

Hon Kelvin Davis

Minister for Māori Crown Relations: Te Arawhiti

Proactive release – Te Awa Tupua: modifying the current appointment term for Te Pou Tupua

Date of issue: 14 September 2020

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

No.	Document	Comments
1	Te Awa Tupua: modifying the current appointment term for Te Pou Tupua <i>Cabinet Paper</i> The Office for Māori Crown Relations - Te Arawhiti 3 August 2020	This paper is to be released in its entirety.
2	Te Awa Tupua: modifying the current appointment term for Te Pou Tupua <i>Cabinet Committee minute MCR-20-MIN-0022</i> Cabinet Office	This paper is to be released in its entirety.
3	Report of the Cabinet Māori Crown Relations: Te Arawhiti Committee: Period Ended 31 July 2020 <i>Cabinet minute CAB-20-MIN-0368</i> Cabinet Office	This paper is to be released in its entirety.

In Confidence

Office of the Minister for Māori Crown Relations: Te Arawhiti

Cabinet Māori Crown Relations: Te Arawhiti Committee

TE AWA TUPUA: MODIFYING THE CURRENT APPOINTMENT TERM FOR TE POU TUPUA

Proposal

1. I seek policy approval to modify the restriction on the term for persons currently appointed to Te Pou Tupua specified in Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (**Settlement Act**) using the immediate modification order mechanism (**IMO**) in section 15 of the Epidemic Preparedness Act 2006 (**Epidemic Act**).

Te Pou Tupua is the legal representative for Te Awa Tupua, Whanganui River

2. The Settlement Act established the office of Te Pou Tupua to act for Te Awa Tupua, Whanganui River. Te Pou Tupua is responsible for:
 - upholding the legal status of Te Awa Tupua;
 - speaking on behalf of Te Awa Tupua;
 - protecting the health and wellbeing of Te Awa Tupua;
 - carrying out relevant “landowner” functions; and
 - administering Te Korotete o Te Awa Tupua, a \$30m fund to support the health and wellbeing of Te Awa Tupua.
3. Te Pou Tupua is a single role, held by two people appointed jointly by both the Crown and the eight iwi¹ with interests in the Whanganui River (**Appendix One**). The term of the current appointees expires on 3 September 2020.

The issue: the effects of COVID-19 mean there is not enough time to complete the joint appointments process

4. The statutory appointment process would have commenced in March 2020 but for the emergency response to the COVID-19 pandemic whereby the focus of the Crown and iwi shifted to community safety.
5. The appointments process is a considerable undertaking at the best of times due to the number of parties involved. The inaugural Te Pou Tupua appointments took the Crown and the iwi over six months due to the complexity of the joint process. It is now impossible for the appointments process to be completed before the expiry of the current term. The iwi confirm they agree with this view and the current appointees are willing to continue.

¹ The eight iwi are: Ngāti Tūwharetoa, Ngāti Maniapoto, Whanganui Iwi, Ngāti Ruanui, Ngā Rauru Kītahi, Ngāti Apa, Ngāti Maru, Ngāti Rereahu.

The solution: an immediate modification order to extend the term of the current appointees

6. I propose an IMO to extend the current appointees' term by nine months to accommodate the expected six month appointments process and to take into account the general election on 19 September 2020 (allowing a Government to be formed and Minister to be warranted). I consider the proposal meets the criteria for an IMO.
7. I believe other options have been exhausted (**Appendix Two**). Without an IMO, the office of Te Pou Tupua will fall vacant as at 3 September 2020.
8. An IMO would ensure the position is not left vacant by enabling Te Pou Tupua to continue to carry out critical functions beyond 3 September 2020 (especially in relation to COVID-19 recovery response plans) while the subsequent appointments are made.
9. A vacancy would create substantial risk for Te Awa Tupua, iwi and the Crown. It would undermine the integrity of the settlement arrangement and mean decisions regarding the Whanganui River would be unable to be made. The relationships with the eight iwi involved would be damaged.
10. The fundamental risk is that the interests of the Whanganui River are left unrepresented and its wellbeing and mana compromised.
11. The Settlement Act does not contain a clause to allow appointees to continue until the subsequent appointments process is completed. I intend to seek the inclusion of a continuity clause through standard legislative options in due course.

