

**TĀTAU TĀTAU**  
o Te Wairoa

# **POTENTIAL WAI MĀORI CASE**

Presentation to Kāhui, December 2021





# BACKGROUND AND PURPOSE OF HUI



- Ngāi Tahu started a High Court case against the Crown in late 2020 in relation to Wai Māori
- Tātau Tātau, Ngāti Kahungunu Iwi Inc and Heretaunga Tamatea Settlement Trust have been approached by Ngāi Tahu to see if we are willing to join their Wai Māori case
- The case is potentially groundbreaking and, even if it fails, will have implications for our legal rights over Wai Māori
- The next step is to decide if we want to join the case







# NGĀI TAHU WAI MĀORI CASE



## *The case is based on two causes of action*

1

**Cause of action one:** The failure of the Crown to provide for Ngāi Tahu to exercise rangatiratanga over Wai Māori

2

**Cause of action two:** The Crown has a relational duty of good faith with Ngāi Tahu, which it has failed to fulfill

Ngāi Tahu is represented in the case by a number of upoko recognised leaders, and Te Rūnanga o Ngāi Tahu



## *Cause of action one: Exercise of rangatiratanga*

- This cause of action is based on proving a legal right to exercise rangatiratanga
- The cause of action alleges that:

Ngāi Tahu has, and is,  
entitled to exercise  
rangatiratanga over  
Wai Māori

Ngāi Tahu has been  
“constrained and  
encumbered” from  
exercising rangatiratanga

The Crown is obliged to  
provide for Ngāi Tahu to  
exercise rangatiratanga

## *Cause of action one: Exercise of rangatiratanga*

- This legal right to exercise rangatiratanga is said to arise from:

Te Tiriti o  
Waitangi

Historical and  
ongoing use of,  
and relationship  
with, Wai Māori

Specific Crown  
acknowledgements,  
including in the  
Ngāi Tahu Deed of  
Settlement

Crown  
acknowledgement  
of the Māori  
relationship with  
Wai Māori



## *Cause of action two: Relational good faith*

- The relational duty of good faith is based on the same factors as the legal right to exercise rangatiratanga in the first cause of action
- The specific relational duty is a duty of good faith to Ngāi Tahu to work in co-operation and partnership in relation to Wai Māori
- Declarations are sought to support this, including co-operation on future governance, regulation and allocation





## *Significance of the case*

- As far as we are aware, there is no precedent for the High Court making the declarations being sought
- The outcome will set a precedent, regardless of the result
- The precedent will affect all hapū and iwi because the matters being pleaded by Ngāi Tahu have general application to all iwi
- If the case succeeds, it will be groundbreaking



