

Hon Kelvin Davis

Minister for Māori Crown Relations: Te Arawhiti

Proactive release – Te Awa Tupua: Approval for Immediate Modification Order to Extend the Current Appointment Term for Te Pou Tupua

Date of issue: 5 October 2020

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

No.	Document	Comments
1	<p>Te Awa Tupua: Approval for Immediate Modification Order to Extend the Current Appointment Term for Te Pou Tupua</p> <p><i>Cabinet Paper</i></p> <p>The Office for Māori Crown Relations - Te Arawhiti</p> <p>14 August 2020</p>	<p>This paper is to be released in its entirety.</p>
2	<p>Te Awa Tupua: Immediate Modification Order to Extend the Appointment Term for Te Pou Tupua</p> <p><i>Cabinet minute CAB-20-MIN-0407</i></p> <p>Cabinet Office</p> <p>24 August 2020</p>	<p>This paper is to be released in its entirety.</p>

In Confidence

Office of the Minister for Māori Crown Relations: Te Arawhiti

Cabinet

TE AWA TUPUA: APPROVAL FOR IMMEDIATE MODIFICATION ORDER TO EXTEND THE CURRENT APPOINTMENT TERM FOR TE POU TUPUA

Proposal

1. I seek Cabinet approval for the attached immediate modification order (**IMO**) to Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (**Settlement Act**) to be sent to Executive Council.

Background

2. On 3 August 2020, Cabinet agreed to an IMO to extend the first appointees' term to Te Pou Tupua by 9 months to accommodate the expected 6-month appointments process and the General Election in September 2020 [CAB-20-MIN-0368 refers].
3. On 12 August 2020, I received a written recommendation from the Acting Chief Executive of the Office for Māori Crown Relations – Te Arawhiti stating the matters required by section 15(2)(a) of the Epidemic Preparedness Act 2006.

Reasons for proposal

4. Te Pou Tupua is the legal representative of Te Awa Tupua, Whanganui River. The term of the first appointments expires on 3 September 2020, as per the legislated term limit of 3 years in the Settlement Act.
5. The effects of the COVID-19 pandemic have made it practically impossible for the Crown and eight iwi with interests in the Whanganui River to nominate and jointly appoint the next Te Pou Tupua before 3 September. The restriction of an expiry date to the term, combined with the legislated appointments process, will leave an unacceptable and unnecessary vacancy.
6. The IMO would:
 - a. address the effect of the COVID-19 pandemic on the Crown and iwi joint appointment process for Te Pou Tupua;
 - b. enable the first appointees to continue to carry out critical functions beyond 3 September 2020 (especially in relation to COVID-19 recovery response plans) and ensure the position is not left vacant;
 - c. provide time for the next nominations and joint appointments process to be completed as intended;
 - d. provide time for the Settlement Act to be amended so the role does not fall vacant in future; and
 - e. protect the integrity of the settlement arrangement and ultimately the wellbeing and mana of Te Awa Tupua, Whanganui River.

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7. I am satisfied that the proposed modifications will go no further than is, or is likely to be, reasonably necessary in the circumstances.

Financial Implications

8. The proposed modification has no financial implications.

Legislative Implications

9. The proposed IMO would modify sections of the Settlement Act to provide for an extension to the inaugural term of appointment.

Regulatory Impact Analysis

10. The Regulatory Quality Team at the Treasury has determined that the regulatory proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement on the basis that they have no or minor impacts on businesses, individuals or not for profit entities.

Human Rights

11. The proposal outlined in this paper is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

12. In preparing this paper, the Office for Māori Crown Relations – Te Arawhiti has consulted with the Ministry for the Environment and Te Puni Kōkiri. Te Arawhiti has discussed the approach with Crown Law Office, Department of Prime Minister and Cabinet, and the Parliamentary Counsel Office.
13. Ngā Tāngata Tiaki o Whanganui Trust has consulted with the other seven iwi with interests in the Whanganui River and confirmed they are unanimous in their support for an IMO to extend the first appointees' term.

Proactive Release

14. I intend to proactively release this paper in whole, making any necessary redactions, within 30 business days of final decisions being taken by Cabinet.

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Recommendations

I recommend that Cabinet:

1. **note** the effects of the COVID-19 pandemic has made it practically impossible for the Crown (led by the Minister for the Environment) and the eight iwi with interests in the Whanganui River to nominate and jointly appoint Te Pou Tupua before the expiry of the existing appointees' term on 3 September 2020;
2. **note**, on 3 August, Cabinet agreed to an immediate modification order to Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 to extend the current appointees' term to Te Pou Tupua by 9 months [CAB-20-MIN-0368 refers];
3. **note** the Acting Chief Executive of the Office for Māori Crown Relations – Te Arawhiti has written a recommendation to me stating the matters required by section 15(2)(a) of the Epidemic Preparedness Act 2006;
4. **note** I am satisfied of the matters required by section 15(2)(b) of the Epidemic Preparedness Act 2006;
5. **note** Crown Law Office has confirmed the modification order meets section 15 of the Epidemic Preparedness Act 2006; and
6. **approve** the immediate modification order to Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 to be sent to Executive Council.

Authorised for lodgement

Hon Kelvin Davis

Minister for Māori Crown Relations: Te Arawhiti

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Appendix One: Immediate Modification Order to Te Awa Tupua (Whanganui River Claims Settlement) Act 2017

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Epidemic Preparedness (COVID-19—Te Awa Tupua (Whanganui River Claims Settlement) Act 2017—Term of Appointments to Te Pou Tupua) Immediate Modification Order 2020

Patsy Reddy, Governor-General

Order in Council

At Wellington this 24th day of August 2020

Present:

The Right Hon Jacinda Ardern presiding in Council

This order is made under section 15 of the Epidemic Preparedness Act 2006—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Māori Crown Relations: Te Ara-whiti made after being satisfied of the matters required by section 15(2)(b) of that Act and after receiving from the chief executive of the Ministry of Justice a written recommendation stating the matters required by section 15(2)(a) of that Act.

