

# Te Waihora Interim Co-Governance Agreement and Terms of Reference



## **Te Waihora Interim Co-Governance Agreement and Terms of Reference**

### **Background**

The Canterbury Regional Council and Ngāi Tahu respectively hold statutory and tikanga responsibilities in relation to Te Waihora (Lake Ellesmere) and have been involved in many initiatives related to the management of the lake and its catchment. More recently the issue of co-governance of Te Waihora has begun to be explored and a number of key documents provide for the development of a formal co-governance framework for Te Waihora and its catchment. In Whakaora Te Waihora, a cultural and ecosystem restoration programme for Te Waihora developed by Ngāi Tahu and Canterbury Regional Council, one of the 6 key strands of the programme includes actions to progress towards a longer-term co-governance arrangement for Te Waihora and its catchment.

A similar goal is included in the Canterbury Water Management Strategy (“CWMS”), which seeks to achieve, by 2015 –

*“A formal co-governance arrangement (developed in partnership by Ngāi Tahu, the Crown and Canterbury local government) for the active management of Te Waihora (Lake Ellesmere) and its catchment.”*

The exploration of co-governance options also forms a strand of ‘Tuia’, the Canterbury Regional Council/Nga Rūnanga joint work programme. The involvement of Ngāi Tahu in co-governance and co-management arrangements for Te Waihora and its catchment is also consistent with the principles of the Treaty of Waitangi, and will promote the principles set out in sections 6 and 8 of the Resource Management Act 1991 (“RMA”) and Parts 2 and 6 of the Local Government Act 2002 (“LGA”).

Nothing in this agreement shall devalue or derogate from the rights of Ngāi Tahu to exercise its rangatiratanga over those matters confirmed as part of the Ngāi Tahu Claims Settlement Act. In relation to the Settlement this agreement shall look to go beyond to continue the process of healing and enter a new age of co-operation with Ngāi Tahu.

The parties acknowledge that nothing in this agreement restricts, fetters or derogates from the statutory functions, duties and obligations imposed on the Canterbury Regional Council by the LGA, the RMA, the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (the “Ecan Act”) or any other statute or regulation.

### **Interpretation**

In this agreement:

- “the Parties” means the Canterbury Regional Council and Te Waihora Management Board
- “Te Waihora” means Te Waihora (Lake Ellesmere)
- “the Governance Group” and “the Group” means the Te Waihora Governance Group which is comprised of ‘the parties’
- “the Commissioners” means the Commissioners of the Canterbury Regional Council

- “the Board” means Te Waihora Management Board
- “the Organisations” means the Canterbury Regional Council and Te Runanga o Ngāi Tahu
- “the Joint Officials Group” means the Te Waihora Joint Officials Group
- Ki Uta Ki Tai - is a Ngāi Tahu paradigm and ethic and is the Ngāi Tahu way of understanding the natural environment, including how it functions, how people relate to it and how it can be looked after appropriately. It is the concept used to describe the overall approach to natural resource management by Ngāi Tahu - from the mountains to the sea.

## **PART 1: PURPOSE AND PRINCIPLES**

### **Purpose**

- To provide for the sustainable management of natural and physical resources, and the realisation of outcomes aimed at the restoration and rejuvenation of Te Waihora, including the cultural, biodiversity, mahinga kai, economic, and recreational values. This includes the outstanding values relating to habitat for wildlife, indigenous vegetation and fish and significance in accordance with tikanga Ngāi Tahu in respect of Ngāi Tahu history, mahinga kai and the customary fishery. This will be delivered for Te Waihora and its catchment through a framework driven by Ki Uta Ki Tai / integrated management of the catchment which recognises and provides for the practical and meaningful exercise of the respective statutory and kaitiakitanga responsibilities of the Parties.
- To provide the framework for interim co-governance between the Canterbury Regional Council and Te Waihora Management Board for the active management of Te Waihora and its catchment to achieve the purpose outlined above. The Parties jointly acknowledge that this is an interim framework that will apply until an enduring and formal co-governance framework is implemented. The development of such a framework is one of the cornerstone commitments of the Parties under this agreement, and one of the four core functions specified in this Agreement.

### **Guiding Principles**

- The Parties will uphold this agreement based on principles of good faith and cooperation, and early, open and transparent sharing of information in the process of making sound, robust, decisions.
- The Parties agree to use their best endeavours in a courageous and innovative manner to overcome any barriers that may constrain this agreement, whilst acknowledging the statutory frameworks that apply, and the need to recognise and provide for each Parties respective responsibilities and values. As part of their commitment to the highest level of good faith collaboration the parties will apply the principles of consensus decision making in all endeavours.
- The Parties agree to approach all material engagement with other stakeholders standing 'shoulder to shoulder/pakahiwi ki pakahiwi'.
- The Parties are committed to ensuring effective coordination, and where appropriate, integration, of their respective roles and responsibilities and efforts and actions relating to Te Waihora.
- The exercise by the Parties (either jointly or separately) of all functions, duties and responsibilities that impact upon Te Waihora and its catchment will be guided at all times by a commitment to the realisation of the shared outcomes aimed at the the restoration and rejuvenation of Te Waihora, including the cultural, biodiversity, mahinga kai, economic, and recreational values of Te Waihora, so that it continues to provide current and future generations with the sustenance, identity and enjoyment that it has to those in the past.

