

WHAKATŌHEA

and

TE TĀWHARAU O TE WHAKATŌHEA

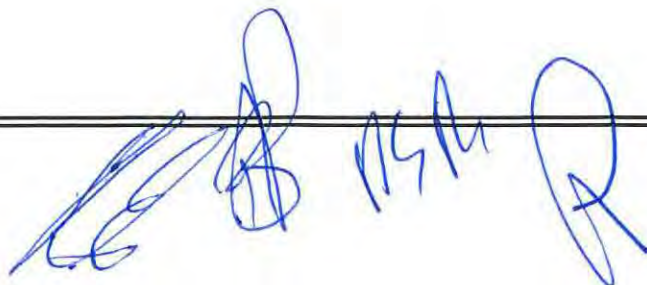
and

THE CROWN

**DEED OF SETTLEMENT OF
HISTORICAL CLAIMS**

Initialling version for presentation to Whakatōhea for ratification purposes

[DATE]

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PURPOSE OF THIS DEED

This deed –

- sets out an account of the acts and omissions of the Crown before 21 September 1992 that affected Whakatōhea and breached te Tiriti o Waitangi/the Treaty of Waitangi and its principles; and
- provides an acknowledgement by the Crown of te Tiriti/the Treaty breaches and an apology; and
- specifies the cultural redress, and the financial and commercial redress, to be provided in settlement to the governance entity that has been approved by Whakatōhea to receive the redress; and
- includes definitions of –
 - the historical claims; and
 - Whakatōhea; and
- provides for other relevant matters; and
- is conditional upon settlement legislation coming into force.



PĀKAURANGI: TABLE OF CONTENTS

He pā nō Ngāti Ngahere. Ko te whakamāoritanga mai o Pākaurangi ko ngā parirau o te rangi, ko te whānui tonu kua whakatairitea ki te rārangi ūpoko me ngā kapinga kei roto i te Mātāpono Whakaae.

A Ngāti Ngahere pā. Pākaurangi, meaning the wings of the sky, its breadth is used as an analogy for the Table of Contents and what is covered in the deed.

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TE MĀKEOTANGA – DEED OF SETTLEMENT

Mākeo is a maunga tapu of Ngāti Rua and of Te Whakatōhea. More so for Whakatōhea since the settling of hapu on the Ōpape reservation post raupatu where Mākeo is at the centre. Naming the deed of settlement Mākeo acknowledges Ngāti Rua for being gracious in hosting all Whakatohea hapu over these many years since 1865. The definition of Mākeo is mā meaning clear and keo is summit or peak. The deed of settlement reflects a clear process that has been undertaken to reach this point. Mākeo being a mountain shows the mountains that had to be climbed to reach this point or stage. Signing the deed of settlement is a huge accomplishment.

THIS DEED is made between

WHAKATŌHEA

and

TE TĀWHARAU O TE WHAKATŌHEA

and

THE CROWN

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TE MANA O TE WHAKATŌHEA

Nā Te Kahautu Maxwell me te Whakatōhea Komiti Whiriwhiri Hitori tēnei kōrero i tuku.¹

"Tangohia te taura i taku kakī, kia waiata ahau i taku waiata" (Mokomoko 1866).

Maruhia atu i runga o Tirohanga te tohu Whakaari, whakarērea atu te whaiwhaiā te mate tonu atu. Whakaihu Moutohora, tāpapa ana Te Rae o Kōhi, te mate te whakamā e patu. Ana Waimuri tō ringa te waka! Hiko te uira, haruru te rangi ngaoko te whenua, ikahuirua. Tapu te wai, tapu te tai ki te rātō Awa-Te Atua. Eke Arawa. Whakaheke matamoe Waipiko hurihia Rūrima tūtūtara noa mua iho koe. Rukuhia te hāpuku te wheke. Tōia tō hope, Hāmatatū timu Te Koko, auē Ngā tamāhine a Te Whakatōhea. Takahia te pipi tahe aku pōtiki, Pākihikura ki uta, kura ki waho. Kapakapa Hukitewai pāra takoto te one. Kōpū e oho! Kaikirikiri tuatua Waiaua te kai a te karoro koa. Kōeaea e, tītītiko e. Tapu te paru. Nukutere Te Rangi Awaawakino ngā tai nui, ngā tai roa. Kōpua-Pātiki huki te pakake. Minohia atu ngā wai Waiomahau. Hīa te mure Tokaroa kai waho, kai uta Parinui tātahi whatawhata kahawai, pāraharaha ika iti Ōhinemōtu, Aukati-Pāhau, Pou tū ana te ure. Tapu te awa Ōhēkōpara! Tōtōia atu, tōtōia mai, Mai Ngā Kurī a Whārei ki Tihirau. Ei te tapu o Muriwai e!

