

Hon Andrew Little, Minister for Treaty of Waitangi Negotiations

Cabinet Paper Te Whānau a Apanui: Decisions for Crown offer and agreement in principle
and MCR-2019-MIN-0015

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These documents have been proactively released:

1. 11 June 2019, Office of the Minister for Treaty of Waitangi Negotiations, *Te Whānau a Apanui: Decisions for Crown offer and agreement in principle* Cabinet paper
2. 11 June 2019, Cabinet Office, *MCR-2019-MIN-0015* Cabinet Committee Minute

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to Redaction Codes:

Reasons for withholding under section 9 of the Official Information Act 1982

s 9(2)(f) – maintain the constitutional conventions which protect:

- (i) – communications by or with the Sovereign or their representative; or
- (ii) – collective and individual ministerial responsibility; or
- (iii) – the political neutrality of officials; or
- (iv) – the confidentiality of advice tendered by Ministers and Crown officials.

s 9(2)(j) – negotiations sensitive.



Cabinet Māori Crown Relations - Te Arawhiti Committee

Minute of Decision

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Te Whānau a Apanui: Decisions for Crown Offer and Agreement in Principle

Portfolio Treaty of Waitangi Negotiations

On 11 June 2019, the Cabinet Māori Crown Relations: Te Arawhiti Committee (MCR):

Previous decisions

Withheld under s 9(2)(j)

1

[Redacted]

2

[Redacted]

- 3 **noted** that in December 2018, MCR agreed to a natural environment negotiations brief that included exploring enshrining Te Whānau a Apanui values in settlement legislation and involvement in decision-making regarding environmental outcomes which could be included in a planning type document [MCR-18-MIN-0015];

Crown apology redress

- 4 **noted** that the agreement in principle will include preliminary Crown acknowledgements and historical account headings;

Commercial redress

Commercial properties

- 5 **agreed** to offer Te Whānau a Apanui, and include in the agreement in principle, the right to purchase two properties from the Treaty Settlements Landbank, as detailed in Appendix 2 of the paper under MCR-19-SUB-0015;
- 6 **agreed** to offer Te Whānau a Apanui, and include in the agreement in principle, a right of first refusal over the properties detailed at Appendix 2 of the paper under MCR-19-SUB-0015 for up to 180 years from settlement date should they be disposed of;
- 7 **noted** that offers over commercial redress properties are subject to final confirmation by the Crown that the property is available;

Right of first refusal over fisheries quota

- 8 **agreed** to offer Te Whānau a Apanui, and include in the agreement in principle, a right of first refusal within the rohe of Te Whānau a Apanui over species that are managed under the Fisheries Act 1996 and are introduced into the quota management system in the future, subject to Te Whānau a Apanui becoming a mandated iwi organisation in the Māori Fisheries Act 2004;

Reservation of marine space

- 9 **agreed** to offer to Te Whānau a Apanui, and include in the agreement in principle, to reserve marine space for a set period to allow Te Whānau a Apanui to make appropriate resource consent applications for aquaculture development;
- 10 **authorised** the Minister for Treaty of Waitangi Negotiations and the Minister of Fisheries to finalise, in consultation with the Minister of Conservation, the exact size and location for reservation of marine space described in paragraph 9 above;
- 11 **noted** that the size of the reservation of marine space described in paragraph 9 above will be broadly in line with the reservation agreed with Whakatōhea in their agreement in principle;
- 12 **noted** that the reservation of aquaculture space described in paragraph 9 above will be provided for in Te Whānau a Apanui settlement legislation;

Agreement to explore roading issues

- 13 **noted** that the Minister for Treaty of Waitangi Negotiations intends to discuss, with the Minister of Transport, a possible offer to Te Whānau a Apanui to explore how the Treaty settlement can ensure that existing legislative processes, in the Public Works Act 1981 and Te Ture Whenua Māori Act 1993, address issues relating to unformed and unused portions of road;

Cultural redress**Cultural redress site transfers**

- 14 **agreed** to offer Te Whānau a Apanui, and include in the agreement in principle, the ability to select, prior to deed of settlement, any of the eight sites identified as suitable for transfer listed at Appendix 3, Table 1 of the paper under MCR-19-SUB-0015, subject to:
- 14.1 reserve status (as set out in Appendix 3, Table 1) and agreements to protect existing third-party interests where applicable being put in place,
- 14.2 agreement from the Ōpōtiki District Council to the inclusion of the four council-administered sites in this Treaty settlement, and
- 14.3 agreement of the Department of Conservation, Ōpōtiki District Council and Te Whānau a Apanui to the future management arrangements for the four council-administered sites;
- 15 **authorised** the Minister for Treaty of Waitangi Negotiations and Minister of Conservation to finalise the management arrangements for the four council administered sites listed at Appendix 3, Table 1 of the paper under MCR-19-SUB-0015 if available and selected for transfer by Te Whānau a Apanui, prior to initialling a deed of settlement;

Raukūmara Conservation Management Strategy

- 16 **agreed** to offer to Te Whānau a Apanui, and include in the agreement in principle, the right to co-author, with Ngāti Porou and the Department of Conservation, a single Raukūmara Chapter in the East Coast/Hawkes Bay Conservation Management Strategy covering the area shown on Appendix 3, Map 1 of the paper under MCR-19-SUB-0015, subject to support from Te Rūnanganui o Ngāti Porou;
- 17 **noted** that the offer in paragraph 16 above will require the Crown to consequentially amend the boundaries of the Bay of Plenty and the East Coast/Hawkes Bay Conservation Boards and Conservation Management Strategies in order to implement the proposed redress;
- 18 **noted** that the offer in paragraph 16 above will be implemented as an “out-of-cycle” amendment to the Bay of Plenty and the East Coast/Hawkes Bay Management Strategies;
- 19 **noted** that the Minister of Conservation intends to seek implementation funding for the Department of Conservation to cover the costs associated with the above proposal prior to the initialling of the deed of settlement;
- Withheld under s 9(2)(j)

20

Customary fishing

- 21 **agreed** to offer Te Whānau a Apanui, and include in the agreement in principle, a requirement for the Minister of Fisheries to propose fishing regulations to give better effect to the Crown’s Treaty obligation to provide for customary fishing in place of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 to apply in the rohe moana of Te Whānau a Apanui to the edge of the exclusive economic zone;

Relationship redress

- 22 **agreed** to include in the Crown offer, and in the agreement in principle, a commitment for the Ministry of Justice to enter into a relationship, focused on producing better long-term justice outcomes for Te Whānau a Apanui across the justice sector, grounded on co-developed principles;
- 23 **agreed** to include in the Crown offer, and agreement in principle, a commitment to:
- 23.1 a mana to mana relationship between the Minister of Education or delegated associate ministers and Te Whānau a Apanui;
- 23.2 an annual meeting between the parties, and other ministers as required, to jointly set policy direction and priorities for education;
- 23.3 develop shared objectives for educational transformation with Te Whānau a Apanui;
- 23.4 further explore the parameters of the education relationship agreement, including the operation of the mahi to mahi relationship and a platform for implementation of the work programme;
- 24 **agreed** to offer Te Whānau a Apanui, and include in the agreement in principle, the opportunity to enter into relationship arrangements with Crown agencies in the form set out at Appendix 3, Table 2 of the paper under MCR-19-SUB-0015;

Natural environment redress

- 25 **agreed** to offer Te Whānau a Apanui, and include in the agreement in principle, a commitment to negotiate a package of natural environment redress in accordance with the parameters agreed by Cabinet in MCR-18-MIN-0015;
- 26 **noted** that the Minister for Treaty of Waitangi Negotiations intends to seek Cabinet approval to the details of natural environment redress prior to initialling a deed of settlement with Te Whānau a Apanui;

Coastal statutory acknowledgement

- 27 **agreed** to offer to Te Whānau a Apanui, and include in the agreement in principle, a coastal statutory acknowledgement over the area set out at Appendix 3, Map 2 of the paper under MCR-19-SUB-0015;

Geographic name changes

- 28 **agreed** to offer Te Whānau a Apanui, and include in the agreement in principle, a commitment to consider name changes proposed by the iwi;

Pouwhenua

- 29 **agreed** to offer Te Whānau a Apanui, and include in the agreement in principle, a commitment to explore a right for Te Whānau a Apanui to erect pouwhenua in their rohe in consultation with the Bay of Plenty Regional Council and the Department of Conservation where relevant;

Riverbed acknowledgment

- 30 **agreed** to offer Te Whānau a Apanui, and include in the agreement in principle, an acknowledgment that ngā hapū o Te Whānau a Apanui are kaitiaki over all waterways in their rohe;

Takutai moana petroleum-related activity permission right

- 31 **agreed** to offer to Te Whānau a Apanui, and include in the agreement in principle, a permission right for ngā hapū o Te Whānau a Apanui over resource consents for petroleum-related activity in customary marine title areas;

Takutai moana conservation processes

- 32 **agreed** to offer Te Whānau a Apanui, and include in the agreement in principle, the following rights to ngā hapū o Te Whānau a Apanui:
- 32.1 a right to possess without authorisation dead wildlife matter and dead marine mammals matter lawfully obtained within their rohe moana;
 - 32.2 a right of first refusal over dead wildlife matter and dead marine mammal matter, possessed by the Department of Conservation, that are found within their rohe moana;
 - 32.3 a right to give or withhold consent for the Director-General of Conservation to consider applications from third parties to possess dead wildlife matter or dead marine mammal matter found within their rohe moana;

- 32.4 a right to give or withhold consent for the Minister of Conservation or Director-General of Conservation to consider concession applications in customary marine title areas;
- 32.5 a right to have their views on concession applications within their rohe moana given particular regard to;
- 32.6 a right to give or withhold consent for the Minister of Conservation to consider a proposal, under section 22 of the Marine Mammals Protection Act 1978, for the establishment or extension of a marine mammal sanctuary where it overlaps a customary marine title area;
- 32.7 a right to give or withhold consent for the Director-General to consider applications for a permit authorising commercial operations under the Marine Mammal Protection Regulations 1992, where it overlaps a customary marine title area;

Whakaari/White Island

- 33 **agreed** to offer Te Whānau a Apanui, and include in the agreement in principle, the right for its post-settlement governance entity to be consulted with and have its views given regard to if the Department of Internal Affairs conducts a review of the local government administration of offshore islands as far as that review relates to Whakaari/White Island;

Financial implications

- 34 **noted** that there are no financial implications arising from the decisions sought in the paper under MCR-19-SUB-0015;
- 35 **noted** that the total cost to the Crown of the proposed Te Whānau a Apanui settlement is estimated as follows:

Withheld under s 9(2)(j)

- 36 **noted** that the total cost to the Crown of this settlement will be charged against the Vote Treaty Negotiations Multi-year Appropriation: Historical Treaty of Waitangi Settlements 2018-2022 when a deed of settlement is initialled;

Delegation to Act

37 **authorised** the Minister for Treaty of Waitangi Negotiations to:

- 37.1 make a comprehensive Crown offer of the redress package as agreed above to Te Whānau a Apanui to comprehensively settle their historical Treaty of Waitangi claims;
- 37.2 make changes, together with relevant portfolio Ministers, to amend the redress within the financial parameters agreed by Cabinet;
- 37.3 sign an agreement in principle with Te Whānau a Apanui should they accept the Crown offer.

