



A stronger voice for Māori in natural resource governance and management

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Abstract

Māori have a deep and innate relationship with natural resources. Māori have also consistently stated that statutory and policy frameworks prevent or restrict their ability to give expression to that deep and innate relationship. There have, however, been significant advances in this area including through the emergence of natural resource frameworks that enable, rather than prevent or unduly restrict, the expression of that relationship.

One significant advance has been through historical Treaty of Waitangi settlement arrangements. These arrangements often reflect a 'layered' approach that emphasises the Māori worldview or 'lens' in relation to a particular resource; provides a stronger voice for Māori in natural resource governance, management and planning; and provides an enhanced ability for Māori to carry out customary activities. This paper considers four examples of Treaty settlement arrangements: the tūpuna

maunga arrangements in the Tāmaki Collective settlement; the Waikato River settlement; the Tūhoe - Te Urewera settlement; and the Whanganui River settlement.

Introduction

Māori have a deep and innate relationship with natural resources. That relationship provides the 'lens' through which Māori view and relate to those resources. As an example, Māori often view the relationship with a natural resource through the lens of an inter-generational responsibility to uphold the mana and health and wellbeing of that resource, as opposed to focussing on 'rights' over that resource. For example, for Māori, a maunga (mountain) or awa (river) may be the embodiment of a tūpuna (ancestor). Consequently, an action taken in respect of that maunga or awa will be interpreted through that lens, and hence Māori take a significant interest in the governance and management of natural resources.

Māori have consistently argued that statutory and policy frameworks operate to prevent or restrict expression being given to that deep and innate relationship. There have, however, been significant advances in this area including through the emergence of natural resource frameworks that enable, rather than prevent or unduly restrict, the expression of that relationship.

These advances have included strengthened statutory obligations for central and local government to consider the Treaty of Waitangi / Te Tiriti o Waitangi and Māori values; a range of frameworks and processes to involve Māori in governance and management of resources; guidance and direction borne out of litigation; and better recognition of Te Ao Māori (the Māori worldview) in statutory and policy processes.

This paper focuses on one of these advances – the significant arrangements delivered through historical Treaty of Waitangi settlements ("Treaty settlements"). In particular, there have been some novel and creative settlement mechanisms developed by Iwi, the Crown and local government to give Māori a stronger voice in natural resource governance and management.

What are Treaty settlements?

Treaty settlements address historical breaches of the Treaty of Waitangi by the Crown prior to 21 September 1992. The Treaty settlement process generally (but not always) involves claims being heard by the Waitangi Tribunal and a report on those

claims from the Tribunal to the Crown. That report includes findings on Crown breaches of the Treaty, and recommendations to the Crown to address those breaches. The Crown (through the Minister for Treaty of Waitangi Negotiations and the Office of Treaty Settlements) then enters into Treaty settlement negotiations with the mandated Iwi representatives, culminating in a deed of settlement and then settlement legislation to give effect to the agreements reached.

Key elements of a Treaty settlement include an agreed historical account (including in relation to the breaches of the Treaty), and Crown acknowledgements of and an apology for those breaches. The settlement redress also includes cultural and financial/commercial redress. In the case of natural resources, often the redress is forward-looking with a view to reflecting a stronger Māori voice in the governance and management of natural resources.

Examples of settlement arrangements

This paper considers four recent examples of Treaty settlements arrangements that focus on the governance and management of a particular natural resource or area (such as a maunga or awa). The examples are (moving from north to south):¹

- the Tāmaki Collective settlement in relation to the tūpuna maunga;
- the Waikato River settlement;
- the Tūhoe – Te Urewera settlement; and
- the Whanganui River settlement.

Each settlement arrangement responds to a unique context and set of circumstances, and reflects the unique relationship between the Iwi and the resource; the settlement aspirations of the Iwi; and the political and negotiation dynamics at the time. In that sense, settlements cannot be easily compared as they each respond to unique circumstances. There are, however, common ‘layers’ that are apparent (to a greater or lesser extent) in each of the settlement arrangements. These layers typically include:

- a reframing of the ‘lens’ through which a natural resource is viewed, so that it aligns more closely with the view of the Iwi in respect of that resource;

¹ There are many more examples that are equally worthy of mention.