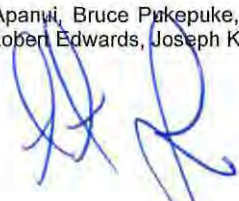
"Hei konei rā e te ao Pākehā! E mate harakore ana ahau. Hei aha?" (Mokomoko, 1866).

E noho ana au i Te Koko ki Ōhiwa, whakarongo rua aku taringa ki te tai o tuarā o Kānawa. E aki ana mai ki uta rā ki Te Whānau a Tairongo. Kei Tauwhare ko te kōpua o te Ururoa. Ko te kai rā i rari noa mai te rāweketiia e te ringaringa (Te Kapo-o-te-rangi).

Tērā te pō pango i tīneia te Whānau-Mārama e te ahi a Mahuika. Ko te whakaeke tērā a Kuini Wikitōria ki runga ki a Te Whakatōhea. Ānō te tama a te Atua i mate harakore ko Te Whakatōhea, ko te whakapono te kaupapa. "Mate tangata, mate whenua, harakore." Tangi kau ana te mapū i ngā tau maha ki muri; ki te roi o te whenua i murua atu ai, ki te tini o te kura i wehea atu ai. Anei rā ko Te Whakatōhea e tū tohenihorau nei.

I roto i ngā rau tau ka huri, nā tēnā whakatipuranga, nā tēnā whakatipuranga i tohenihorau a Te Whakatōhea ki tōna harakore kia utua e te Karauna te kino ki te pai. Mā reira e tū toherauariki ai a Te Whakatōhea ki te hautū anō i tōna anō ao i tōna mana motuhake i heke mai i a Toi-te-Huatahi, ko Awanuiārangi, ko Awaroa, ko Awatumakiterangi, ko Parinuitērā, ko Awamōrehurehu, ko Irākewa, ko Muriwai. Nā Muriwai i hua mai ko te ingoa o tēnei iwi, ko Te Whakatōhea. Ka honoa Te Whakatōhea e tō mātou whakapapa ki ō mātou maunga, ki ō mātou ngahere, ki ō mātou whenua, ki ō mātou awa, ki tō mātou moana, ki tō mātou rangi. Nā tō mātou ao me ōna tapu ka hua mai ko Te Whare o Te Whakatōhea i te tīmatanga rā anō o te ao. Nā konei tō mātou mana Atua i runga i ngā mea katoa o tō mātou rohe.

¹ Te Riaki Amoamo, Julie Williams, Julie Lux, Apanui Mason, Muriel Kelly, Mana Pirihi, Anau Apanui, Bruce Pukepuke, Jozie Mortenson, Keita Hudson, Muriwai Kahaki, Daniel Paruru (Jr), Anita Kurei-Paruru, Ruka Hudson, Robert Edwards, Joseph Kahika.



"Te tangata nāna i noho Whakarua ka rangaranga te muri ka tutū ngā tamatea o te moana. Ko au, ko au ko Tūtāmure!" (Tūtāmure).

Nō reira, ko nga korero e whai ake nei, e rārangi ana i ngā wāhanga o Te Mākeotanga Deed of Settlement e hāngai ana ki nga tūmanako o Te Whakatōhea. Ko te tūmanako, kua whakatinanatia ēnei tūmomo kōrero i ngā whāinga a Te Whakatōhea mō ngā take Tiriti o Waitangi, arā:

- Kia mau ki te wairua o Te Tiriti o Waitangi;
- Kia tokatū iho te mana tangata, te mana whenua me te mana moana o te Whakatōhea;
- Kia whakakake i a Te Whakatōhea ki te toihuarewa kia manawa-ora, kia mauri-ora; a
- Kia mahitahi hai painga mō te hapori.