Rachel Clarke
Committee Secretary

Present:

Hon Kelvin Davis (Chair)
Hon Grant Robertson
Hon David Parker
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Shane Jones
Hon Peeni Henare
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Officials Committee for MCR

Hard-copy distribution:

Minister of Transport
Minister for Treaty of Waitangi Negotiations
Minister of Fisheries
Minister of Conservation

RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS

In Confidence

Office of the Minister for Treaty of Waitangi Negotiations

Cabinet Māori Crown Relations: Te Arawhiti Committee

Te Whānau a Apanui: Decisions for Crown offer and agreement in principle

Proposal

- 1 I seek your agreement to a redress package to enable the Crown to make a settlement offer and sign an agreement in principle with Te Whānau a Apanui to settle their historical Treaty claims.

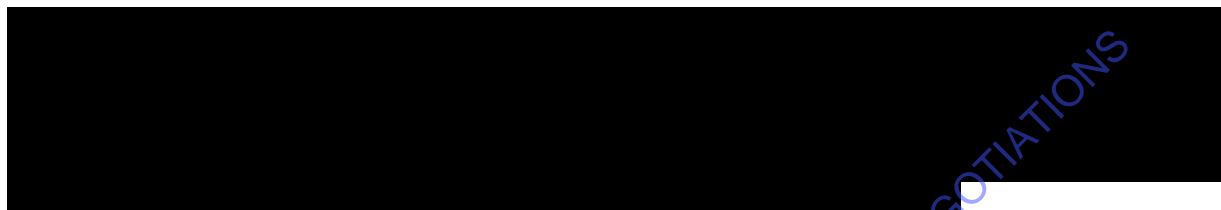
Executive Summary

- 2 Te Whānau a Apanui is a hapū-based iwi in the eastern Bay of Plenty. Their rohe, approximately 190,000 hectares between Hāwai and Pōtaka, is set out in the map at Appendix 1. In the 2013 census, the iwi population was approximately 13,000 of which 775 live within the rohe. The rohe of Te Whānau a Apanui is an isolated, natural environment, and nearly half the land is owned by Te Whānau a Apanui. Traditional practices, stewardship and affinity with the environment remain strong and Te Whānau a Apanui values pervade within it.
- 3 Te Whānau a Apanui is seeking a future-focussed settlement that will improve outcomes for their uri, establish a partnership with the Crown and support the exercise of hapū mana. Many Te Whānau a Apanui settlement aspirations challenge the established frameworks for Treaty settlements. I have taken a different approach to negotiations with Te Whānau a Apanui due to the hapū-based structure of the iwi, the agreements reached in 2008 in relation to the recognition of customary interests in the takutai moana, and a dearth of Crown-owned property or other assets in the rohe. The proposed offer reflects the unique circumstances of Te Whānau a Apanui.

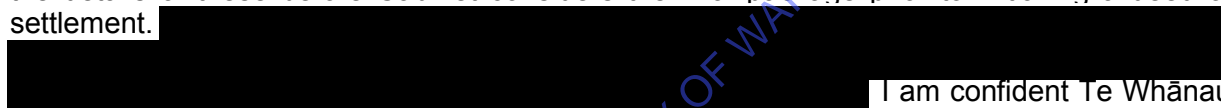
Withheld under s 9(2)(j)
- 4 Cabinet has previously approved [REDACTED] a natural environment negotiation brief [CAB-18-MIN-0514 and CAB-18-MIN-0643 refer]. This paper outlines the details of Crown apology, commercial and cultural redress that I seek Cabinet's approval to offer to Te Whānau a Apanui for inclusion in the agreement in principle.
- 5 In addition to a range of standard redress, I am seeking your approval of "non-standard redress" that I consider necessary to meet Te Whānau a Apanui settlement aspirations. "Non-standard redress" is a term used in this paper to describe redress that is not offered as a matter of course in Treaty settlement negotiations and has limited or no precedent in past settlements. All settlements include some bespoke elements but the package I am seeking your agreement to in this paper has a larger proportion than is typically the case. This paper seeks your agreement to offer the following non-standard redress to Te Whānau a Apanui:
 - a. reservation of marine space for aquaculture;
 - b. an agreement to explore roading issues;
 - c. a right to co-author a chapter in a conservation management strategy;
 - d. a commitment to propose customary fishing regulations;
 - e. bespoke relationship agreements with the Ministry of Justice and Minister of Education;

- f. natural environment redress;
- g. an acknowledgement in relation to Crown ownership of riverbeds;
- h. a takutai moana permission right in relation to petroleum;
- i. participation in conservation processes in the takutai moana beyond that provided for in the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA Act); and
- j. a right to participate in reviews of offshore island administration. Withheld under s 9(2)(j)

6



- 7 The details of a number of redress items for inclusion in a Crown offer and agreement in principle have not been finalised. In these cases, I am seeking Cabinet approval to provide a commitment in the Crown offer to Te Whānau a Apanui to explore redress. I intend to finalise the details of these before Cabinet considers the final package prior to initialling a deed of settlement.



I am confident Te Whānau a Apanui will accept the Crown offer outlined in this paper and sign an agreement in principle.

Withheld under s 9(2)(j)

Background

Te Whānau a Apanui

- 8 The nature of Te Whānau a Apanui and its rohe present challenges in reaching a Treaty settlement. They are strongly hapū-based, with some 13,000 members¹ affiliating to twelve hapū. Their rohe, an isolated part of the Eastern Bay of Plenty coast, is set out in the map at Appendix 1.
- 9 Te Whānau a Apanui consider their values pervade in their rohe. The resident population is 75% Māori and predominantly Te Whānau a Apanui (approximately 775 members live in the rohe). Nearly half of the land in Te Whānau a Apanui rohe is Māori freehold land and nearly half is public conservation land. There is limited local or central government activity and few third-party interests.
- 10 Despite the relatively high rate of land retention there is a high-level of socio-economic deprivation amongst the iwi.² There are limited business and employment opportunities within the rohe and it is challenging to deliver services and infrastructure. The Crown's individualisation of land ownership and lack of support for investment has had a disproportionately negative effect on Te Whānau a Apanui.
- 11 Life in the rohe exists primarily along a narrow coastal strip in a natural, rather than built, environment. Te Whānau a Apanui have a greater reliance on natural resources for food sources than in most other iwi rohe. Traditional practices, stewardship and affinity with the environment remain strong. Approximately half the Māori freehold land is covered by Ngā

¹ According to the 2013 Census.

² For example, in the 2013 Census, the median Te Whānau a Apanui income was \$22,400 (below the median for all Māori) and the unemployment rate of the working age population was 16.9% (above the rate for all Māori). The rohe of Te Whānau a Apanui has a score of 10 (most deprived) according to NZDep2006 Index of Deprivation.

Whenua Rāhui covenants,³ showing the importance Te Whānau a Apanui places on the environment. The iwi has been vocal in their opposition to deep sea oil exploration in the Raukūmara Basin, has raised concerns with the Crown about a perceived lack of investment, since the late 1990s in landscape scale pest management in the Raukūmara Conservation Park and its members have a hands-on approach to on-the-ground management of waterways.

Te Whānau a Apanui Treaty claims reflect the position of the iwi and the Crown accepts there are breaches that need to be remedied

12 Te Whānau a Apanui hapū and individuals have filed approximately 45 historical Treaty claims with the Waitangi Tribunal. The broad themes of these claims are:

- a. the Crown's failure to protect interests in natural resources;
- b. the Crown's treatment of Te Whānau a Apanui military veterans;
- c. native land legislation and the impact of individualisation of title;
- d. public works takings and other compulsory acquisitions of Te Whānau a Apanui land;
- e. the impact of Crown policies on Te Whānau a Apanui reo me ōna tikanga;
- f. the impact of Crown policies on Te Whānau a Apanui ability to exercise hapū rangatiratanga; and
- g. the Crown's failure to address Te Whānau a Apanui socio-economic deprivation and poor health outcomes.

13 The Crown accepts that the operation of native land legislation, individualisation of title, compulsory acquisition of land shares by the Māori Trustee, and failure to actively protect te reo a Te Whānau a Apanui are in breach of the Treaty. These breaches have resulted in prejudice to Te Whānau a Apanui and a settlement is required to remedy this and restore the honour of the Crown.

Te Whānau a Apanui settlement aspirations challenge the Crown's policy frameworks

14 Te Whānau a Apanui has informed the Crown the following about their expectations for their Treaty settlement:

- a. they seek recognition of and support for the exercise of the mana of the hapū;
- b. Te Whānau a Apanui value systems pervade in their rohe and their negotiations should be about finding a place for these value systems;
- c. the settlement, like the mandate, should be hapū-based;
- d. the experience of Te Whānau a Apanui does not fit the Crown's standard settlement framework;
- e. a conventional settlement is unlikely to meet Te Whānau a Apanui aspirations; and
- f. Te Whānau a Apanui expect their settlement to cover:
 - i. natural environment and resources (including the Raukūmara, other public conservation land, waterways and fisheries);

³ A mechanism under section 77A of the Reserves Act 1997 that provides for land to be managed to preserve and protect: the natural environment, landscape amenity, wildlife or freshwater-life or marine-life habitat, or historical value of the land; or the spiritual and cultural values which Maori associate with the land.

