning Documents – Engagement

- 6.1.1 Council and TARIT will meet at an operational level no less than twice per year. The purpose of these meetings will be to discuss and consider policy matters, including the necessity for review, change or variation to RMA Planning Documents to:
- (a) Give effect to Te Ture Whaimana for the Waikato river;
  - (b) Implement those matters identified and agreed as priorities in clause 5 of this Agreement as it relates to section 35(2)(b) of the RMA; and
  - (c) Address any issue identified in the Upper Waikato River Integrated Management Plan and/or the TARIT Environmental Management Plan.
- 6.1.2 Where as the result of discussions held at the operational meetings, it is identified that a review, change or variation may be required, a Joint Working Party (**JWP**) shall be convened. The JWP members shall include in the first instance, the Council's Group Manager Policy and Transport and the TARIT General Manager, and staff members invited by the Managers.
- 6.1.3 The JWP will discuss and agree on:
- (a) The purpose, process and programme for the preparation of the review, change or variation;
  - (b) The engagement and participation process and programme with TARIT. This may include how to involve the co-governance committee (see clause 12); and
  - (c) The general form and content of the RMA Planning Document to be drafted for the purposes of consultation and notification.
- 6.1.4 As the result of discussions and agreement at JWP meetings, the JWP will prepare two joint recommendations to the trustees and Council:
- (a) Whether to commence a review, change or variation to a RMA Planning Document, including the process to be adopted; and
  - (b) The content of the RMA Planning Document to be notified under clause 5 of Schedule 1 of the RMA.
- 6.1.5 Where agreement cannot be reached on RMA Planning Documents, the JWP in the first instance will seek to resolve any concerns. If the concerns persist, then the joint final recommendation will outline those matters.
- 6.1.6 Prior to the joint recommendation on the content and notification of the RMA Planning Document, the JWP will discuss the potential for TARIT to participate in making decisions on the draft RMA Planning Document. The discussion will consider how matters relevant to TARIT are appropriately represented and acknowledged as part of the decision making process.

- 6.1.7 Other matters relating to the hearings panel that may also be discussed by the JWP are:
- (a) Number of members appointed by the Council;
  - (b) Number of independent hearing commissioners selected by Council; and
  - (c) An independent chairperson jointly appointed and/or agreed by the iwi and the Council.
- 6.1.8 The results of the discussions (set out in clauses 6.1.6 and 6.1.7) will be incorporated into the joint recommendations to the trustees and Council.

## 6.2 Requests for Private Plan Changes

- 6.2.1 If a request is made under clause 21 of Schedule 1 of the RMA, and relates to the Waikato river or its catchment, Council will provide a copy to the TARIT General Manager as soon as practicable.
- 6.2.2 The TARIT General Manager will advise Council whether TARIT wishes to participate in the process.
- 6.2.3 Should TARIT wish to participate in the process a JWP will be convened. The JWP members shall include in the first instance, the Council's Group Manager Policy and Transport and the TARIT General Manager, and staff members invited by the Managers. This first meeting will discuss the potential and opportunities for TARIT to participate in the process.

## 7. Resource Consents

### 7.1 Resource Consents Scope

- 7.1.1 This section applies to:
- (a) Applications listed in section 49(1)(a) of the Upper Waikato River Act for resource consent (including any section 127 of the RMA change application and any application for direct referral to the Environment Court) located within or partly within the Rohe.
  - (b) Any resource consent for any of the matters listed at section 49(1)(a) of the Upper Waikato River Act involving land or water located within or partly within the Rohe where section 128 of the RMA provides Council the opportunity to review consent conditions.

### 7.2 Resource Consents Engagement

- 7.2.1 For any application or condition review specified under clause 7.1.1 (a) or (b) above the Council:
- (a) Acknowledges TARIT as a major stakeholder and representative of tangata whenua with regard to activities affecting the Waikato river and/or its catchment, within the Rohe.
  - (b) Acknowledges that TARIT may consider itself to be an affected party irrespective of the contents of this Agreement.
  - (c) Will actively encourage applicants to consult early with TARIT prior to the lodgement of an application and encourage TARIT's participation in formal pre-lodgement meetings.
  - (d) Will provide a guideline to applicants, advising of Te Ture Whaimana for the Waikato river, the role of the Waikato River Authority, the Upper Waikato River Integrated Management Plan and the TARIT Environmental Management Plan. The guideline will be developed in consultation with TARIT and will be completed by 31 December 2013.
  - (e) 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.