TE MANA O TE WHAKATŌHEA

The following text represents a Whakatōhea perspective and was provided by Te Kahautu Maxwell and the Whakatōhea Komiti Whiriwhiri Hitori.

"Remove the rope from my neck and allow me to sing my song" (Mokomoko 1866).

From Tirohanga I look out towards the plume of Whakaari, where the seer was left to die. Yet he mounted a whale and made landfall at Te Rae o Kōhi where he quoted, "let you die from embarrassment". You were foresaken Muriwai for tampering with the canoe (Mātaatua). The skies lit up with lightning, roared with thunder and the earth trembled. A sign of death, your two sons had drowned at sea. Muriwai you placed a restriction on the sea and the land, no gathering of food was permitted from Tihirau in the east to the setting of the sun. Te Awa o Te Atua where Toroa performed a karakia on the beached Te Arawa canoe and exclaimed, "move Arawa". The migration of the matamoe eel navigating the tuatara inhabited Rūrima Islands. Dive deep for groper at Te Puku o Te Wheke. At Ōhope make good with your paddle and arrive at Hāmatatū. Low tide at Ōhiwa is when the bountiful shellfish can be seen; known as "the daughters of Te Whakatōhea". Tread upon the pipi at Waiōtahe arriving at the pool where my pets from afar reside at Pākihikura inland and on shore. The water boils at Hikuwai with shoals of fish. The morning star Kōpū is visible, awake, frost fish are on the beach. The sand-eating tuatua are plentiful at Waiaua where the seagull feast on whitebait and tītiko. The people at Waiaua are known as "Tapu te paru". At Awaawakino is where the anchor rock Te Rangi of the Nukutere canoe can be found. The great tides and long tides of the Tainui flow at Kōpua-Pātiki (the bay at Tōrere) where Ngātoroirangi caught the tail of the whale. The water of the Waiomahau waterfall cascades down to the snapper rocks, Tokaroa, which is further out and Parinui, which is closer to shore. Upon the shore kahawai and the small pink moki (pāraharaha) are dried on the drying racks. Aukati-Pāhau intercepted the attempt on the maiden Ōhinemōtu by Poumātangatanga. A restriction was placed on the Mōtū river with the drowning of Ōhēkōpara. Haul the canoe; from Ngā Kurī a Whārei ki Tihirau. It is the tapu of Muriwai!

"Farewell the Pākehā! I am dying an innocent man. What is my crime?" (Mokomoko, 1866).

As I sit on the beach at Ōhiwa, I listen to waves crashing over the sandbar at Kānawa and surging to Te Whānau a Tairongo. My mind wanders to Tauwhare, to the birthplace of the hammerhead shark and to the food basket revered by many hands (Te Kapo-o-te-rangi).

The darkest of nights where the constellation of stars were extinguished by the fires of Mahuika. When the Crown invaded Te Whakatōhea. Like the son of God, without sin Te Whakatōhea were executed due to religion. As the Te Whakatōhea proverbial saying goes: The death of one man, caused the loss of many lives and the loss of land although Te Whakatōhea was innocent. For generations I have mourned the confiscation of my tribal lands and the killing of my ancestors. Here we, Te Whakatōhea stand resolute today.

Handwritten signature and initials in blue ink, located at the bottom right of the page. The signature appears to be 'EB' with a large flourish, and the initials 'EB' are written to its right.

Through consecutive generations Te Whakatōhea have never wavered in their fight for justice, for the Crown to right the unjust confiscation of its tribal lands and the killing of its people. Through this Treaty settlement process, Te Whakatōhea will rebuild the authority that it once held over its domain.

The Whakatōhea mana motuhake is derived from Toi-te-Huatahi, to Awanuiārangi, to Awaroa, to Awatumakiterangi, to Parinuiērā, to Awamōrehurehu, to Irākewa, and to Muriwai, from whom we Te Whakatōhea derive our name. Our whakapapa connects Te Whakatōhea to our mountains, our forests, our land, our rivers, our ocean and our sky. From the beginning of time this is what makes Te Whakatōhea, Te Whakatōhea. This gives us mana Atua over our region.