- The parties acknowledge that these agreements are subject to funding in order to deliver the purpose and principles.
- The parties acknowledge that they each operate within particular statutory frameworks. When giving effect to the guiding principles of this agreement the parties accept that each must work within those statutory frameworks.

## **PART 2: STRUCTURE**

### **1. Te Waihora Governance Group**

The central component of this interim co-governance framework is the Whakaora Te Waihora Governance Group. The Parties will establish and operate this Group in accordance with the following provisions.

A diagram illustrating the structure outlined in this Part is appended as Attachment 1.

#### **Membership**

The Governance Group will comprise all 7 Commissioners of the Canterbury Regional Council and all 8 members of Te Waihora Management Board.

The Governance Group will be chaired jointly, and the chairs are to be known as Co-Chairpersons. One Co-Chairperson will be appointed by the Commissioners and one Co-Chairperson will be appointed by the Board.

A representative of the Minister for the Environment will attend meetings of the Governance Group as an invited attendee when any matters directly related to the Whakaora Te Waihora Project 2011 – 2013, to which the Crown has contributed funding, are being considered.

#### **Decision Making**

All decisions of the Governance Group are to be reached through the highest level of good faith engagement and made on a consensus basis, while having regard to statutory frameworks and the mana whakahaere of Ngāi Tahu, represented by the Board.

A consensus means a consensus between a majority of the Commissioners and a majority of the Board, rather than a consensus between all of the individual members of the Group. Every effort shall be made by members of the Group to reach a consensus decision, and in the event of difficulty in this regard, reference should always be made back to the Purpose and Principles of this Agreement for guidance.

All decisions made by the Governance Group must demonstrate, and be aligned with, the Purpose and Principles of this Agreement.

#### **Conduct of Members**

All members of the Governance Group must act in good faith, in a manner that achieves the Purpose and Principles of this Agreement, and follow the principles of consensus decision-making.

## **Meetings**

The Governance Group shall meet on a monthly basis, or such other frequency as is agreed by the Group. Regular meetings of the Governance Group will preferably occur prior to the regular Canterbury Regional Council full Council meetings and Te Waihora Management Board meetings.

The location of meetings of the Governance Group shall alternate between a location chosen by the Board and a location chosen by the Commissioners, unless agreed otherwise by the Parties.

## **Quorum**

The quorum for meetings is 7 members, made up of at least 1 of the Co-Chairpersons, 3 of the Commissioners, and 3 members of the Board.

## **2. Te Waihora Joint Officials Group**

A Joint Officials Group will be created, consisting of at least 2 staff members from each of the Canterbury Regional Council and Te Runanga o Ngāi Tahu. At least 1 of the staff members from each of the Organisations is to be at senior management level.

In addition, the Joint Officials Group will have, but will not be limited to, the following specific functions:

- Ensuring a strategic and integrated approach to management of issues within the Organisations that relate to Te Waihora and its catchment.
- The development, management and delivery of the Whakaora Te Waihora accelerated restoration programme, as well as the provision of the leadership and integration within the organisations with regard to that programme.
- Responsibility for oversight and coordination of all reports, briefings, presentations etc, received by the Governance Group.
- Active collaboration and engagement with key stakeholders.
- The development and review of strategies and policies that relate to Te Waihora and its catchment.
- The provision of research, analysis and recommendations for long-term formal co-governance framework options for Te Waihora and its catchment.
- The development of policy and protocols related to the artificial opening and closing of Te Waihora.
- Other functions as directed by the Governance Group.
- Input into all (material) consents or RMA processes in the Te Waihora catchment.

Wherever possible staff recommendations to the Governance Group should be joint recommendations from the Joint Officials Group. Where a joint recommendation cannot be agreed, separate recommendations and associated rationale shall be provided.

An official from the Ministry for the Environment shall be nominated as the key contact for the Joint Officials Group for all matters relating to the delivery of the Whakaora Te Waihora accelerated restoration programme as it relates to the Ministry funding.

### **3. Engagement Protocols**

The Guiding Principles of this Agreement reflect, among other things, a “no surprises” relationship between the Parties. Fundamental to this relationship will be regular and effective communication and coordination between staff of the Organisations (via the Joint Officials Group), and between the Co-Chairpersons of the Governance Group.