- ii. establishing a partnership with the Crown, as envisioned by the Treaty of Waitangi;
- iii. the impacts of legislation and Crown policies on their mana; and
- iv. their aspirations in the areas of education and customary knowledge.

Agreement signed in 2008 requires the Crown to Act in good faith and deliver non-standard redress

- 15 Te Whānau a Apanui and the Crown signed a heads of agreement in February 2008 in the course of joint negotiations with Ngāti Porou under the now repealed Foreshore and Seabed Act 2004. The deed of agreement contemplated by the heads of agreement was finalised in October 2008 but Te Whānau a Apanui had not signed it by the time the new government had initiated a review of the Foreshore and Seabed Act in February 2009. The Crown then put negotiations with Te Whānau a Apanui on hold while the new government undertook its review of the Foreshore and Seabed Act. Following this review, the Foreshore and Seabed Act was repealed by the MACA Act.
- 16 The 2008 heads of agreement set out a range of instruments that recognised, but for the vesting of the foreshore and seabed in the Crown, ngā hapū o Te Whānau a Apanui had a claim to territorial customary rights in their rohe moana.⁴ These instruments included:
- a. a “statutory overlay” – akin to a coastal statutory acknowledgment that required a map of the rohe moana of Te Whānau a Apanui to be attached to key public planning documents and for the hapū to be notified of any resource consent applications in their rohe moana;
 - b. a Resource Management Act 1991 permission right over some resource consent applications in territorial customary rights areas;
 - c. an “environmental covenant” – giving the hapū the right to prepare an environmental planning document that had to be taken account of across their rohe moana and recognised and provided for in territorial customary rights areas;
 - d. relationship agreements with environmental agencies and an annual Ministerial accord meeting;
 - e. a “fisheries mechanism” – requiring the Crown to procure customary fishing regulations that apply to the twelve hapū of Te Whānau a Apanui;
 - f. a “conservation mechanism” – that provided for hapū participation in a number of conservation processes across their rohe moana and a permission right over a number of conservation decision making processes in territorial customary rights areas;
 - g. changes to place names; and
 - h. a right to erect pouwhenua.
- 17 Te Whānau a Apanui expect the Crown to honour the heads of agreement signed in 2008.
- 18 Having regard to the heads of agreement signed in 2008 and the circumstances in which negotiations were not completed, the Crown has a duty to provide to Te Whānau a Apanui the substance of what the heads of agreement promised. This is based on the Treaty principle of good faith rather than any contractual obligation to do so.

⁴ “Rohe moana” refers to the area of takutai moana adjacent to the whenua rohe. This area is set out at Map 2 of Appendix 3.



Withheld under s 9(2)(j)

The hapū-based mandate is reflected in the proposed Crown offer

- 20 On 16 August 2017, the Crown recognised the mandate of Te Whānau a Apanui Negotiation Team to represent Te Whānau a Apanui in Treaty settlement negotiations with the Crown and to engage with the Crown on takutai moana issues. Terms of negotiation were signed on 7 September 2017. The Negotiation Team's mandate was conferred on them by each of the twelve hapū of Te Whānau a Apanui in accordance with their tikanga. Two hapū temporarily withdrew their support for the negotiations in 2018. However, I am satisfied that, currently, the Negotiation Team has the support of all twelve hapū.
- 21 Each of the twelve hapū have expressed a range of unique settlement aspirations to the Crown through Te Whānau a Apanui Hapū Chairs Forum. My Chief Crown Negotiator, Glenn Webber, has met regularly with the Forum. Meeting the hapū aspirations with meaningful redress will be crucial to the acceptance of a Crown offer and ultimately settling with Te Whānau a Apanui. The proposed settlement package has been designed to meet these hapū aspirations. However, the proposed Crown offer is for a single settlement, not twelve hapū settlements.
- 22 Subject to Cabinet approval, I intend to make a formal Crown offer to Te Whānau a Apanui Negotiation Team on 19 June 2019. I am scheduled to sign an agreement in principle with Te Whānau a Apanui on 28 June 2019.

Precedent risks of non-standard redress for Te Whānau a Apanui are manageable because of their unique circumstances

- 23 A number of factors contribute to the unique negotiations I am undertaking with Te Whānau a Apanui. These include the hapū basis of the mandate; the absence of significant Crown-owned commercial assets and, therefore, of opportunities to provide Te Whānau a Apanui with significant appreciating assets; the substantially advanced takutai moana negotiations; and Te Whānau a Apanui aspirations to have their unique relationship to their rohe recognised by local and central government.
- 24 To provide a Crown offer that will be accepted by the iwi and ultimately reach a settlement, I am seeking approval for a number of "non-standard" redress items⁵ to be included in the Crown offer and agreement in principle. "Non-standard" redress is redress that is either outside the historical Treaty settlement framework, lacks precedent in other settlements, or both. I consider such redress is also required to make up for a dearth of standard commercial redress options available and to recognise the particular circumstances of Te Whānau a Apanui relationship to its rohe.

⁵ These are: reservation of aquaculture space; roading issues; a right to co-author a chapter in a conservation management strategy; a commitment to propose customary fishing regulations; the nature of relationship agreements with the Minister of Justice and Ministry of Education; unique natural environment redress; an acknowledgement in relation to Crown ownership of riverbeds; a takutai moana permission right; participation in conservation processes in the takutai moana; and a right to participate in any review of offshore island administration.

Withheld under s 9(2)(j)

25

[REDACTED]

Some of this redress will also support broader Government objectives across the education, justice and conservation sectors. I have consulted with relevant portfolio Ministers on all non-standard redress and we have agreed to seek Cabinet approval of each item detailed in this paper.

Previous Cabinet decisions on quantum and natural environment are key parameters within which an offer to Te Whānau a Apanui will be made

26 In June 2018, Cabinet noted that the Crown intends to sign an agreement in principle with Te Whānau a Apanui in 2018/2019 and a deed of settlement in 2019/2020 [CAB-16-MIN-0525 refers].

Withheld under s 9(2)(j)

27

[REDACTED]

28 In December 2018, Cabinet agreed to a natural environment negotiations brief that included exploring recording a statement of Te Whānau a Apanui values in settlement legislation and involvement in decision-making regarding environmental outcomes which could be included in a planning-type document [CAB-18-MIN-0643 refers].

Decisions for Crown offer and agreement in principle

Standard Crown apology redress will be offered to Te Whānau Apanui

29 Te Whānau a Apanui settlement will include, as Crown apology redress, an historical account, Crown acknowledgments and a Crown apology. The agreement in principle will include preliminary Crown acknowledgements and historical account headings. The full historical account, Crown acknowledgements, and Crown apology will be developed prior to deed of settlement initialling. No Cabinet decisions are required for this redress at this time.

Agreement sought to offer a limited package of standard commercial redress and two item of non-standard commercial redress

30

[REDACTED]

Commercial properties

Withheld under s 9(2)(j)

31 I seek agreement to offer redress over properties detailed in Appendix 2 to Te Whānau a Apanui, comprising:

- a. the right to purchase two properties from the Treaty Settlement Landbank on settlement date; and

- b. a right of first refusal for 180 years over nine Housing New Zealand properties, five Ministry of Education properties (subject to standard Ministry of Education policies providing right of first refusal redress) and a New Zealand Police property.
- 32 Any offers of commercial redress or deferred selection properties are subject to final confirmation by the Crown that the property is available. They are also subject to negotiating mutually acceptable terms prior to the initialling of a deed of settlement. The agreement in principle will include agreed valuation processes for commercial redress properties.
- 33 Further options to purchase Crown-owned properties will be discussed between agreement in principle and initialling a deed of settlement if land becomes available for use in settlements. The agreement in principle will specify limitations on what commercial properties may be available and what mechanisms (such as sale and leaseback, rights of first refusal and deferred selection) are being made available.
- 34 This is a small package of commercial redress property relative to other settlements with comparable claimant groups but is all the commercial property currently available to offer Te Whānau a Apanui. It includes no Landcorp farms or Crown Forest Licenced land. The scale of the commercial redress package reflects the paucity of Crown property in Te Whānau a Apanui rohe available for use in a settlement and the consequent need for the Crown to partner with the iwi to identify commercial opportunities beyond rights to purchase Crown property.

Right of first refusal over new fisheries quota

- 35 I propose the settlement provides that by or on settlement date, the Minister of Fisheries will provide the governance entity with a right of first refusal within the rohe of Te Whānau a Apanui over species that are managed under the Fisheries Act 1996 and are introduced into the quota management system in the future. The details of the right of first refusal will be outlined in the deed of settlement and will be subject to Te Whānau a Apanui becoming a mandated iwi organisation in the Māori Fisheries Act 2004. This is standard redress offered to groups that are mandated iwi organisations under the Fisheries settlement.

Reservation of marine space for aquaculture

- 36 I propose to offer to Te Whānau a Apanui reservation of marine space for a set period to allow time for them to have the exclusive opportunity to make appropriate resource consent applications for aquaculture development. The reserved marine space is intended to:
- a. provide Te Whānau a Apanui with an opportunity to apply for resource consents for aquaculture activities in their own name;
 - b. be time bound; and
 - c. be for a defined area (to be determined), set out in Te Whānau a Apanui settlement legislation.
- 37 The offer to reserve space will not guarantee the granting of resource consents and will note that if consents were to be subsequently granted, Te Whānau a Apanui will bear all the normal risks associated with operating a space for marine aquaculture. Reservation of marine space for Te Whānau a Apanui is separate from, yet may trigger, obligations that the Crown has under the Māori Commercial Aquaculture Claims Settlement Act 2004. Issuing of future consents for aquaculture activities in the Bay of Plenty will create a new obligation for the Crown under that Act to provide 20% equivalent space and/or cash, delivered under a regional agreement to all Bay of Plenty mandated iwi organisations.