"The warlord who lives in the Northeast who he calls to the horizons and forms great battalions. It is I, it is I, it is Tūtāmure." (Tūtāmure).

It is intended that this deed of settlement realises Te Whakatōhea's guiding principles for resolution of its Treaty of Waitangi grievances, namely:

- To uphold the spirit of the Treaty of Waitangi;
- To recognise Whakatōhea's mana tangata, mana whenua, and mana moana;
- To accelerate Whakatōhea's vision for prosperity and wealth; and
- To work together to realise benefits for the community.

1 TIROTIRO WHETŪ: BACKGROUND

Ko Tirotiro Whetū te maunga o te Ūpokorehe, i roto i tana whakamāori, ka whai korokī tēnei kōkōraho.

Tirotiro Whetū is the Ūpokorehe maunga meaning to star gaze, in doing so provides the narrative to the claim.

WHAKAPAPA

- 1.1. Te Whakatōhea mana motuhake is derived from Ranginui the Skyfather and Papatuanuku the Earthmother which descends to Tāwhaki who ascended the heavens and attained the kete o te wānanga the 3 baskets of knowledge. From Tāwhaki Te Whakatōhea whakapapa to Wekanui the mother of Muriwai. Te Whakatōhea whakapapa from Toi Te Huatahi to Awanuiārangi, to Awaroa to Awatumakiterangi to Parinuitēra to Awamōrehurehu to Irakewa and to Muriwai from whom we Te Whakatōhea derive our name. Our whakapapa connects us to our mountains our forests our lands our rivers our oceans and our sky. This is what makes Te Whakatōhea and gives us mana over our region.

TĪPUNA

- 1.2. Waka arrived prior to the Mataatua and brought with them the earlier tribes of Hapūoneone and Ngā Ariki. Rangimātoru was captained by Hape; Ōtūrereao by Tairongo, Pākihikura by Irākewa; Te Araumauma by Taarawa and Tuwhenua by Tamatea-Mātangi. These identities are important to acknowledge in the evolution and the subsequent emergence of Te Whakatōhea te Iwi Ko Tūtāmure rāua ko Muriwai ngā tīpuna. Whakatōhea members derive their whakapapa through Tūtāmure of the Nukutere waka and Muriwai of the Mataatua waka. The union between Tūtāmure and Hineīkauia laid the foundation for the Iwi of Whakatōhea on the mana of Te Panenehu and the Mātaatua waka. *"Over succeeding generations, the names of Te Wakanui and Te Panenehu were submerged by the new Iwi of Whakatōhea".*
- 1.3. On the eastern boundary at Te Rangi where the Nukutere Waka landed around 1250AD our ancestor Tauturangī disembarked to form one of the original inhabitants of the area, the Te Wakanui people. These were the ancestors of Tūtāmure and his people, the Panenehu. It is said that Tūtāmure's influence extended to the Motu; however, it is evidenced that the eastern and south-eastern boundaries of the Whakatōhea rohe were established during the time of Tūtāmure and the Panenehu people. Tūtāmure was responsible for defining the exercise of mana and rangatiratanga to the eastern and southern boundaries of Te Panenehu.
- 1.4. The **Ngāi Tū people** are descendants of **Taarawa** and settled much of the southern, central and northern regions of the Whakatōhea rohe, including the current Ōpōtiki Township. A number of hapū descend from Ngāi Tū, namely, Ngāti Ngāhere, Ngāti Patumoana, and Ngāti Tamahaua. Amongst some of the well-known descendants of Taarawa were Tamakōmutumutu, Hauoterangi, Tahu and Ruamoko.
- 1.5. On the western Whakatōhea boundary the Mataatua Waka arrived approximately eight generations after Nukutere. It is here our ancestor **Muriwai** disembarked and stayed in her cave below Kohi Point in Whakatane. This area is made famous because of her strength in saving the Mataatua Waka from floating out to sea with her quote "Kia whakatāne au i ahau" and is part of the Mataatua legend. We also see through her travels

TE MĀKEOTANGA – DEED OF SETTLEMENT

1: TIROTIRO WHETŪ: BACKGROUND

and the influence of her children the emergence of important bloodlines connecting Mataatua.