- (f) Will give written or electronic notice to TARIT of the receipt of any application described in clause 7.1.1 (a) above as soon as practicable and no later than two Working Days after receiving the application.
- (g) Will provide a copy of any application described in clause 7.1.1 (a) within two Working Days of receiving a request from TARIT.
- (h) Will annually provide TARIT with a list of priority resource consents specified under clause 7.1.1 (b) above for which an opportunity for a review of consent condition(s) is approaching. Under this clause, "priority resource consents" means those sites assigned in Council's compliance monitoring database as Priority 1 sites and other agreed Priority 2, 3 and 4 sites.
- (i) Will make TARIT aware of any review of consent conditions of any resource consent described at clause 7.1.1 (b) above no later than five Working Days after advising the consent holder of the review, and invite formal comment from TARIT.
- (j) 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 described in clause 7.1.1 (a) or (b) above , including any reporting and recommendations on direct referral requests.

7.2.2 For any application or condition review specified under clause 7.1.1 (a) or (b) above TARIT:

- (a) Acknowledges that Council must operate in terms of the timeframes as set out in the RMA;
- (b) Will engage with applicants and Council in an open and transparent manner, including holding meetings and providing comments in writing;
- (c) Will aim to provide comments to Council as soon as practicable; and
- (d) Will direct applicants to representatives of Ngati Tahu-Ngati Whaoa, Ngati Kearoa Ngati Tuara and Tuhourangi-Ngati Wahiao where applicable.

### 7.3 Joint Development of Criteria to Assist Council Decision Making

7.3.1 In order to fulfil the requirements of section 49(2)(d) of the Upper Waikato River Act, criteria to assist Council decision making for pre-application processes and decisions under sections 87E, 88(3), 91, 92, 95 to 95F, 127 and 128 of the RMA will be developed from information set out in the Upper Waikato River Integrated Management Plan and the TARIT Environmental Management Plan. These criteria will be developed in conjunction with and agreed with the Council.

## 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 Waikato Regional 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 this 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 Officer 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 Officer 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

- 10.1 The Council and TARIT may agree in writing to suspend, in whole or part, the operation of this Agreement. In reaching this decision, the Parties must specify the scope and duration of the suspension in writing.

## 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 TARIT 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 4.
- 12.5 Staff members may be invited to attend the meetings for technical support.
- 12.6 The Parties will appoint a senior staff member to be the key contact and to oversee the implementation of this Agreement.

### **13. Review and Amendment**

- 13.1 The Parties agree that this Agreement is a living document which should be updated and adapted to take account of future developments.
- 13.2 The initial review of this Agreement will take place no later than two years from the Commencement Date and biennially thereafter.
- 13.3 Additional reviews can be undertaken, as agreed by the Parties.
- 13.4 If the Parties agree to amend this Agreement then changes will be made by way of written variation to this Agreement.
- 13.5 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. Exercise of Powers**

- 14.1 The Council may carry out functions or exercise powers on its own account and not in accordance with this Agreement if:
  - (a) An emergency situation arises; 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.
- 14.2 As soon as practicable the Council will provide TARIT with written notice of carrying out this function or exercise of power.

### **15. Information Sharing**

- 15.1 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.
- 15.2 TARIT may make available to the Council, information where appropriate, and when requested by the Council, to enable it to fulfil its statutory obligations and obligations under this Agreement.

### **16. Communication**

- 16.1 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.

## 17. Extension to JMA

17.1 The Parties acknowledge that section 54 of the Upper Waikato River 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.

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

## 18. Definitions and Interpretation

18.1 In this Agreement, unless the context requires otherwise:

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

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

“**Regional Policy Statement**” has the same meaning as set out in the RMA.

“**RMA Planning Document**” has the same meaning as set out in the Upper Waikato River Act.

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

“**Rohe**” means the land area within the Te Arawa River Iwi and Council boundaries, as shown in the map in Schedule One.

“**TARIT Environmental Management Plan**” means the environmental plan that TARIT prepares and serves on the Council and other agencies.

“**Te Ture Whaimana**” means the vision and strategy for the Waikato river and has the same meaning as set out in the Upper Waikato River Act.

“**Upper Waikato River Integrated Management Plan**” has the same meaning as set out in the Upper Waikato River Act.

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

“**Working Days**” has the same meaning as set out in the RMA.

- 18.2 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 this Agreement;
  - (b) Where possible the same definitions under the Upper Waikato River 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 Upper Waikato River 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.

**EXECUTED BY:**



Signed for and on behalf of the TE ARAWA RIVER IWI TRUST by its trustees:

**Roger Pikia**  
Chairman

**Rawiri Te Whare**

**Eru George**

**Eugene Berryman-Kamp**

**Wally Lee**

**Grace Hoet**

Signed for and on behalf of the WAIKATO REGIONAL COUNCIL

**Peter Buckley**  
Chairman

**William (Norm) Barker**

**Laurie Burdett**

**Simon Friar**