- 38 I consider the reservation of space will provide Te Whānau a Apanui a significant commercial opportunity in a rohe where the Crown has limited commercial assets to offer the iwi in a Treaty settlement. This is non-standard redress but agreement to reserve 5000 hectares of marine space was included in the Whakatōhea agreement in principle.
- 39 I seek joint delegation with the Minister of Fisheries, in consultation with the Minister of Conservation, to finalise how much aquaculture space will be reserved for Te Whānau a Apanui and where it will be located. The amount of space will be consummate with the amount offered to Whakatōhea.

Agreement to explore roading issues

- 40 Te Whānau a Apanui are seeking to use the settlement to resolve some of the longstanding issues relating to land that was taken for roading but ultimately not used for that purpose. The hapū have raised issues broadly relating to:
- a. the taking of land for roading;
 - b. discrete areas adjacent to the state highway that are unformed and could potentially be surplus; and
 - c. the impact of portions of unformed legal roads.
- 41 The settlement will address the taking of land for roads through the historical account and general quantum.
- 42 The most appropriate way to address the issues relating to unformed roads is to use the existing processes in the Public Works Act 1981 and Te Ture Whenua Māori Act 1993. I intend to discuss with the Minister of Transport a possible offer to Te Whānau a Apanui to explore how the Treaty settlement can ensure existing legislative processes, in the Public Works Act 1981 and Te Ture Whenua Māori Act 1993, address issues relating to unformed and unused portions of road.

Agreement sought to a range of standard and non-standard cultural redress to address the unique circumstances of Te Whānau a Apanui

Cultural redress site transfers

Withheld under s 9(2)(j)

- 43 During the course of negotiations, Te Whānau a Apanui have expressed their strong cultural connections to waterways. To recognise this connection, Te Whānau a Apanui seek the transfer of public conservation land adjacent to waterways within their rohe.

- 44 Officials have identified eight sites adjacent to waterways, totalling approximately 23 hectares, suitable for transfer subject to on-going conservation protections.

Withheld under s 9(2)(j)

- 45



- 46 I propose to offer Te Whānau ā Apanui the ability to select, prior to deed of settlement, any of the eight sites identified as suitable for transfer, subject to:
- a. reserve status and agreements to protect existing third-party interests, where applicable, being put in place;
 - b. agreement from the Ōpōtiki District Council to the inclusion of the four council-administered sites in this Treaty settlement; and
 - c. agreement of the Department of Conservation, Ōpōtiki District Council and Te Whānau ā Apanui to the future management arrangements for the four council-administered sites.
- 47 Details of the eight cultural redress sites I am proposing to make available for selection in the offer to Te Whānau ā Apanui are set out at Table 1 of Appendix 3.
- 48 I seek delegated authority for the Minister of Conservation and me to finalise the management arrangements for the four council-administered sites, if available and selected for vesting by Te Whānau ā Apanui, prior to initialling the deed of settlement.

Raukūmara Conservation Park management

- 49 I propose that Te Whānau ā Apanui be offered the right to co-author a Raukūmara chapter in the East Coast/Hawkes Bay Conservation Management Strategy, with Te Rūnanganui o Ngāti Porou and the Department of Conservation, in consultation with the East Coast/Hawkes Bay Conservation Board. This proposal will recognise the iwi as a Treaty partner through conservation redress. Throughout negotiations, the key conservation issue has been what redress the Crown would offer over the Raukūmara Conservation Park to address Te Whānau ā Apanui aspirations for:
- a. the Crown to recognise, and provide for, the exercise of the mana of the hapū of Te Whānau ā Apanui over the Park;
 - b. the restoration of a “mana to mana” relationship between Te Whānau ā Apanui and the Crown; and
 - c. a more integrated approach to management of the Raukūmara to stop the current environmental decline caused by significant pest pressures.
- 50 The Raukūmara Conservation Park is in a perilous state due to pest numbers. Te Whānau ā Apanui input into its governance will significantly help to address this due to the large amount of Ngā Whenua Rāhui land that adjoins the Park and local opposition to the use of 1080. The Raukūmara chapter would cover an area of approximately 91,000 hectares, most of which is located in the Park (as shown on Map 2 of Appendix 3). It will provide a single, coherent set of management policies and objectives for the Park, and reinforce the wider efforts of iwi, the Department of Conservation, and Ngā Whenua Rāhui land-owners to work collaboratively on pest management.
- 51 With the agreement of the Minister of Conservation, I propose that the preparation and approval of the Raukūmara Chapter be completed by 2025 and implemented as an “out-of-cycle” amendment to the East Coast/Hawkes Bay and Bay of Plenty Conservation

Management Strategies (CMS). Any consequential amendments to the relevant Conservation Board and CMS boundaries will be made at the same time. The Minister of Conservation will seek implementation funding for her department to cover the costs associated with the above proposal prior to the signing of the deed of settlement.

Withheld under s 9(2)(j)

52



Customary fishing redress

53 I seek agreement to offer to Te Whānau a Apanui that the Minister of Fisheries propose customary fishing regulations. The regulations will apply in the rohe moana to the edge of the exclusive economic zone. They will:

- a. enable hapū to manage their customary fishing activities;
- b. provide for the special relationship hapū have with areas over which customary marine title is recognised;
- c. allow the iwi governance entity to co-ordinate fisheries management plans developed by hapū committees to guide the management of customary fishing;
- d. provide the ability for the iwi governance entity to propose specific harvest rules and bag limits for local residents (hau kāinga);
- e. empower the iwi governance entity to propose bylaws to the Minister of Fisheries to manage important fishing grounds in areas where hapū have a recognised customary marine title; and
- f. provide for the establishment and management of pātaka which will enable the governance entity to place customary fishing authorisations on commercial fishing vessels, and to use its processing facilities to process, store and distribute fisheries resources for customary non-commercial purposes.

54 The 2008 heads of agreement required the Crown to develop various fisheries mechanisms. This included a requirement that the Minister of Fisheries propose fishing regulations to give better effect to the Crown's Treaty obligation to provide for customary fishing in place of the existing Fisheries (Kaimoana Customary Fishing) Regulations 1998. The agreement I seek in this paper achieves substantially the same result that was intended in the 2008 heads of agreement but as Treaty settlement redress. Similar agreements to propose customary fishing regulations have been made in the Whanganui River, Waikato River and Te Arawa Lakes settlements and in the Crown offer to Moriori and Ngāti Rangī.

55 I consider the circumstances of Te Whānau a Apanui justify undertaking to propose bespoke fishing regulations particularly as the Crown agreed to do so in 2008. Te Whānau a Apanui will agree to the final form of the regulations proposed to the Governor-General. The Crown has agreed to propose similar regulations for ngā hapū o Ngāti Porou in fulfilment of agreements reached with those hapū alongside Te Whānau a Apanui in 2008. The Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 makes provision for this.

56 I also propose the Crown offer include a requirement in the deed of settlement for six-monthly meetings and consultation between the post settlement governance entity, and the Fisheries

Compliance group of the Ministry for Primary Industries in respect of compliance planning and operations to support the new regulatory arrangement for fisheries in the rohe of Te Whānau ā Apanui. This proposal will be recorded in a relationship agreement with the Ministry of Primary Industries.

Relationship redress

- 57 Resetting the Treaty relationship with Te Whānau ā Apanui to ensure it is a collaborative, enduring partnership through shared decision-making has been a focus of the negotiations to date. Te Whānau ā Apanui see relationships of this nature as a key requirement of any settlement and a fundamentally important aspect to achieving positive outcomes for their communities. In the course of negotiations, Te Whānau ā Apanui have focussed on strategic relationships with the Ministry of Justice and the Ministry of Education.
- 58 I seek approval to include a commitment in the agreement in principle for the Ministry of Justice to enter into a relationship agreement aimed at producing better justice outcomes for the communities in Te Whānau ā Apanui rohe. If you agree to the proposal, the relationship agreement will be developed to reflect underlying principles that have been co-developed by Te Whānau ā Apanui and the Crown.
- 59 I also seek approval to include a commitment in the agreement in principle for the Ministry of Education to enter a relationship agreement for a collaborative, education-focussed partnership. The proposed framework for this relationship agreement will comprise:
- a. a “mana to mana” relationship between Te Whānau ā Apanui and the Crown to jointly set direction and priorities (including provision for an annual meeting between the Minister of Education or Associate Minister of Education and principal decision-makers in Te Whānau ā Apanui);
 - b. terms of reference to set the kawa for the relationship; and
 - c. a “mahi to mahi” relationship between Te Whānau ā Apanui and the Crown (Ministry of Education officials) to implement decisions and agree a work programme.
- 60 The nature of both relationship agreements is outside the scope of standard redress offered to settling groups. There is currently a moratorium on providing Ministerial-level accords through Treaty settlements. In 2010, the Government publicly stated it did not want any more social accords in Treaty settlements due to Ministers being tied into a large number of meetings and a general uncertainty around whether they were an effective way of furthering the Crown-Māori relationship. I consider both relationships are nevertheless warranted for Te Whānau ā Apanui given the distinctive nature of their community and the concerning educational and justice outcomes they currently experience. The 2008 heads of agreement also provided for an annual Ministerial accord meeting. Details on both agreements will be co-developed with Te Whānau ā Apanui throughout the deed of settlement phase and final Cabinet agreement to the overall relationship will be sought prior to the initialling of the deed of settlement.
- 61 Te Whānau ā Apanui are also seeking relationship redress with other key social, cultural and environmental sector agencies. I propose to offer protocols, relationship agreements, or letters of introduction to Te Whānau ā Apanui or a commitment to explore a relationship agreement with the agencies set out at Table 2 of Appendix 3.