- 1.6. Her eldest son **Repanga** married **Ngāpoupereta** daughter of Ranginui-a-tekohu of the Rangimātoru Waka from Ohiwa. Their first son **Tuamutu** had a union with **Ani-i-waho** daughter of Tairongo, a descendant of Hape (Upokorehe Hapū) while their other son Ruamatarangi was an ancestor of **Ruatakena** (Ngāti Rua Hapū). From Muriwai's other son, **Rangikurukuru** descends the hapū of Ngāti Ira with links to other hapū, Ngāti Ngāhere and Ngāi Tamahaua.
- 1.7. Following the battle of Maungakahia involving his uncle Kahungunu, Tūtāmure returned from there and married Hineīkauā, the daughter of Muriwai which laid the foundation on the western and northern side of Whakatōhea and the mana ariki (chiefly authority) of the **Mataatua** waka. It is from this union that the hapū of Whakatōhea derives its lineage.
- 1.8. However, Muriwai is known because of her tenacity and stubbornness, from which Whakatōhea derives its name. Her influence is further reinforced through an incident involving the drowning of her two sons Tanewhirinaki and Koau where the saying "Mai Ngā Kuri a Whareī ki Tihirau" originates. This kōrero references the tapu placed on the area because of the drowning of her sons and respect to Muriwai herself.
- 1.9. Whakatōhea today is made up of the 6 hapū, Te Ūpokorehe, Ngati Ngahere, Ngati Ira, Ngati Ruatakena, Ngati Patumoana and Ngai Tamahaua.

SETTLEMENT PATHWAY

Ngā kōhi a ngā hapū o Whakatōhea – Te Petihana – Petition to Parliament

- 1.10. On the 14 September 1914, Mēhaka Wātene, Tauhā Nikora and Paora Taia along with 166 others, petitioned Parliament on behalf of Whakatōhea regarding the confiscation of Whakatōhea lands, requesting the establishment of a commission of inquiry. On the 25 December 1914, at Waiaua marae, the Whakatōhea tribe met to discuss the unsuccessful petition journey to Parliament. It was resolved that the hapū would continue to collect a tax of 2s. 6d per person to support the continuation of the petition up to 1946. A record was kept of the name of every single person who contributed the 2s. 6d including their Hapu affiliation. The book was known as the "sacred book".
- 1.11. Thirty-two years later, in 1946, the Crown finally agreed to grant Whakatōhea compensation of £20,000 for the confiscation of their lands. The funds were received by the Māori Trustee on the 14 November 1946.
- 1.12. Chairman Tua Hudson of the Whakatōhea Tribal Executive met with undersecretary G.P. Shepherd at Omarumutu marae in 1947 who proposed that the fund be spent on the purchase of land. From this meeting the inaugural members of the Whakatōhea Trust Board were elected. These were: Tame Ihimaera, Tū Gage (Ngati Ngahere); Raimona Pāpuni, Ngāwai Amoamo (Ngāti Rua); Hōri Taia, Hapua Apanui (Ngai Tama); Pākaha Tairua, Tānara Mihaere (Ngati Patu); Koroua Tai, George Rangiaho (Ngati Ira); and J Aramoana and Hūrae Īhaia (Upokorehe).
- 1.13. There was but one objective: "A kāti, ko te moni raupatu me tatū ki te whenua, ā ki roto tonu i Ōpōtiki". Enough, the settlement money shall be applied to the land, within Ōpōtiki. The land was seen as the foundation on which to build a lasting future for all Whakatōhea.