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Order

1 Title

This order is the Epidemic Preparedness (COVID-19—Te Awa Tupua (Whanganui River Claims Settlement) Act 2017—Term of Appointments to Te Pou Tupua) Immediate Modification Order 2020.

2 Commencement

This order comes into force on 28 August 2020.

3 Enactment to which modifications made

This order modifies a restriction imposed by the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (the **Act**).

4 Restriction on term of appointment to Te Pou Tupua is modified for first appointees

Clause 1 of Schedule 3 of the Act has effect as if the following were inserted after clause 1(1) of that schedule:

(1A) However, the term of the first persons appointed to Te Pou Tupua ends at the close of 3 June 2021.

5 Revocation

This order is revoked on 10 June 2021.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order is made under the Epidemic Preparedness Act 2006. It comes into force on 28 August 2020 and is revoked on 10 June 2021. It modifies a restriction imposed by the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (the **Act**) that may be impossible or impracticable to comply with during an epidemic.

Clause 1 states the Title of the order.

Clause 2 states that the order comes into force on 28 August 2020.

Clause 3 states that the order modifies a restriction imposed by the Act.

Clause 4 modifies the term of appointment for the first appointees to Te Pou Tupua so that the term ends on 3 June 2021. The effect of the modification is that those appointees are appointed for 3 years and 9 months, instead of the usual 3 years.

Statement of reasons

The Minister for Māori Crown Relations: Te Arawhiti is satisfied of the matters required by section 15(2)(b) of the Epidemic Preparedness Act 2006 for the reasons that follow.

Effects are, or are likely to be, such that requirement or restriction is impossible or impracticable to comply (or comply fully) with

Te Pou Tupua is the legal representative of Te Awa Tupua, which is the legal person comprising the Whanganui River recognised under the Act. It is important for Te Pou Tupua to continue to make decisions as the legal representative of Te Awa Tupua.

The term of office of the existing appointees (who are the first appointees) to Te Pou Tupua ends on 3 September 2020. There is no provision in the Act that enables the present members of Te Pou Tupua to continue to act beyond 3 September 2020.

The nomination and joint appointment process for Te Pou Tupua, which involves the Crown and the 8 iwi with interests in the Whanganui River, requires approximately 6 months to complete.

It is impossible for the Crown and iwi to nominate and jointly appoint Te Pou Tupua before the term of the existing appointees ends on 3 September 2020.

The effects of COVID-19 meant that initial meetings were not held and the iwi and the Crown could not get their internal processes underway in March 2020. Hui were not possible during the period when contact with others and travel were restricted. In addition, both the Crown and iwi were focused on more immediate priorities relating to the COVID-19 response, with few, if any, resources to commit to the nomination and appointment process for Te Pou Tupua.

Modification goes no further than is, or is likely to be, reasonably necessary

The modification is a narrow modification to the Act to address this specific situation by providing for the first appointees to have a term of 3 years and 9 months, instead of 3 years.

A 9-month extension is considered reasonable and appropriate to allow for both the general election (which ensures that a government is formed and a Minister warranted) and a subsequent 6-month process for appointment. This time frame has been confirmed with Ngā Tāngata Tiaki o Whanganui (on behalf of Whanganui Iwi) and is supported by the other 7 iwi with interests in the Whanganui River who are involved in the nomination and appointment process.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 27 August 2020.
This order is administered by the Ministry of Justice.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Te Awa Tupua: Immediate Modification Order to Extend the Appointment Term for Te Pou Tupua

Portfolio **Māori Crown Relations: Te Arawhiti**

On 24 August 2020, Cabinet:

- 1 **noted** that the effects of the COVID-19 pandemic has made it practically impossible for the Crown (led by the Minister for the Environment) and the eight iwi with interests in the Whanganui River to nominate and jointly appoint Te Pou Tupua before the expiry of the existing appointees' term on 3 September 2020;
- 2 **noted** that in July 2020, the Cabinet Maori Crown Relations: Te Arawhiti Committee noted that the office of Te Pou Tupua will fall vacant if appointments are not made by 3 September 2020, and agreed to modify the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (the Settlement Act) to extend the current appointees' terms by nine months [MCR-20-MIN-0022];
- 3 **noted** that before recommending the making of an Immediate Modification Order, the responsible minister must:
 - 3.1 be satisfied of the matters set out in section 15(2)(b) of the Epidemic Preparedness Act 2006;
 - 3.2 have received from the responsible chief executive a written recommendation stating the matters required by section 15(2)(a) of that Act;
- 4 **noted** the advice of the Minister for Maori Crown Relations: Te Arawhiti that the conditions set out in paragraph 3 have been met;
- 5 **noted** that the Crown Law Office has confirmed the modification order meets section 15 of the Epidemic Preparedness Act 2006;
- 6 **authorised** the submission to Executive Council of the Epidemic Preparedness (COVID-19-Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 – Term of Appointments to Te Pou Tupua) Immediate Modification Order 2020 [PCO 23118/5.0];
- 7 **agreed** to a waiver of the 28-day rule so that the Order can come into force on 28 August 2020;
- 8 **noted** that the Order is temporary and will be revoked on 10 June 2021.

Michael Webster
Secretary of the Cabinet