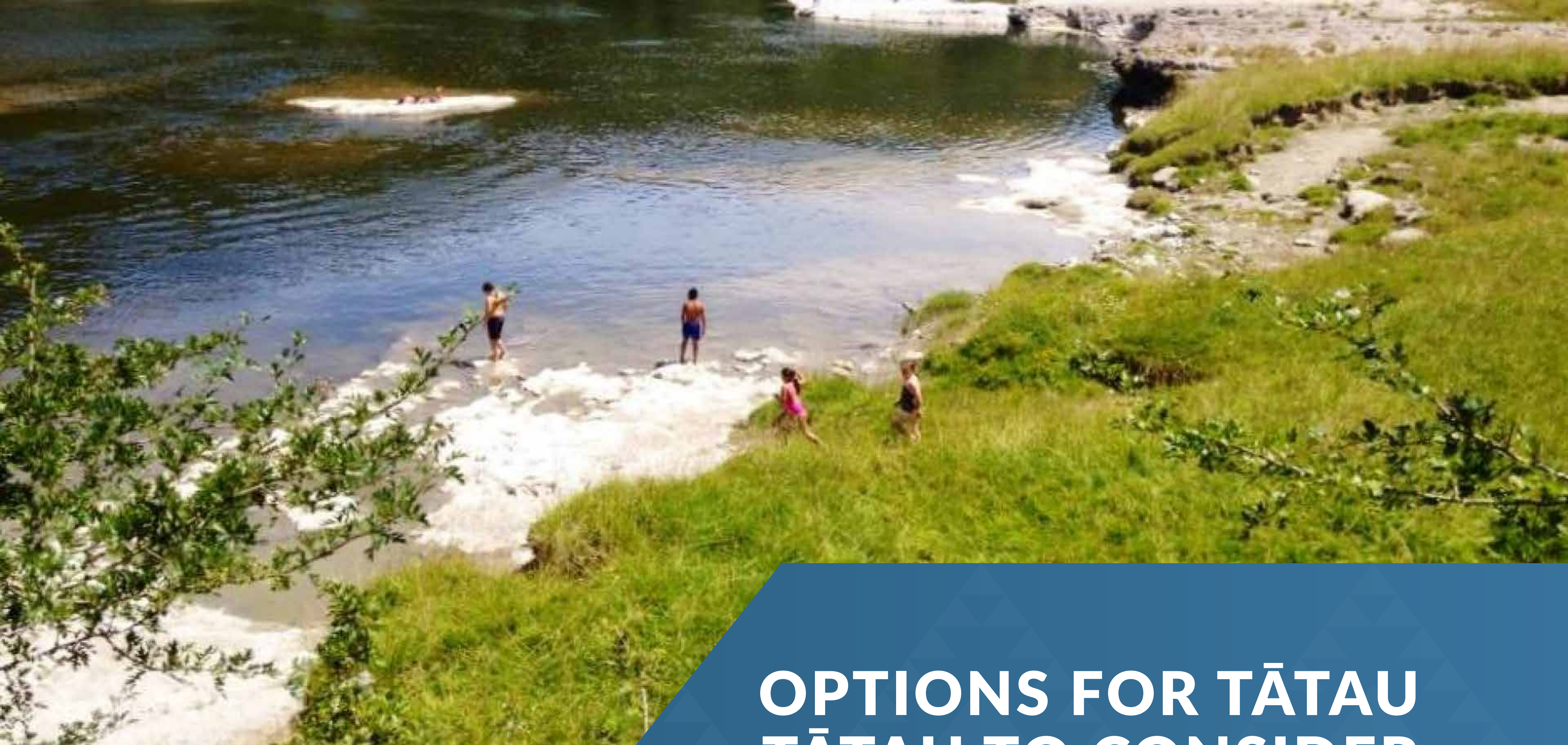


## *Relationship to customary title*

- The common law does not currently recognise ownership of water
- Ngāi Tahu does not seek title to Wai Māori, rivers or lakes
- A customary Title Claim would remain an option if the case is not successful
- The conventional approach to a Customary Title Claim would be a claim to title a river or lake
- The case would not prevent a claim to Customary Title over Wai Māori, but it would need to break new ground to succeed







**OPTIONS FOR TĀTAU  
TĀTAU TO CONSIDER**



1

Tātau Tātau applies to join the claim as an additional plaintiff

2

Tātau Tātau applies to become an interested party in the claim

3

Tātau Tātau launches its own water claim and merges its separate claim, with the Ngāi Tahu claim (known as 'consolidation')

4

Tātau Tātau launches its own water claim and runs that case separately to the Ngāi Tahu claim

5

Tātau Tātau does not participate







# POSITIVES OF PARTICIPATING



- + Tātau Tātau will be able to represent its own interests and directly influence the case
- + If Tātau Tātau has strong evidence, it will strengthen the case
- + A positive decision will enable the hapū and iwi of Tātau Tātau to exercise greater influence over Wai Māori







# NEGATIVES OF PARTICIPATING



- It is hard to assess the prospects of success
- The process will be costly in both time and money
- The process will take a number of years and, even if successful, an appeal(s) is likely







# OVERALL ASSESSMENT



- Tātau Tātau will be affected by the outcome
- There is no precedent and, therefore, no clear basis to assess whether the case will succeed
- Participating gives Tātau Tātau a direct influence over the case
- It would be a commitment to a lengthy and costly process with no guarantee of success







**TIMETABLE**



- There is no firm timetable for the Ngāi Tahu High Court case
- Ngāi Tahu has asked for the Court to have a hearing into an initial question of law concerning their claim
- The timetable will be clearer once the Court decides whether to consider the initial question of law
- This gives us until early in the New Year for Tātau Tātau to decide whether to seek to become involved







# PURPOSE OF ENGAGEMENT WITH KĀHUI





We need to understand the level of support for or against joining the case, to indicate the view of the Kāhui



We also need to further engage with Kāhui on the matter





**PĀTAI?**