WHAKATŌHEA MĀORI TRUST BOARD

- 1.14. The Whakatōhea Māori Trust Board (**Trust Board**) was formally recognised by the Whakatōhea tribe when it resolved to purchase J.G Murray's farm on the 1 October 1952. From here several committees such as the finance, farm, executive, building and land trust, education and cultural, advisory trust and administration committees were established to manage the Trust Board's functions.
- 1.15. Throughout the Trust's sixty-eight-year history, there have been several key themes of importance, namely:
 - 1.15.1. The protection, development, growth, and prosperity of the Whakatōhea farm;
 - 1.15.2. Strategic purchases of land and properties;
 - 1.15.3. Education grants to attend university 20 January 1962;
 - 1.15.4. Cultural grants;
 - 1.15.5. Grants to the six hapū and paid to each marae committee 9 December 1966; and
 - 1.15.6. Donations to Ōpōtiki College prizegiving 10 November 1965.
- 1.16. The vision of the inaugural members elected sixty-eight years ago remains as a legacy to those who have followed and will continue to follow in their footsteps; and reminds us all, that it has been a long and arduous journey to re-establish Whakatōhea as a thriving and prosperous nation for the future.

SETTLEMENT NEGOTIATIONS

- 1.17. In 1989 the Whakatōhea Raupatu Claim (WAI 87) was lodged with the Waitangi Tribunal by Claude Edwards Chairman of the Whakatōhea Māori Trust Board.
- 1.18. In 1992 Whakatōhea initiated direct negotiations with the Crown.
- 1.19. In 1993 Whakatōhea Raupatu Negotiating Committee established under Te Ture Whenua Māori Act 1993.
- 1.20. Between 1993 and 1996, the Crown and members of the Whakatōhea Raupatu Negotiating Committee, negotiated a deed of settlement to settle the historical claims of Whakatōhea. The settlement contained a quantum offer of \$40 million.
- 1.21. Concerns among the people of Whakatōhea about the scope of the claims to be settled, the sufficiency of settlement package offered and a lack of agreement on the way forward contributed to the decision not to proceed with negotiations at that time. The 1996 Deed was withdrawn by the Crown in 1998.
- 1.22. In August 2003, an interim working party developed a process report known as the Te Ara Tono mō te Raupatu. This report set out a process by which Whakatōhea could re-engage with the Crown to negotiate a settlement of the historical claims. This report was adopted by Whakatōhea at a Hui-ā-lwi on 26 August 2007.
- 1.23. Following the adoption of Te Ara Tono mō te Raupatu, a second group known as the Whakatōhea Raupatu Working Party (**WRWP**) began the work of preparing Whakatōhea to grant a mandate to a representative entity to negotiate the settlement of the historical

TE MĀKEOTANGA – DEED OF SETTLEMENT

1: TIROTIRO WHETŪ: BACKGROUND

claims. However, the WRWP was not able to finalise a mandating process before Ngāti Ngāhere, Ngāti Rua, Ngāti Patumoana, Ngāti Ira and Ngai Tamahaua hapū withdrew their representatives from the WRWP.

- 1.24. In 2009 the Hapu Chairs of Whakatōhea held a hui at Waiaua Marae to determine the way forward. Karakia Whakawātea i te huarahi mo te Raupatu o Whakatōhea. The Iwi were called together at Opeke Marae Waioweka on 14 August 2010 to join in the recommencement of the process for mandate by way of karakia.
- 1.25. In 2010, Ngāti Ira, Ngāti Ngāhere, Ngāti Rua and Ngāti Patumoana regrouped to consider the next steps. This grouping of hapū became known as the Tu Ake Whakatōhea Collective (**the Collective**). The Collective sought assistance from the Trust Board to engage with Iwi members of Whakatōhea (**Whakatōhea uri**) to identify the most appropriate process by which Whakatōhea could provide a mandate to a representative entity to negotiate the settlement of the Historical Claims.
- 1.26. The Trust Board agreed to provide reasonable assistance in accordance with the terms of its governing legislation.
- 1.27. The Collective, with the support of the Trust Board, supported a collective approach, where whānau and hapū were encouraged to work together as Iwi in the context of the settlement of the Historical Claims. Through a robust consultation process which is detailed further in this document, the Collective sought to educate Whakatōhea uri, marae and hapū on the settlement process and options available to Whakatōhea to settle the Historical Claims.
- 1.28. Twenty-three (23) education and consultation hui were held within the Whakatōhea rohe and around the country in order to ascertain the views of Whakatōhea uri and hapū. The overall feedback from participants at those hui was that the information presented gave them a better understanding of the Treaty settlement process, Whakatōhea history and the options available to Whakatōhea to settle the historical claims.
- 1.29. As a result of these consultations with Whakatōhea uri, marae and hapū, the Collective developed the mandate strategy to lead Whakatōhea into negotiations.
- 1.30. Whakatōhea voted to approve the mandate to the Whakatōhea Pre-Settlement Claims Trust to negotiate a deed of settlement with the Crown. Voting was carried out by postal, online and at mandate hui. Special votes were also provided to all Whakatōhea uri who were not on the Trust Board at the time. Special votes were also provided to all Whakatōhea uri who were not on the Trust Board tribal database at the time.
- 1.31. The Crown recognised the mandate on 12 December 2016. The mandated negotiators and the Crown –
 - 1.31.1. by terms of negotiation dated 17 December 2016, agreed the scope, objectives, and general procedures for the negotiations; and
 - 1.31.2. by agreement dated 18 August 2017, agreed, in principle, that Whakatōhea and the Crown were willing to enter into a deed of settlement on the basis set out in the agreement; and
 - 1.31.3. since the agreement in principle, have –
 - (a) had extensive negotiations conducted in good faith; and