Natural environment/Te Ao Tūroa redress

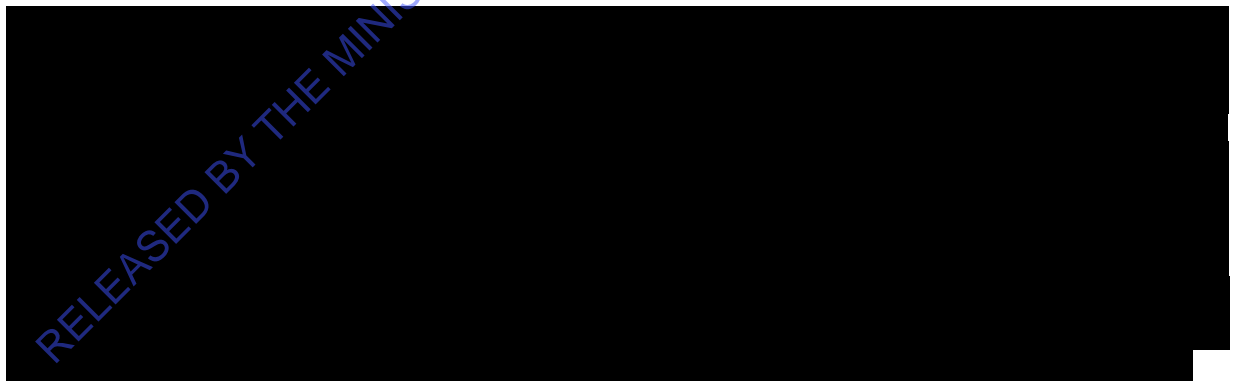
- 62 I propose to offer a commitment to provide natural environment redress to Te Whānau ā Apanui in line with the parameters agreed by Cabinet [CAB-18-MIN-0643 refers] and record this in the agreement in principle. This will include exploring the following elements before finalising them in the deed of settlement phase:

- a. the ability for Te Whānau a Apanui and local authorities to develop a planning type document that could articulate the issues, vision, aspirations, objectives and desired outcomes for Te Whānau a Apanui rohe to:
- i. promote sustainable and integrated management of the environment;
 - ii. provide for the relationship of Te Whānau a Apanui with the natural environment; and
 - iii. respect Te Whānau a Apanui tikanga and values in the management of the environment;
- b. a relationship agreement between Te Whānau a Apanui and local authorities that builds on previous discussions between the parties to formalise a relationship;
- c. Te Whānau a Apanui involvement in decision-making in their rohe regarding environmental outcomes, which could be included in the proposed planning type document, in the relationship agreement or in some other manner; and
- d. including a statement of Te Whānau a Apanui values in their deed of settlement and settlement legislation, potentially as a set of principles, so they can be referred to as an aid to interpreting the natural environment provisions and can be a relevant consideration for decision-makers on environmental matters. Withheld under s 9(2)(j)

63



64



65 Negotiations to date have focused how the four elements of natural environment redress can be designed to meet Te Whānau a Apanui aspirations in a natural environment redress package to be called Te Ao Tūroa. This proposed package has included addressing some elements from the 2008 heads of agreement such as the “environmental covenant”. The Bay of Plenty Regional Council, Gisborne District Council and Ōpōtiki District Council have been participating in these discussions. Withheld under s 9(2)(j)

66



67

Coastal statutory acknowledgement

- 68 I propose to offer a coastal statutory acknowledgement over the common marine and coastal area of the rohe moana of Te Whānau a Apanui. A map of this area is attached at Map 2 of Appendix 3.
- 69 A coastal statutory acknowledgement is an acknowledgement by the Crown of a statement made by a claimant group about its particular cultural, spiritual, historical, and traditional associations with a specified coastal area and is intended to ensure groups are informed of consent applications that could impact on areas they have identified as having special significance to them. This is standard cultural redress offered in most settlement negotiations with coastal groups.
- 70 The 2008 heads of agreement provided a “statutory overlay”. Te Whānau a Apanui Negotiation Team has agreed the outcomes intended by the statutory overlay instrument can be met via a coastal statutory acknowledgement.

Acknowledgement over riverbeds

- 71 I am seeking agreement to include in the Crown offer and agreement in principle an acknowledgment of Te Whānau a Apanui as the kaitiaki of riverbeds in their rohe.
- 72 There are twelve recognised catchments in the rohe of Te Whānau a Apanui. Six of the catchments are based on rivers of varying sizes and the remainder are based on streams. The proposed acknowledgment reflects the reality of these catchments where Te Whānau a Apanui individuals and hapū control practical access to them and are the main users of the rivers’ water resources. The acknowledgement will not be made a mandatory consideration in resource management or conservation decision-making processes.
- 73 The proposed Crown acknowledgement will set out that:
- a. in accordance with their tikanga, the hapū of Te Whānau a Apanui, have an unbroken, and enduring sacred relationship with lands, waters and other resources within their rohe;
 - b. the hapū exist within a sacredly interconnected world in which respect for the mana, oranga, mauri and tapu of all other living beings, natural resources and their habitats is paramount;
 - c. the hapū have kaitiaki responsibilities to protect both the physical and spiritual wellbeing of taonga within their rohe, including the waterways, for the present and future generations; and

- d. the Crown acknowledges that the relationship and interconnectedness between the hapū of Te Whānau a Apanui and, among other things, waterways, and the kaitiaki responsibilities exist regardless of the legal ownership of riverbeds or land adjoining rivers.

Geographic name changes

- 74 I propose the Crown offer and agreement in principle include a commitment to consider proposed changes to geographic names. Te Whānau a Apanui will identify the name changes to enable them to be considered by the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa between the signing of the agreement in principle and the initialling of a deed of settlement. Cabinet approval for name changes that have been recommended by the Board will be sought prior to initialling a deed of settlement. This is standard cultural redress in historical Treaty settlements and will address a commitment to provide for name changes in the 2008 heads of agreement.

Pouwhenua

- 75 I propose to offer to explore a right for Te Whānau a Apanui to erect pouwhenua or interpretation panels in consultation with the Bay of Plenty Regional Council and the Department of Conservation, where relevant. This is consistent with commitments made to the hapū in the 2008 heads of agreement. Any sites for pouwhenua will be agreed prior to initialling a deed of settlement.

Takutai moana petroleum-related activity permission right

- 76 I am seeking agreement to include in the Crown offer a right for ngā hapū o Te Whānau a Apanui to give or decline permission for resource consents for petroleum-related activities in customary marine title areas.
- 77 The MACA Act provides a resource consent permission right but petroleum-related activities are “accommodated activities” which are exempted from the scope of the permission right. By contrast, the 2008 heads of agreement provided a permission right to the hapū without accommodating petroleum-activities. To honour the substance of the 2008 agreement and reach agreement in principle with Te Whānau a Apanui, providing a petroleum-related activity permission right to its hapū through the Treaty settlement is necessary. The MACA Act permission right will remain unaffected by this proposal.

Withheld under s 9(2)(j)

78



Participation in takutai moana conservation processes

- 79 The heads of agreement provided for ngā hapū o Te Whānau a Apanui participation in a number of conservation processes and, in territorial customary rights areas, a permission right over certain conservation permits, concessions and processes. The MACA Act provides for all coastal iwi, hapū and whānau participation in a more limited set of processes and for a conservation permission right in customary marine title areas over a more limited set of permits, concessions and processes.

80 In order to honour the Crown's agreements of 2008 and meet Te Whānau a Apanui aspirations for participation in conservation processes in their rohe moana, I am proposing, with the agreement of the Minister of Conservation, to include the following provisions in the Crown offer:

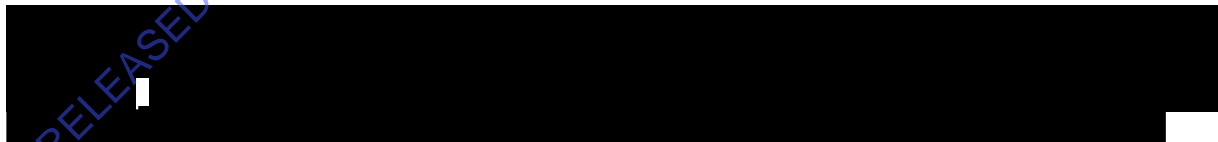
- a. the right for the hapū of Te Whānau a Apanui to possess without authorisation dead wildlife matter and dead marine mammals matter lawfully obtained within the rohe moana;
- b. a right of first refusal over dead wildlife matter and dead marine mammal matter, possessed by the Department of Conservation, that are found within the rohe moana;
- c. a right to give or withhold consent for the Director-General of Conservation to consider applications from third parties to possess dead wildlife matter or dead marine mammal matter found within the rohe moana;
- d. a right to give or withhold consent for the Minister of Conservation or the Director-General of Conservation to consider concession applications in customary marine title areas and a right to have their views given particular regard to outside of customary marine title areas;
- e. a right to give or withhold consent for the Minister of Conservation to consider a proposal, under section 22 of the Marine Mammals Protection Act 1978, for the establishment or extension of a marine mammal sanctuary where it overlaps a customary marine title area; and
- f. a right to give or withhold consent for the Director-General to consider applications, made under regulation twelve of the Marine Mammal Protection Regulations 1992, for a permit authorising commercial operations under the Marine Mammal Protection Regulations 1992, where the application overlaps a customary marine title area.

81



Withheld under s 9(2)(j)

82



83 The Department of Conservation has no significant concerns with fettering the ability of the Crown to implement marine protection measures in customary marine title areas within the Te Whānau a Apanui area of interest. The Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 provides ngā hapū o Ngāti Porou with the same set of conservation process rights.

Whakaari/White Island

84 I propose to offer Te Whānau a Apanui consultation rights relating to any future reviews of the local government administration of Whakaari/White Island, a scenic reserve in private ownership. The Local Government Act 2002 provides that the Minister of Local Government is the territorial authority for some offshore islands including Whakaari. I propose that if the Department of Internal Affairs conducts a review of the local government administration of

Whakaari (as part of a review of the local government administration of offshore islands) it will consult with, and have regard to the views of, Te Whānau a Apanui. This is non-exclusive redress and would not prevent the Department of Internal Affairs from also consulting with other iwi who have interests in Whakaari or other offshore islands.

Next steps

Reaching agreement in principle that includes offers to explore will maintain momentum

85 The details of a number of redress items for inclusion in a Crown offer to Te Whānau a Apanui and an agreement in principle have not been finalised. In these cases, I am seeking your approval to provide a commitment to Te Whānau a Apanui in the Crown offer and agreement in principle to finalise the details of these in the deed of settlement negotiation phase.