- a stronger voice for Māori in natural resource governance;
- a stronger voice for Māori in natural resource management;
- a stronger voice for Māori in natural resource planning; and
- the ability to exercise customary activities that have previously been prevented or constrained by the natural resource statutory and policy frameworks.

Some of these layers focus on collaboration with other Iwi and agencies (such as co-governance arrangements), while other layers focus more specifically on an individual Iwi (such as the customary activities).

Tāmaki Makaurau - Tūpuna Maunga Authority

The Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 provides for a collective settlement with 13 of the Iwi of Auckland. The settlement provides collective redress over natural resources such as the motu (islands) and tūpuna maunga (volcanic cones). The purpose of the Act is as follows:

The purpose of this Act is to give effect to certain provisions of the collective deed, which provides shared redress to the iwi and hapū constituting Ngā Mana Whenua o Tāmaki Makaurau, including by—

(a) restoring ownership of certain maunga and motu of Tāmaki Makaurau to the iwi and hapū, the maunga and motu being treasured sources of mana to the iwi and hapū; and

(b) providing mechanisms by which the iwi and hapū may exercise mana whenua and kaitiakitanga over the maunga and motu; and

...

The settlement provides for 14 of the tūpuna maunga to be vested in the Tāmaki Collective. This is significant as it represents the return to the Iwi of those taonga which are considered to be tūpuna (ancestors).

The settlement also provides for the establishment of the Tūpuna Maunga o Tāmaki Makaurau Authority ("Maunga Authority") which is comprised of six members appointed by the Tāmaki Collective and six members appointed by the Auckland Council. The Maunga Authority is responsible for the governance of the tūpuna

maunga, including through the Authority's role as the administering body of tūpuna maunga reserves under the Reserves Act 1977.

In carrying out its functions the Maunga Authority is directed to have regard to the spiritual, ancestral, cultural, customary and historical significance of the tūpuna maunga to the Iwi of the Tāmaki Collective.

The Auckland Council is responsible for 'routine management' of the tūpuna maunga, under the direction of the Maunga Authority and an annual operational plan to be agreed between the Maunga Authority and the Council.

In terms of planning, the Maunga Authority will prepare and approve an integrated reserve management plan for all of the tūpuna maunga under its jurisdiction. This document will be key in setting the vision and direction for the maunga, and for articulating in more detail the spiritual, ancestral, cultural, customary and historical significance of the tūpuna maunga to the Iwi of the Tāmaki Collective.

The settlement acknowledges the importance to the Iwi of being able to carry out customary activities on and traditional uses of the tūpuna maunga, as an integral part of the relationship between the Iwi and those tūpuna maunga. The settlement also provides for Iwi members to carry out identified customary activities on the tūpuna maunga without the need for approval under the Reserves Act. One key element of the integrated management plan will be a consideration of whether further customary activities may be carried out on the tūpuna maunga without the need for approval under the Reserves Act.

The Tāmaki Collective settlement reflects a significant reconnection between the Iwi of the Tāmaki Collective and their tūpuna maunga, and a detailed set of arrangements that provide a prominent voice for those Iwi in the future governance and management of, and planning for, those tūpuna maunga.

Waikato River

The Waikato River negotiations included a number of Iwi who have with relationships with the Waikato River, and the arrangements are reflected primarily in three statutes enacted between 2010 and 2012.²

² The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010; the Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010; and the Nga Wai o Maniapoto (Waipa River) Act 2012.

The overarching purpose of the Waikato-Tainui river settlement is to restore and protect the health and wellbeing of the Waikato River for future generations.³

The deep and innate relationship between Waikato-Tainui and the Waikato River is described as follows:⁴

The Waikato River is our tupuna (ancestor) which has mana (spiritual authority and power) and in turn represents the mana and mauri (life force) of Waikato-Tainui. The Waikato River is a single indivisible being that flows from Te Taheke Hukahuka 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, aquatic fisheries, vegetation, flood plains, wetlands, islands, springs, water column, airspace, and substratum as well as its metaphysical being. Our relationship with the Waikato River, and our respect for it, gives rise to our responsibilities to protect te mana o te Awa and to exercise our mana whakahaere in accordance with long established tikanga to ensure the wellbeing of the river. Our relationship with the river and our respect for it lies at the heart of our spiritual and physical wellbeing, and our tribal identity and culture.

One key driver for the settlement is to have this worldview reflected in the natural resource frameworks that provide for the governance and management of the river.