TE MĀKEOTANGA – DEED OF SETTLEMENT

1: TIROTIRO WHETŪ: BACKGROUND

(b) negotiated and initialled a deed of settlement.

1.32. Throughout negotiations, the mandated negotiators have –

1.32.1. focussed on achieving Whakatōhea aspirations of mana tangata, mana whenua and mana moana; and

1.32.2. been guided by the Whakatōhea Transformation Framework, which contains the following four pillars:

(a) Mihi Marino Reconciliation with the Crown:

(b) Kōpura Regenerating Culture:

(c) Te Puta Tieke Intergenerational Development:

(d) Te Umutahunoa a Tairongo Practising Hospitality.

RATIFICATION AND APPROVALS

1.33. Whakatōhea has, since the initialling of the deed of settlement, by a majority of –

1.33.1. [percentage]%, ratified this deed; and

1.33.2. [percentage]%, approved the governance entity receiving the redress; and

1.33.3. [percentage]%, ratified the constitutional documents of the governance entity for the purposes of the Māori Fisheries Act 2004 and the Māori Commercial Aquaculture Act 2004, and agreed that the governance entity replaces the Whakatōhea Māori Trust Board as the Mandated Iwi Organisation and Iwi Aquaculture Organisation for the purposes of those Acts.

1.34. Each majority referred to in clause 1.33 is of valid votes cast in a ballot by eligible members of Whakatōhea.

1.35. The governance entity approved entering into, and complying with, this deed by [process (resolution of trustees etc)] on [date].

1.36. The Crown is satisfied –

1.36.1. with the ratification and approvals of Whakatōhea referred to in clause 1.33; and

1.36.2. with the governance entity's approval referred to in clause 1.35; and

1.36.3. the governance entity is appropriate to receive the redress.

AGREEMENT

1.37. Therefore, the parties –

1.37.1. in a spirit of co-operation and compromise wish to enter, in good faith, into this deed settling the historical claims; and

1.37.2. agree and acknowledge as provided in this deed.

A Grace
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1: TIROTIRO WHETŪ: BACKGROUND

OFFICIAL OR RECORDED GEOGRAPHIC NAMES

- 1.38. The place names referred to in this deed that are not official or recorded geographic names, within the meaning of the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008, are listed in paragraph 5.5 of the general matters schedule.

d. Grace.

2 KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

He wahanga a 'ka rangaranga te muri' o tētahi whakataukī ā Tūtāmure. Hei tō mai i te muri e tītina ai tēnei whakataunga mō ngā uri kāre anō kia whānau mai; whakaritenga.

Ka rangaranga te muri is part of a whakataukī by Tūtāmure. It is used here to bring together the past securing this settlement for the future generations.