The provision and exchange of all information, advice, and any other communication between the Parties, either at the Joint Officials Group or Governance Group, shall allow reasonable opportunity for due consideration of the matter, and shall take account of all reasonable internal communication processes of the Parties.

In carrying out the core functions specified in this Agreement, all business of the Governance Group shall, in the first instance, be undertaken ‘face to face/kanohi ki te kanohi’ at an official meeting of the Group. However, the Parties recognise that some of the functions specified in this Agreement relate to statutory powers, functions and responsibilities of the Canterbury Regional Council, and that the exercise of these can be subject to statutory timeframes. In the event that statutory timeframes and the timing of Governance Group meetings do not allow for ‘face to face’ consideration of a matter, there shall be direct engagement between the Co-Chairpersons and/or between the members of the Joint Officials Group to reach agreement on the actions to be taken in accordance with the nature of the issue.

## **PART 3: FUNCTIONS**

The Governance Group will have the following functions, which may be varied in writing by joint agreement of the Parties.

### **1. Long Term Co-Governance**

- a) By 1<sup>st</sup> February 2012, to oversee the joint research, analysis and development of a proposed long term formal co-governance framework for the active management of Te Waihora and its catchment.
- b) To jointly initiate and progress the necessary political engagement at both the central and local government level to ensure the realisation of a) and to progress the proposed formal co-governance framework through to implementation.
- c) The framework developed in accordance with a) and b) must give effect to the Guiding Principles of this Agreement, as well as any jointly agreed addition or variation to these. In addition, the following key parameters will guide the nature and form of the long term co-governance framework:
  - reflects the concept of mana to mana;
  - provides for the practical, meaningful, and appropriate exercise of mana, including kaitiakitanga, by Ngāi Tahu;
  - is enduring and not subject to change with the local government electoral cycle;
  - provides due consideration for democracy and local decision-making;
  - provides for enduring and on-going funding streams in accordance with the function and roles of the respective parties;

- clearly and explicitly provides for collaborative engagement with key stakeholders and involvement of the wider community of interest;
- clearly outlines roles and responsibilities;
- provides for simplicity and certainty for the public, key stakeholders and those working within the framework;
- avoids duplication of processes and unnecessary complexity; and
- ensures a bold and transformative approach to the development and delivery of solutions in all matters.

## **2. Implementation of Whakaora Te Waihora Restoration Programme**

- a) The provision of leadership to the organisations and the community in relation to the Whakaora Te Waihora accelerated restoration programme.
- b) The approval of any relevant management and/or operational plans, work programmes and budgets developed for the implementation of the Whakaora Te Waihora accelerated restoration programme.

## **3. Wider Functions**

- a) The identification of significant existing and emerging issues affecting Te Waihora and its catchment. Unless it is defined otherwise by agreement of the Parties, a “significant” issue is any that is considered to be such by either of the Parties.
- b) The receipt of advice, reports, briefing papers and other relevant information from staff of Canterbury Regional Council, Te Runanga o Ngāi Tahu and other relevant organisations.
- c) The approval of policy and protocols related to the artificial opening and closing of Te Waihora.
- d) Input into statutory policy statements and plans that relate to Te Waihora and its catchment. Such policy statements and plans include but are not limited to iwi and hapu management plans, regional policy statements, regional plans, Rating District asset management plans, annual plans and long term council plans.
- e) Input into the appointment of independent commissioners, which may include Ngāi Tahu commissioners, to hear notified and called-in resource consent and private plan change applications within the Te Waihora catchment, whilst acknowledging that any person appointed as an independent commissioner must consider any such application with an open mind, and is not bound by the provisions of this agreement.
- f) Input into the proposed Zone Implementation Programme (ZIP) and Regional Implementation Programme (RIP) of the Selwyn –Waihora CWMS Zone Committee and the Regional CWMS Committee respectively, insofar as they impact on Te Waihora and its catchment.

## **4. Stakeholder Relationships**

- a) To facilitate consultation and collaborative engagement amongst and between the Parties, the Organisations and with other stakeholders.
- b) The development of collaboration agreements with key stakeholders, that outline the extent and nature of engagement in relation to the management of Te Waihora generally and in particular to the implementation of the Whakaora Te Waihora accelerated restoration programme.
- c) To initiate and progress engagement with key stakeholders (including central and local government) to ensure they have a clear understanding of the

long-term formal co-governance arrangements between Ngāi Tahu and the Canterbury Regional Council for Te Waihora and its catchment.

#### **PART 4: REVIEW**

The terms of this Agreement will be reviewed by the Governance Group annually, or more frequently by agreement of the Parties.

**EXECUTION:**

---

**Signed by:**  
**on behalf of Te Rūnanga o Ngāi Tahu**

---

**Signed by:**  
**on behalf of Te Waihora Management Board**

---

**Signed by:**  
**on behalf of Canterbury Regional Council**

# ATTACHMENT 1: INTERIM CO-GOVERNANCE STRUCTURE