The Waikato River arrangements provide for the establishment of the Waikato River Authority, a co-governance authority comprising five members appointed by the river Iwi and five members appointed by the Crown/local authorities. The Waikato River Authority prepares and approves a planning document called the 'vision and strategy' (discussed further below); appoints RMA hearing commissioners for applications that relate to the river and acts as the trustee for the clean-up trust that administers a significant fund aimed at improving the health and wellbeing of the river.

The arrangements also provide for a number of relationships between individual Iwi and the Crown or local government, described as 'co-management' arrangements. Examples include the joint management agreements between Waikato-Tainui and relevant local authorities. These agreements are based generally on sections 36B to

³ The Waikato-Tainui settlement will be used as the example in this paper.

⁴ Section 8 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

36D of the RMA, but are modified through the settlement legislation. There is also provision for an Iwi environmental plan; and an integrated river management plan that brings together river Iwi, and various central and local government agencies to promote integrated planning across various statutory planning processes, including regional council, conservation and fisheries planning processes.

The Waikato River Authority is responsible for the vision and strategy for the Waikato River. The vision and strategy is a planning document with very powerful effect, in fact it is incorporated directly into the Waikato regional policy statement, and it overrides an RMA national policy statement in the event of conflict. The vision and strategy is also deemed to be a statement of general policy under conservation legislation. Decision-makers under a wide range of legislation are required to consider and give legal effect to the vision and strategy.

The Waikato-Tainui settlement also includes an acknowledgement of and provision for the Iwi to exercise customary activities and the preparation of a cultural harvest plan. These activities may be undertaken without undue restriction from statutory or policy frameworks.

The Waikato River arrangements represent a very significant advance in this area, and provide a good illustration of the layers of these settlement arrangements, from the mana whakahaere / te mana o te awa 'lens' through to co-governance, co-management, planning and mechanisms for the exercise of customary activities.

Tūhoe – Te Urewera

The recent Tūhoe settlement provides significantly new arrangements for Te Urewera (formerly Urewera National Park).⁵ Te Urewera Act 2014 refers to the relationship between Tūhoe and Te Urewera as follows:

3 *Background to this Act*

Te Urewera

- (1) *Te Urewera is ancient and enduring, a fortress of nature, alive with history; its scenery is abundant with mystery, adventure, and remote beauty.*
- (2) *Te Urewera is a place of spiritual value, with its own mana and mauri.*

⁵ Reflected in the Tūhoe Claims Settlement Act 2014 and Te Urewera Act 2014.

- (3) *Te Urewera has an identity in and of itself, inspiring people to commit to its care.*

Te Urewera and Tūhoe

- (4) *For Tūhoe, Te Urewera is Te Manawa o te Ika a Māui; it is the heart of the great fish of Maui, its name being derived from Murakareke, the son of the ancestor Tūhoe.*
- (5) *For Tūhoe, Te Urewera is their ewe whenua, their place of origin and return, their homeland.*
- (6) *Te Urewera expresses and gives meaning to Tūhoe culture, language, customs, and identity. There Tūhoe hold mana by ahikāroa; they are tangata whenua and kaitiaki of Te Urewera.*

...

The purpose of Te Urewera Act 2014 is as follows:

4 Purpose of this Act

The purpose of this Act is to establish and preserve in perpetuity a legal identity and protected status for Te Urewera for its intrinsic worth, its distinctive natural and cultural values, the integrity of those values, and for its national importance, and in particular to:

- (a) *strengthen and maintain the connection between Tūhoe and Te Urewera; and*
- (b) *preserve as far as possible the natural features and beauty of Te Urewera, the integrity of its indigenous ecological systems and biodiversity, and its historical and cultural heritage; and*
- (c) *provide for Te Urewera as a place for public use and enjoyment, for recreation, learning, and spiritual reflection, and as an inspiration for all.*

Te Urewera was formerly a national park governed by the National Parks Act 1980. That 1980 Act is virtually silent on the relationship between Māori and national parks. Te Urewera Act 2014, however, has as its first purpose to "*strengthen and maintain the connection between Tūhoe and Te Urewera*". Further, Te Urewera Act 2014

specifically refers to Tūhoetanga and core Tūhoe traditional management concepts (referred to below).