Withheld under s 9(2)(j)

Shared interests and relationships with neighbouring iwi are being addressed in negotiations

86 The rohe of Te Whānau a Apanui overlaps with a number of iwi. These iwi have a close connection with Te Whānau a Apanui through affiliation to the Mataatua waka (Whakatōhea, Ngāti Awa), through Apanui whakapapa connections (Ngāti Porou, Te Āitanga ā Māhaki) and through shared occupation of the eastern Bay of Plenty (Ngāi Tai ki Tōrere). As a result, Te Whānau a Apanui Negotiation Team and the Crown have been mindful to discuss potential redress items with groups that may have shared or overlapping interests. This includes Raukūmara Conservation Park redress (Ngāti Porou, Ngāi Tai ki Tōrere, Te Āitanga ā Māhaki), redress in the takutai moana (Ngāti Porou, Ngāi Tai ki Tōrere), potential cultural redress sites (Ngāi Tai ki Tōrere) and Whakaari/White Island redress (Whakatōhea, Ngāti Awa). My officials have informed these groups of these potential redress items and I am satisfied that sufficient overlapping claims discussions have taken place for the Crown to proceed to making an offer to Te Whānau a Apanui without adversely affecting the relationship they have with their whanaunga iwi. Te Whānau a Apanui Negotiation Team are aware that all overlapping claims will need to be addressed to the Crown's satisfaction before a deed of settlement can be initialled.

An agreement in principle by the end of June enables a deed of settlement to be initialled by December 2020

87 Subject to Cabinet approval, I intend to make a formal Crown offer to Te Whānau a Apanui Negotiation Team on 19 June. If the offer is accepted, I intend to sign an agreement in principle with Te Whānau a Apanui on 28 June 2019.

88 In order to finalise the Crown offer to Te Whānau a Apanui and sign an agreement in principle, I seek the following authorisations from Cabinet:

- a. authority to make a comprehensive Crown offer of the redress package as agreed above to Te Whānau a Apanui to settle their historical Treaty of Waitangi claims;
- b. authority, together with Ministers as relevant to their portfolio, to make changes to amend the redress within parameters agreed by Cabinet; and
- c. authority to sign an agreement in principle with Te Whānau a Apanui should they accept the Crown offer.

- 89 If Te Whānau a Apanui accept a Crown offer and sign an agreement in principle, I will undertake negotiations with the intention of initialling a deed of settlement by December 2020. Finalising a deed of settlement will be conditional on my approval of post-settlement governance arrangements and approval of a ratification strategy by me and the Minister of Māori Development. Additionally, overlapping interests will need to be addressed to my satisfaction.

Consultation

- 90 In preparing this paper Te Arawhiti has consulted with and incorporated the views of the Ministry for Culture and Heritage, the Treasury, Housing New Zealand, the Ministry for Business Innovation and Employment (Energy and Resources), the Ministry of Education, the Ministry of Justice, the Ministry for the Environment, the Department of Internal Affairs, Te Puni Kōkiri, New Zealand Police, the Ministry for Primary Industries (Fisheries New Zealand), the Department of Conservation, and Land Information New Zealand.

- 91 The Parliamentary Counsel Office and the Crown Law Office have been informed.

Financial Implications

- 92 There are no financial implications arising directly from this paper.

93

[REDACTED]

Proactive Release

- 94 I intend to release this paper proactively, making any necessary redactions, within 30 business days of final Cabinet decisions. However, if the agreement in principle has not been signed within 30 business days of Cabinet's decision, then I intend to defer proactive release of this paper until after it has been signed, as all of the content will remain negotiations sensitive until that time.

Withheld under s 9(2)(j)

RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS

- 95 The proposals in this paper will not require new funding. The total cost to the Crown of the settlement with Te Whānau a Apanui will be charged against the Vote Treaty Negotiations Multi-year Appropriation: Historical Treaty of Waitangi Settlements 2018-2022 when a deed of settlement is initialled.

96 Implementation costs of the settlement for the Department of Conservation and Local Government will also likely need to be sought from Cabinet prior to initialling a deed of settlement. In 2010, Cabinet agreed a funding process to enable the Department of Conservation to implement Treaty settlements which provided for funds that would otherwise be available for the purchase of reserves to offset implementation costs [CAB Min (10) 9/7 refers]. In 2011, Cabinet agreed to consider contributing, on a case by case basis, towards the cost of local authorities and iwi resulting from new natural resource arrangements in Treaty settlements [CAB Min (11) 29/9 refers].

Withheld under s 9(2)(f)(iv)

97

[REDACTED]

Human Rights

98 The proposals outlined in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Legislative Implications

99 Following the signing of a deed of settlement, I will seek to introduce a Te Whānau a Apanui settlement bill.

Regulatory Impact Analysis

100 No regulatory impact statement is usually required for proposals to give effect to historical Treaty settlements. However, the procurement of Te Whānau a Apanui customary fishing regulations will require preparation of a regulatory impact statement and consultation with affected parties prior to Cabinet approval of the regulations being presented to the Executive Council. Depending on the extent to which Te Ao Tūroa and Raukūmara conservation management redress affects existing regulatory arrangements, a regulatory impact statement on these redress items may be required prior to Cabinet approval of a deed of settlement.

Publicity

101 I plan to issue a press statement at the signing of the agreement in principle. Te Arawhiti will make it publicly available on the Government's Treaty settlement website.

Recommendations

102 The Minister for Treaty of Waitangi Negotiations recommends that the Committee:

Previous decisions

Withheld under s 9(2)(j)

1.

[REDACTED]

2.

[REDACTED]

3. **note** on 17 December 2018, Cabinet agreed to a natural environment negotiations brief that included exploring enshrining Te Whānau a Apanui values in settlement legislation and involvement in decision-making regarding environmental outcomes which could be included in a planning type document [CAB-18-MIN-0643 refers];

Crown apology redress

4. **note** the agreement in principle will include preliminary Crown acknowledgements and historical account headings;

Commercial redress

Commercial properties

5. **agree** to offer Te Whānau a Apanui and include in the agreement in principle the right to purchase two properties from the Treaty Settlements Landbank, as detailed at Appendix 2;
6. **agree** to offer Te Whānau a Apanui and include in the agreement in principle a right of first refusal over the properties detailed at Appendix 2 for up to 180 years from settlement date should they be disposed of;
7. **note** offers over commercial redress properties are subject to final confirmation by the Crown that the property is available;

Right of first refusal over fisheries quota

8. **agree** to offer Te Whānau a Apanui and include in the agreement in principle a right of first refusal within the rohe of Te Whānau a Apanui over species that are managed under the Fisheries Act 1996 and are introduced into the quota management system in the future, subject to Te Whānau a Apanui becoming a mandated iwi organisation in the Māori Fisheries Act 2004;

Reservation of marine space

9. **agree** to offer to Te Whānau a Apanui and include in the agreement in principle to reserve marine space for a set period to allow Te Whānau a Apanui to make appropriate resource consent applications for aquaculture development;
10. **authorise** the Minister of Fisheries and the Minister for Treaty of Waitangi Negotiations to finalise, in consultation with the Minister of Conservation, the exact size and location for reservation of marine space at recommendation 9;
11. **note** the size of the reservation of marine space at recommendation 9 will be broadly in line with the reservation agreed with Whakatōhea in their agreement in principle;
12. **note** the reservation of aquaculture space at recommendation 9 will be provided for in Te Whānau a Apanui settlement legislation;

Agreement to explore roading issues

13. **note** the Minister for Treaty of Waitangi Negotiations intends to discuss with the Minister of Transport a possible offer to Te Whānau a Apanui to explore how the Treaty settlement can ensure existing legislative processes, in the Public Works Act 1981 and Te Ture Whenua Māori Act 1993, address issues relating to unformed and unused portions of road;

Cultural redress

Cultural redress site transfers

- 14. agree** to offer Te Whānau a Apanui and include in the agreement in principle the ability to select, prior to deed of settlement, any of the eight sites identified as suitable for transfer listed at Appendix 3, Table 1, subject to:
- 14.1. reserve status (as set out in Appendix 3, Table 1) and agreements to protect existing third-party interests where applicable being put in place,
 - 14.2. agreement from the Ōpōtiki District Council to the inclusion of the four council-administered sites in this Treaty settlement, and
 - 14.3. agreement of the Department of Conservation, Ōpōtiki District Council and Te Whānau a Apanui to the future management arrangements for the four council-administered sites;
- 15. authorise** the Minister of Conservation and Minister for Treaty of Waitangi Negotiations to finalise the management arrangements for the four council-administered sites listed at Appendix 3, Table 1 if available and selected for transfer by Te Whānau a Apanui, prior to initialling a deed of settlement;

Raukūmara Conservation Management Strategy

- 16. agree** to offer to Te Whānau a Apanui and include in the agreement in principle the right to co-author, with Ngāti Porou and the Department of Conservation, a single Raukūmara Chapter in the East Coast/Hawkes Bay Conservation Management Strategy covering the area shown on Appendix 3, Map 1 of this submission, subject to support from Te Rūnanganui o Ngāti Porou;
- 17. note** the offer at recommendation 16 will require the Crown to consequentially amend the boundaries of the Bay of Plenty and the East Coast/Hawkes Bay Conservation Boards and Conservation Management Strategies in order to implement the proposed redress;
- 18. note** the offer at recommendation 16 will be implemented as an “out-of-cycle” amendment to the Bay of Plenty and the East Coast/Hawkes Bay Management Strategies;
- 19. note** the Minister of Conservation will seek implementation funding for the Department of Conservation to cover the costs associated with the above proposal prior to the initialling of the deed of settlement;

Withheld under s 9(2)(j)

20.