Financial Implications

12. The proposed modification has no financial implications.

Legislative Implications

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

Regulatory Impact Analysis

14. 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

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

Consultation

16. In preparing this paper, Te Arawhiti has consulted with the Ministry for the Environment, and informed Te Puni Kōkiri and the Treasury. Te Arawhiti has discussed the approach with Crown Law Office, Department of Prime Minister and Cabinet, and the Parliamentary Counsel Office.

IN CONFIDENCE

17. Ngā Tāngata Tiaki o Whanganui (the post-settlement governance entity for the Settlement Act) supports the IMO and has consulted the relevant iwi with interests in the Whanganui River.

Proactive Release

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

Recommendations

I recommend that the Committee:

1. note Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 established the office of Te Pou Tupua to act on behalf of Te Awa Tupua, Whanganui River;
2. note the office of Te Pou Tupua falls vacant if appointments are not made by 3 September 2020;
3. note the joint process for the Crown (led by the Minister for the Environment) and the eight iwi with interests in the Whanganui River to make appointments to Te Pou Tupua was disrupted by the COVID-19 pandemic and is impossible to complete by 3 September;
4. note the role of Te Pou Tupua includes landowner functions for the bed of the Whanganui River and has implications for COVID-19 recovery response plans;
5. note that The Office for Māori Crown Relations – Te Arawhiti administers the Settlement Act as a departmental agency of the Ministry of Justice;
6. note the iwi support the immediate modification order;
7. agree 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; and
8. note, as a future measure, I intend to seek the inclusion of a continuity clause in Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 to prevent this occurring in future.

Authorised for lodgement

Hon Kelvin Davis

Minister for Māori Crown Relations: Te Arawhiti

I N C O N F I D E N C E

Appendix One: the joint statutory appointments process for Te Pou Tupua

The Settlement Act sets out the joint process for the Crown and the eight iwi to make appointments to Te Pou Tupua as follows:

Nominator: Iwi with interests in the Whanganui River (eight iwi)	Nominator: Crown – led by the Minister for the Environment
<i>Objective: One person must be nominated by the eight iwi (Ngāti Tuwharetoa, Ngāti Maniapoto, Whanganui Iwi, Ngāti Ruanui, Ngā Rauru Kīhahi, Ngāti Apa, Ngāti Maru, Ngāti Rereahu)</i>	<i>Objective: One person must be nominated on behalf of the Crown</i>
Eight iwi with interests in the Whanganui River consult internally within each iwi and then collectively about the nomination – to agree one nomination	Minister for the Environment consults the Minister for Māori Development, Minister of Conservation and any other relevant Minister on the preferred nomination
Nominator must give notice of the proposed nominee to the Minister for the Environment and invite comment	Minister for the Environment must give notice of the proposed nominee to the iwi nominator and invites comment The nominations are submitted to Cabinet Appointment and Honours Committee
The iwi and Crown nominators must jointly appoint the persons	

Current appointments

Iwi Appointee: Turama Hawira

Crown Appointee: Dame Tariana Turia

Appendix Two: other options considered

When determining the necessity of the IMO, alternative options considered included:

	Option	Result
1.	Immediate Modification Order	An IMO can only be pursued if there are no other solutions. Having exhausted the following options, an IMO is now a reasonable solution.
2.	Non-legislative options	Letting the role fall vacant is not an option due to the importance of the office of Te Pou Tupua as the legal representative of the Whanganui River.
3.	Use of existing powers in existing legislation	There is no clause in the Settlement Act to extend the current term while the next appointments process is completed. Persons appointed to Te Pou Tupua may be reappointed, but the process is such that it will not be completed before the current term expires.
4.	Make change by other legislative methods	An amendment was unable to be included in the COVID-19 Response (Further Management Measures) Legislation Bill (No 2) due to other priorities.
5.	Completing a compressed appointments process	Iwi and the Crown consider a compressed process would undermine the integrity of the appointments process, prove impracticable and is not possible due to resources of both being diverted by response to COVID-19 recovery efforts.