A unique approach has been adopted for the Tūhoe settlement and the treatment of Te Urewera. While Tūhoe and the Crown had initially discussed the vesting of Te Urewera in Tūhoe, that did not eventuate, and instead they negotiated and agreed a novel 'legal personality' approach, which involves:

- 'Te Urewera' being declared as a legal entity or person;
- the land that was formerly Urewera National Park being vested in Te Urewera (ie vested in the legal person created through the settlement); and
- a governance board, Te Urewera Board, being appointed to act on behalf and in the name of the legal person Te Urewera, and to provide governance for Te Urewera.

This legal personality resonates with the Tūhoe view of Te Urewera being an "*identity in and of itself*" as opposed to something that can be owned.

Te Urewera Board is appointed to act on behalf and in the name of the legal person, in other words as the representative of Te Urewera. The Board comprises four members appointed by Tūhoe and four members appointed by the Crown, and from 2017 that composition will change to six members appointed by Tūhoe and three members appointed by the Crown.

The key role of the Board is to give expression to the Te Urewera legal personality, and to achieve the purpose of Te Urewera Act 2014. As noted above, the first purpose of Te Urewera Act is to "*strengthen and maintain the connection between Tūhoe and Te Urewera*". The functions of Te Urewera Board include to prepare and approve a management plan for Te Urewera; issue an annual statement of priorities for Te Urewera; approve an annual operational plan for Te Urewera; and consider applications for activities within Te Urewera.

In terms of the Tūhoe voice, in performing its functions the Board may consider and give expression to Tūhoetanga and Tūhoe concepts⁶ such as rahui⁷, tapu me noa⁸, mana me mauri⁹ and tohu¹⁰.

While operational management of the former Urewera National Park was undertaken by the Department of Conservation, that role is now shared by Tūhoe and the Department. The operational management of Te Urewera must be undertaken in accordance with Te Urewera Act 2014; Te Urewera management plan; the Board's statement of priorities; and the annual operational plan. That annual operational plan must, for example, identify opportunities for Tūhoe to carry out management activities.

One key task for Tūhoe and Te Urewera Board will be to set the foundation and provide for the strengthening and maintenance of the connection between Tūhoe and Te Urewera, particularly in respect of Tūhoe continuing to live and carry out customary activities within Te Urewera.

The Tūhoe settlement and Te Urewera arrangements provide a significant new approach to what was formerly a national park. In particular, the arrangements provide a far stronger voice for Tūhoe and for Te Urewera itself.

Whanganui River

The most recent of the natural resource settlements covered in this paper is the settlement of the long-standing claims by Whanganui Iwi over the Whanganui River.¹¹ The deep relationship between Whanganui Iwi and the Whanganui River is reflected in the following pepeha:¹²

E rere kau mai te Awa nui

Mai i te Kāhui Maunga ki Tangaroa

Ko au te awa, ko te awa ko au

The Great River flows

⁶ These concepts are explained in section 18 of Te Urewera Act 2014.

⁷ Rahui conveys the sense of the prohibition or limitation of a use for an appropriate reason.

⁸ Tapu me noa conveys, in tapu, the concept of sanctity, a state that requires respectful human behaviour in a place; and in noa, the sense that when the tapu is lifted from the place, the place returns to a normal state.

⁹ Mana me mauri conveys a sense of the sensitive perception of a living and spiritual force in a place.

¹⁰ Tohu connotes the metaphysical or symbolic depiction of things.

¹¹ The deed of settlement (Ruruku Whakatupua, 5 August 2014) has been signed for the Whanganui River settlement, but the settlement legislation has not yet been introduced.

¹² Ruruku Whakatupua – Te Mana o Te Awa Tupua, 5 August 2014, page 1.

From the Mountains to the Sea

I am the River and the River is me

The settlement is centred around the recognition of the Whanganui River as Te Awa Tupua¹³

Te Awa Tupua is an indivisible and living whole comprising the Whanganui River from the mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements.

Consistent with that recognition is a set of four innate Te Awa Tupua values, Tupua te Kawa, that underpin and support the recognition of Te Awa Tupua. Tupua te Kawa are:¹⁴

1. Ko Te Kawa Tuatahi

Ko te Awa te mātāpuna o te ora (The River is the source of spiritual and physical sustenance)

Te Awa Tupua is a spiritual and physical entity that supports and sustains both the life and natural resources within the Whanganui River and the health and wellbeing of the Iwi, hapū and other communities of the River.