Customary fishing

- 21. agree** to offer Te Whānau a Apanui and include in the agreement in principle a requirement for the Minister of Fisheries to propose fishing regulations to give better effect to the Crown's Treaty obligation to provide for customary fishing in place of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 to apply in the rohe moana of Te Whānau a Apanui to the edge of the exclusive economic zone;

Relationship redress

22. **agree** to include in the Crown offer and in the agreement in principle a commitment for the Ministry of Justice to enter into a relationship, focused on producing better long-term justice outcomes for Te Whānau a Apanui across the justice sector, grounded on co-developed principles;
23. **agree** to include in the Crown offer and agreement in principle a commitment to:
- 23.1. a mana to mana relationship between the Minister of Education or delegated associate ministers and Te Whānau a Apanui,
 - 23.2. an annual meeting between the parties, and other ministers as required, to jointly set policy direction and priorities for education,
 - 23.3. develop shared objectives for educational transformation with Te Whānau a Apanui, and
 - 23.4. further explore the parameters of the education relationship agreement, including the operation of the mahi to mahi relationship and a platform for implementation of the work programme;
24. **agree** to offer Te Whānau a Apanui and include in the agreement in principle the opportunity to enter into relationship arrangements with Crown agencies in the form set out at Appendix 3, Table 2;

Natural environment redress

25. **agree** to offer Te Whānau a Apanui and include in the agreement in principle a commitment to negotiate a package of natural environment redress in accordance with Cabinet agreed parameters [CAB-18-MIN-0643 refers];
26. **note** the Minister for Treaty of Waitangi Negotiations intends to seek Cabinet approval to the details of natural environment redress prior to initialling a deed of settlement with Te Whānau a Apanui;

Coastal statutory acknowledgement

27. **agree** to offer to Te Whānau a Apanui and include in the agreement in principle a coastal statutory acknowledgement over the area set out at Appendix 3, Map 2;

Geographic name changes

28. **agree** to offer Te Whānau a Apanui and include in the agreement in principle a commitment to consider name changes proposed by the iwi;

Pouwhenua

29. **agree** to offer Te Whānau a Apanui and include in the agreement in principle a commitment to explore a right for Te Whānau a Apanui to erect pouwhenua in their rohe in consultation with the Bay of Plenty Regional Council and the Department of Conservation where relevant;

Riverbed acknowledgment

30. **agree** to offer Te Whānau a Apanui and include in the agreement in principle an acknowledgment that ngā hapū o Te Whānau a Apanui are kaitiaki over all waterways in their rohe;

Takutai moana petroleum-related activity permission right

31. **agree** to offer to Te Whānau a Apanui and include in the agreement in principle a permission right for ngā hapū o Te Whānau a Apanui over resource consents for petroleum-related activity in customary marine title areas;

Takutai moana conservation processes

32. **agree** to offer Te Whānau a Apanui and include in the agreement in principle the following rights to ngā hapū o Te Whānau a Apanui:

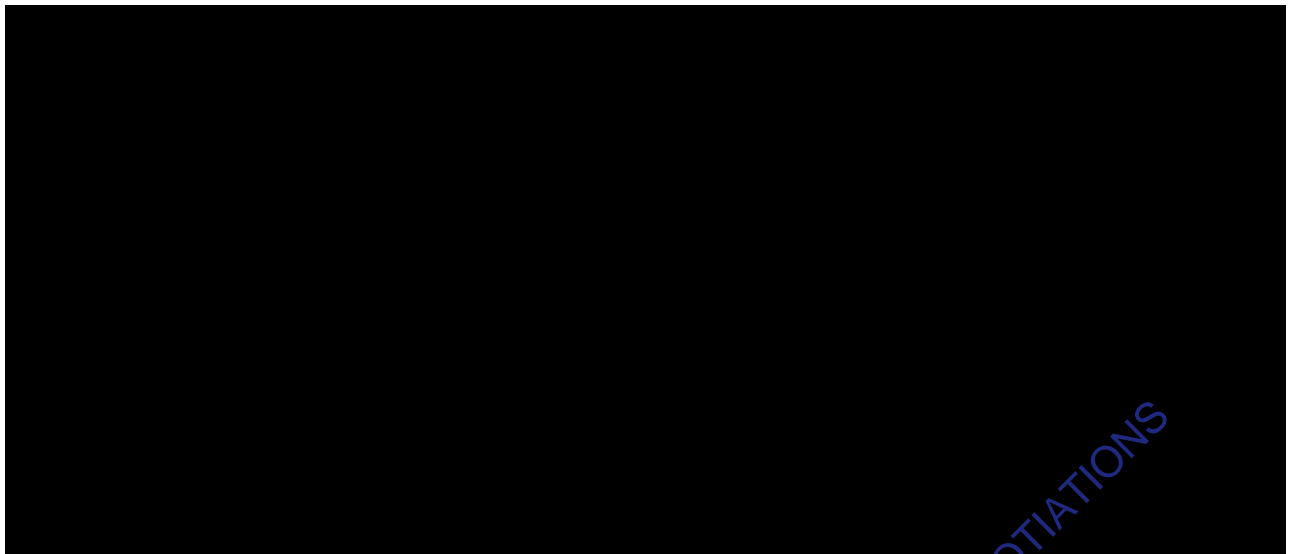
- 32.1. a right to possess without authorisation dead wildlife matter and dead marine mammals matter lawfully obtained within their rohe moana,
- 32.2. a right of first refusal over dead wildlife matter and dead marine mammal matter, possessed by the Department of Conservation, that are found within their rohe moana,
- 32.3. a right to give or withhold consent for the Director-General of Conservation to consider applications from third parties to possess dead wildlife matter or dead marine mammal matter found within their rohe moana,
- 32.4. a right to give or withhold consent for the Minister of Conservation or Director-General of Conservation to consider concession applications in customary marine title areas,
- 32.5. a right to have their views on concession applications within their rohe moana given particular regard to,
- 32.6. a right to give or withhold consent for the Minister of Conservation to consider a proposal, under section 22 of the Marine Mammals Protection Act 1978, for the establishment or extension of a marine mammal sanctuary where it overlaps a customary marine title area, and
- 32.7. a right to give or withhold consent for the Director-General to consider applications for a permit authorising commercial operations under the Marine Mammal Protection Regulations 1992, where it overlaps a customary marine title area;

Whakaari/White Island

33. **agree** to offer Te Whānau a Apanui and include in the agreement in principle the right for its post-settlement governance entity to be consulted with and have its views given regard to if the Department of Internal Affairs conducts a review of the local government administration of offshore islands as far as that review relates to Whakaari/White Island;

Financial implications

34. **note** there are no financial implications arising from this submission;



Withheld under s 9(2)(j)

36. **note** the total cost to the Crown of this settlement will be charged against the Vote Treaty Negotiations Multi-year Appropriation: Historical Treaty of Waitangi Settlements 2018-2022 when a deed of settlement is initialled;

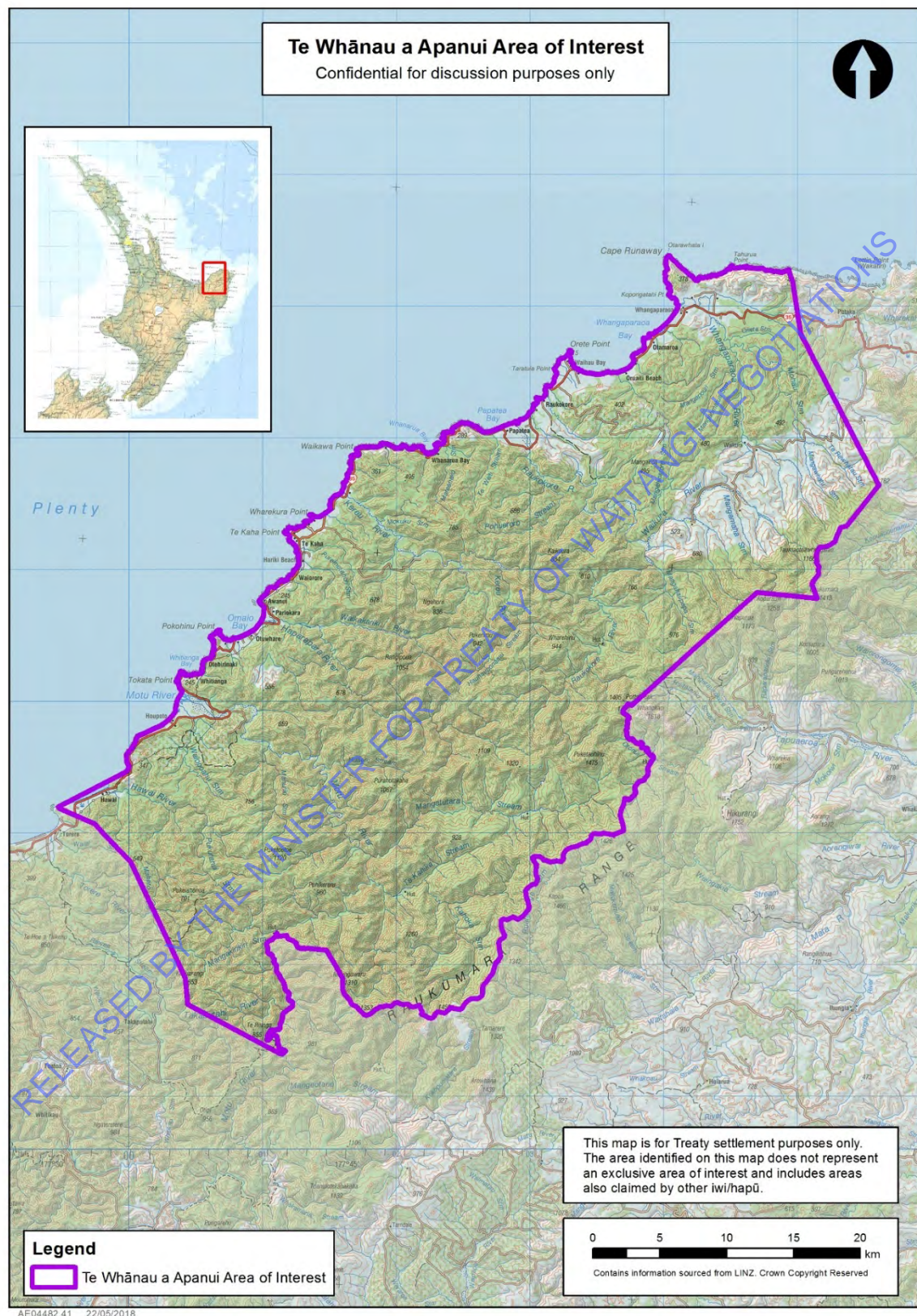
Delegation to Act

37. **authorise** the Minister for Treaty of Waitangi Negotiations to make a comprehensive Crown offer of the redress package as agreed above to Te Whānau a Apanui to comprehensively settle their historical Treaty of Waitangi claims;
38. **authorise** the Minister for Treaty of Waitangi Negotiations, together with Ministers as relevant to their portfolio, to make changes to amend the redress within the financial parameters agreed by Cabinet; and
39. **authorise** the Minister for Treaty of Waitangi Negotiations to sign an agreement in principle with Te Whānau a Apanui should they accept the Crown offer.