Cabinet Māori Crown Relations - Te Arawhiti Committee

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: Modifying the Current Appointment Term of Te Pou Tupua

Portfolio **Māori Crown Relations: Te Arawhiti**

On 28 July 2020, the Cabinet Māori Crown Relations - Te Arawhiti Committee:

- 1 **noted** that Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (the Settlement Act) established the office of Te Pou Tupua to act on behalf of Te Awa Tupua, Whanganui River;
- 2 **noted** that the office of Te Pou Tupua falls vacant if appointments are not made by 3 September 2020;
- 3 **noted** that the joint process for the Crown (led by the Minister for the Environment) and the eight iwi with interests in the Whanganui River to make appointments to Te Pou Tupua was disrupted by the COVID-19 pandemic and is impossible to complete by 3 September 2020;
- 4 **noted** the role of Te Pou Tupua includes landowner functions for the bed of the Whanganui River and has implications for COVID-19 recovery response plans;
- 5 **noted** that The Office for Māori Crown Relations – Te Arawhiti administers the Settlement Act as a departmental agency of the Ministry of Justice;
- 6 **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;
- 7 **noted** that iwi support the immediate modification order;
- 8 **noted** that, as a future measure, the Minister for Maori Crown Relations: Te Arawhiti intends to seek the inclusion of a continuity clause in the Settlement Act 2017 to prevent the above issue occurring in the future.

Rachel Clarke
Committee Secretary

Present:

Hon Kelvin Davis (Chair)
Hon Andrew Little
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Peeni Henare
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Officials Committee for MCR



Cabinet

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Report of the Cabinet Māori Crown Relations: Te Arawhiti Committee: Period Ended 31 July 2020

On 3 August 2020, Cabinet made the following decisions on the work of the Cabinet Māori Crown Relations - Te Arawhiti Committee for the period ended 31 July 2020:

MCR-20-MIN-0022	Te Awa Tupua: Modifying the Current Appointment Term of Te Pou Tupua Portfolio: Māori Crown Relations: Te Arawhiti	CONFIRMED
MCR-20-MIN-0023	Ngāti Hāua: Crown Offer Portfolio: Treaty of Waitangi Negotiations	CONFIRMED
MCR-20-MIN-0028	Te Akitai Waiohua: Request for Increase in Total Settlement Value Portfolio: Treaty of Waitangi Negotiations	CONFIRMED
MCR-20-MIN-0027	Maniapoto Settlement Natural Resources Redress: Crown Contribution to Local Authority Costs Portfolio: Treaty of Waitangi Negotiations	CONFIRMED
MCR-20-MIN-0026	Mangatu Crown Forest Licensed Land Remedies Inquiry: Preparing for Interim Recommendations Portfolio: Treaty of Waitangi Negotiations	CONFIRMED
MCR-20-MIN-0025	Ngati Kahungunu ki Wairarapa Tamaki nui-a-Rua: Litigation and Negotiation Strategy Portfolio: Treaty of Waitangi Negotiations	CONFIRMED
MCR-20-MIN-0029	Crown Response to 'Wakatu' Litigation Portfolio: Attorney-General	CONFIRMED
MCR-20-MIN-0024	Ngāti Maru (Taranaki): On-Account Transfer Portfolio: Treaty of Waitangi Negotiations	CONFIRMED
MCR-20-MIN-0031	Ngati Tuwharetoa Resolution of Lease Validity Issue Portfolios: Treaty of Waitangi Negotiations / Conservation	CONFIRMED
MCR-20-MIN-0032	Te Aute Endowment Lands: Proposed Approach to Resolve Glasgow Lease Issues Portfolio: Māori Development	CONFIRMED

MCR-20-MIN-0030	Oral Item: Report Back on Budget 2020 Initiatives Portfolio: Māori Crown Relations: Te Arawhiti	CONFIRMED <i>[Withdrawn]</i>
MCR-20-MIN-0020	Oral Item: Report Back on Te Puni Kokiri's Monitoring Review Portfolio: Social Development	CONFIRMED
MCR-20-MIN-0021	Oral Item: Maori Media Sector Shift Portfolio: Māori Development	CONFIRMED

Michael Webster
Secretary of the Cabinet