2. Ko Te Kawa Tuarua

E rere kau mai te Awa nui mai i te Kahui Maunga ki Tangaroa (The great River flows from the mountains to the sea)

Te Awa Tupua is an indivisible and living whole from the mountains to the sea, incorporating the Whanganui River and all of its physical and metaphysical elements.

3. Ko Te Kawa Tuatoru

Ko au te Awa, ko te Awa ko au (I am the River and the River is me)

The Iwi and hapū of the Whanganui River have an inalienable interconnection with, and responsibility to, Te Awa Tupua and its health and wellbeing.

4. Ko Te Kawa Tuawhā

¹³ Ruruku Whakatupua – Te Mana o Te Awa Tupua, clause 2.1.

¹⁴ Ruruku Whakatupua – Te Mana o Te Awa Tupua, clause 2.7.

Ngā manga iti, ngā manga nui e honohono kau ana, ka tupu hei Awa Tupua (*The small and large streams that flow into one another and form one River*)

Te Awa Tupua is a singular entity comprised of many elements and communities, working collaboratively to the common purpose of the health and wellbeing of Te Awa Tupua.

This is a good example of a Māori worldview or 'lens' being recognised through a Treaty settlement. Te Awa Tupua has always been at the centre of Whanganui Iwi's view of the river, but the settlement will place Te Awa Tupua at the centre of natural resource governance and management. The settlement will require Te Awa Tupua and Tupua te Kawa to be given appropriate legal effect in statutory decisions and processes.

As in the case with the Te Urewera arrangements, one highly novel aspect of this settlement is that Te Awa Tupua will be recognised as a 'legal person', with all of the rights and responsibilities of a person in law. The Crown-owned parts of the bed of the Whanganui River will vest in that Te Awa Tupua legal person. Put another way, Te Awa Tupua will own itself.

Two guardians, Te Pou Tupua, will be appointed to act on behalf and in the name of Te Awa Tupua, to uphold Te Awa Tupua and Tupua te Kawa, and to carry out the landowner functions on behalf of Te Awa Tupua. Te Pou Tupua will also administer a fund, Te Korotete o Te Awa Tupua, to promote the health and wellbeing of Te Awa Tupua.

The settlement will also provide for a collaborative whole of river strategy group, Te Kōpuka nā Te Awa Tupua, which will be made up of 17 members from river Iwi, the Crown, local authorities and commercial and other interest groups. Te Kōpuka nā Te Awa Tupua will undertake a collaborative process to approve a river strategy document, Te Heke Ngahuru ki Te Awa Tupua, to address and advance the environmental, social, cultural and economic health and wellbeing of Te Awa Tupua. That document will also be given legal effect in statutory decisions and processes.

There are a number of other layers or elements of the settlement including provision for Whanganui Iwi to carry out customary activities on the Whanganui River, and recognition of Whanganui Iwi has having legal standing in RMA and other statutory

processes. The settlement will be inclusive of all Iwi with interests in the Whanganui River and communities with interests in the river.

The Whanganui River settlement is a very good example of a change of 'lens' for natural resource frameworks to reflect a Māori worldview - in this case the lens of Whanganui River as Te Awa Tupua.

Conclusion

While there have been developments in many areas to strengthen the voice of Māori in natural resource governance and management, Treaty settlements have provided real 'step-change'. Iwi and the Crown, working with local authorities, have made a significant contribution by designing, negotiating and agreeing these new arrangements through Treaty settlements. This has been acknowledged internationally as a novel and progressive approach to recognising indigenous peoples in natural resource governance and management. In the New Zealand context, the Treaty settlement arrangements represent a significant turning point for strengthening the Māori voice in relation to those natural resources.

Bio

Paul is a partner in the RMA and Māori law team at Buddle Findlay. He specialises in RMA, co-governance design in Treaty settlement processes and advising local authorities on Treaty and Māori law issues. Paul has acted for the Crown on over 30 Treaty settlements, including as a core Crown design and negotiation team member in the Tuhoe, Whanganui River, Waikato River, Te Hiku, Te Tau Ihu, Hauraki and recent Taranaki settlements. He also acted for the Auckland Council in the negotiations leading to the new Tupuna Maunga Authority in Auckland, and advises a range of local authorities and other entities and Māori law and Treaty-related issues.