Authorised for lodgement

Hon Andrew Little
Minister for Treaty of Waitangi Negotiations

Appendix 1: Te Whānau a Apanui rohe



Appendix 2: Commercial redress

Table 1: Crown Landbank properties

Site	Size	Redress type
Former Police Station, 6749 State Highway 35, Te Kaha	0.8355 hectares	Transfer on settlement date
Papatea Bay property, Cemetery Road (Raukōkore), State Highway 35	3.7000 hectares	Transfer on settlement date

Table 2: Ministry of Education properties

School site	Size	Redress type
Te Kura Kaupapa Māori o Whangapāraoa School, 11555 State Highway 35	unconfirmed	Right of First Refusal
Te Kura o Te Whānau a Apanui, State Highway 35, Te Kaha	unconfirmed	Right of First Refusal
Te Kura Mana Māori Maraenui, State Highway 35, Ōpōtiki	unconfirmed	Right of First Refusal
Te Kura o Omaio, 10 Omaio School Road, Ōpōtiki	unconfirmed	Right of First Refusal
Raukōkore School, State Highway 35, Waihou Bay	unconfirmed	Right of First Refusal

Table 3: New Zealand Police properties

Property site	Size	Redress type
Police Station, 6755 State Highway 35, Te Kaha	0.3780 hectares	Right of First Refusal

Table 4: Housing New Zealand residential properties

Property site	Size	Redress type
Te Kaha	0.0840 hectares	Right of First Refusal
Te Kaha	0.0843 hectares	Right of First Refusal
Te Kaha	0.0981 hectares	Right of First Refusal
Te Kaha	0.0850 hectares	Right of First Refusal
Te Kaha	0.0550 hectares	Right of First Refusal
Te Kaha	0.0664 hectares	Right of First Refusal

Property site	Size	Redress type
Te Kaha	0.055 hectares	Right of First Refusal
Te Kaha	0.0664 hectares	Right of First Refusal
Te Kaha	0.0719 hectares	Right of First Refusal

RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS

Appendix 3 – Cultural Redress

Table 1: Cultural redress sites: offer to be vested in fee simple subject to conditions

Name of site	Size	Current manager	Conditions	Subject to
Oruaiti Beach Recreation Reserve	Approximately 6.8 hectares	Department of Conservation	Vest in fee simple as a Recreation Reserve subject to the Reserves Act 1977	<ul style="list-style-type: none"> Protection of existing third party interests where applicable
Tokata Scenic Reserve	Approximately 1.8 hectares	Department of Conservation	Vest in fee simple as a Scenic Reserve subject to the Reserves Act 1977	<ul style="list-style-type: none"> Protection of existing third party interests where applicable
Whangaparaoa Beach – marginal strip	Approximately 0.33 hectares	Department of Conservation	Vest in fee simple as a Local Purpose (Esplanade) Reserve subject to the Reserves Act 1977	<ul style="list-style-type: none"> Protection of existing third party interests where applicable
Part of Hāwai Scenic Reserve	Up to 5 hectares	Department of Conservation	Vest in fee simple as a Scenic Reserve subject to the Reserves Act 1977	<ul style="list-style-type: none"> Protection of existing third party interests where applicable
Omaio Bay Recreation Reserve	Approximately 4.32 hectares	Ōpōtiki District Council	Vest in fee simple as a Recreation Reserve subject to the Reserves Act 1977	<ul style="list-style-type: none"> Agreement from the Ōpōtiki District Council on the use of the site in a Treaty settlement; and Agreement of Department of Conservation, Te Whānau a Apanui, and Ōpōtiki District Council on the management arrangements of the site; and Protection of existing third party interests where applicable
Whanarua Bay Recreation Reserve	Approximately 2.56 hectares	Ōpōtiki District Council	Vest in fee simple as a Recreation Reserve subject to the Reserves Act 1977	<ul style="list-style-type: none"> Agreement from the Ōpōtiki District Council on the use of the site in a Treaty settlement; and Agreement of Department of Conservation, Te Whānau a Apanui, and Ōpōtiki District Council on the management arrangements of the site ; and Protection of existing third party interests where applicable

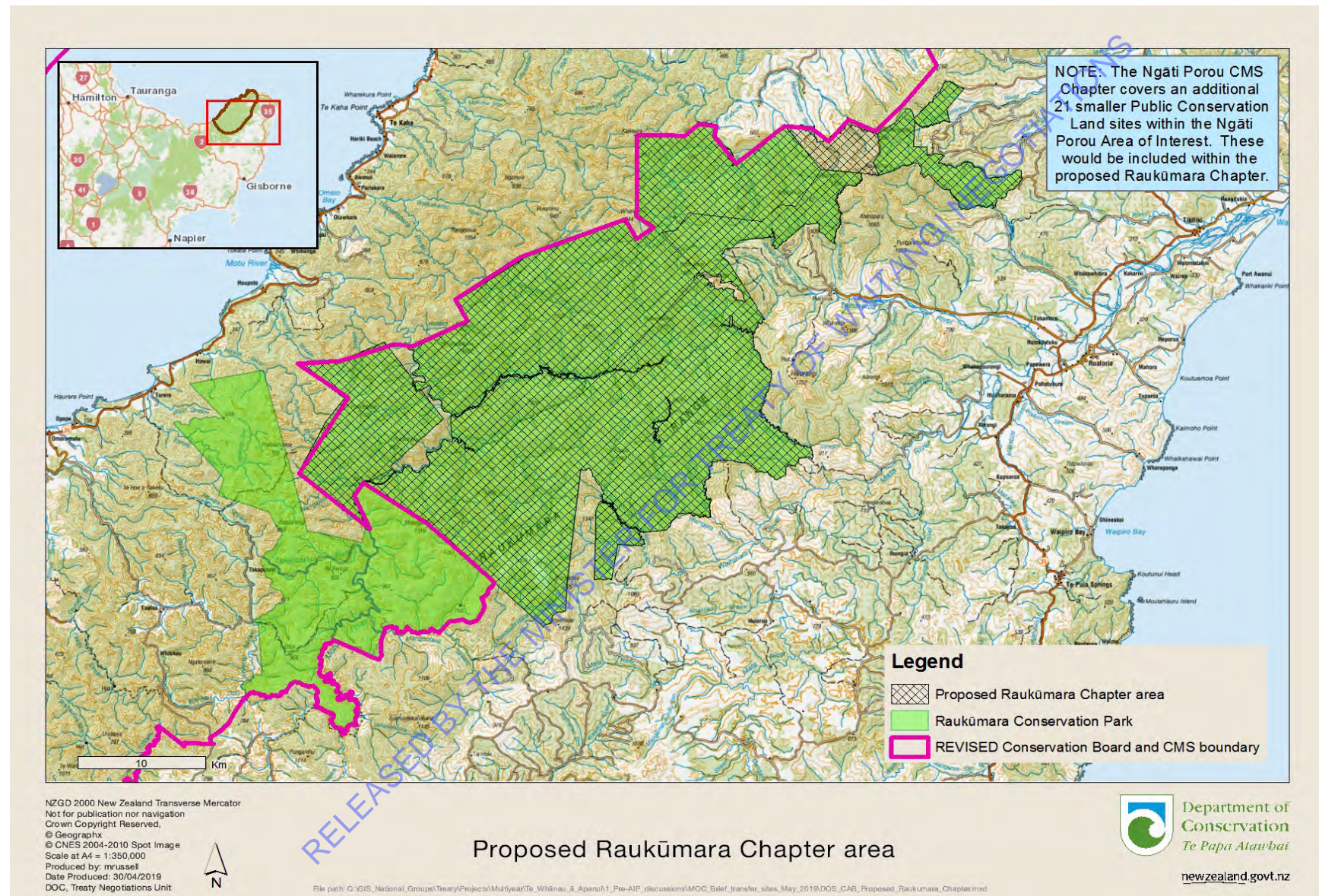
Name of site	Size	Current manager	Conditions	Subject to
Waihou Bay Recreation Reserve	Approximately 0.76 hectares	Ōpōtiki District Council	Vest in fee simple as a Recreation Reserve subject to the Reserves Act 1977	<ul style="list-style-type: none"> • Agreement from the Ōpōtiki District Council on the use of the site in a Treaty settlement; and • Agreement of Department of Conservation, Te Whānau a Apanui, and Ōpōtiki District Council on the management arrangements of the site; and • Protection of existing third party interests where applicable
Maraetai Bay Recreation Reserve	Approximately 1.6 hectares	Ōpōtiki District Council	Vest in fee simple as a Recreation Reserve subject to the Reserves Act 1977	<ul style="list-style-type: none"> • Agreement from the Ōpōtiki District Council on the use of the site in a Treaty settlement; and • Agreement of Department of Conservation, Te Whānau a Apanui, and Ōpōtiki District Council on the management arrangements of the site; and • Protection of existing third party interests where applicable

RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS

Table 2: Relationship agreements and protocols for inclusion in Crown offer and agreement in principle

Agency	Form of agreement
Culture and Heritage sector agencies	Whakaaetanga Tiaki Taonga
Ngā Taonga Sound and Vision	Letter of Introduction
Department of Conservation	Relationship agreement
Ministry for the Environment	Environment protocol
Ministry of Business, Innovation and Employment	Crown minerals protocol
Ministry for Primary Industries	Primary Industries protocol, right of first refusal over quota and the appointment of Te Whānau a Apanui Post-Settlement Governance Entity as an advisory committee to the Minister for Primary Industries
Ministry of Justice	Relationship agreement
Ministry of Education	Relationship agreement
Commissioner of Crown Land	Letter of introduction in relation to riverbeds
Tertiary Education Commission	Offer to explore relationship agreement
Ōranga Tamariki	Offer to explore relationship agreement
Ministry of Health	Offer to explore relationship agreement
Ministry of Social Development	Offer to explore relationship agreement
Ministry of Housing and Urban Development	Offer to explore relationship agreement
Statistics New Zealand	Offer to explore relationship agreement
New Zealand Transport Agency	Offer to explore relationship agreement

Map 1: Conservation management redress area



Map 2: Coastal statutory acknowledgment area