- 2.1. The Crown's acknowledgement and apology to Whakatōhea in part 3 is based on this historical account.
- 2.2. Whakatōhea are an iwi whose early experiences of the Crown were characterised by violence against their people, the destruction of property, and the confiscation of large parts of their traditional lands. From 1840 to 1864, Whakatōhea were prosperous and actively engaging with the emerging settler economy. In 1865, the Crown invasion led to loss of life, the displacement of Whakatōhea from much of their ancestral lands and the destruction of their economic base. The Crown's actions caused immense hardship for the people of Whakatōhea and have significantly impaired their ability to develop – economically, socially, and culturally – ever since.

CHAPTER 1: TE ROHE OF WHAKATŌHEA

- 2.3. Whakatōhea have occupied the coastal lands and rich alluvial plains around Ōpōtiki since the arrival of their tīpuna from Hawaiki. The traditional lands of Whakatōhea have been described as falling within boundaries commencing in the east at Pakihi at the mouth of the river along the sea coast to the mouth of the Waiōtahe stream to the mouth of Ōhiwa Harbour past Tehoro (a hill) on to Maraetotara. Then turning inland southwards to Puhikoko (a hill) by straight line to Pukemoremore (a hill) then to Mapouriki (a hill) at one time a fighting pa. Then descending to Waimana Stream; following the stream; then following Parau Stream to Tangata e roha (a hill) on to Kaharoa (an old settlement). From Kaharoa to Pa Harakeke, a ridge heading towards Maungapohatu, to Maungatapere (a hill), descending into the Motu River to the Kaitaura falls to Peketutu (a rock in the river that was an old crossing). Leaving the river and up a ridge to Whakarakongo (a hill); following the hill tops until it reaches Tipi o Houmea (a peak). Then descending towards Makomako (another hill) until it crosses Takaputahi Stream to Ngaupoko Tangata (a mountain). Following the ridge to Kamakama (a mound resting place); along the ridge to Oroī (a trig station). Then turning seawards to Te Rangi on the sea coast, (a stone visible at low tide); then along the sea coast to the mouth of the Opape Stream, to Awahou Stream to Tirohanga and back to Pakihi. While their traditional lands extended towards the mountainous interior of the Tahora block, most Whakatōhea kainga were located along the coast, enabling them to use, and defend, the area's rich marine resources.
- 2.4. The traditional territory of Whakatōhea is bountiful in kai. Ōhiwa Harbour, in the west of the rohe, is home to the so-called 'Ngā Tamāhine a Te Whakatōhea the daughters of Whakatōhea' – a local name for the rich abundance of kaimoana provided by the Harbour. Pākōwhai and Ōpōtiki sit at the centre of Te Rohe o Te Whakatōhea near the confluence of the Waiōweka and Ōtara Rivers. Together with the Waiōtahe, the estuarine habitats of these awa provide a plentiful supply of fish and shellfish. On the eastern side

2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

of the rohe, from Ōpape to Awaawakino, the rocks abound with mussels, pāua, kina and koura.

- 2.5. The mountainous interior of the rohe provided Whakatōhea with important food resources including fern grounds, tuna fisheries and places for snaring and hunting kererū, kākā, weka and kiwi. These forested mountains also provided a haven for the hapū of Te Whakatōhea during periods of conflict.
- 2.6. However, for Whakatōhea the lands and waterways of their rohe are much more than a physical resource. Ōhiwa Harbour has immense cultural significance and is recognised as an important repository of the mauri of Whakatōhea. Over time, the long occupation of Whakatōhea became written into the landscape in the form of cultivations, kainga, pā and urupā. The histories and genealogies of Whakatōhea are grounded in the land, and the land carries many names that in turn reflect their history.

CHAPTER 2: TE TIRITI O WAITANGI AND EARLY PĀKEHĀ SETTLEMENT

First encounters

- 2.7. The initial contact between Whakatōhea and Pākehā was fleeting. On 1 November 1769, HMS Endeavour, commanded by Lieutenant James Cook, appeared off the coast of Ōpōtiki. Many Whakatōhea went out in waka and began trading kaimoana for European items. Ngāti Patumoana tradition states that Cook gave his flag to Punahamoa, a powerful tohunga. Some believe this to be the flag now held in Ruamoko wharenuī at Waiaua Marae. One version of the story has it that Punahamoa used his spiritual power over Cook to make him give up the flag.
- 2.8. The journals of Cook and Banks describe a dispute breaking out when the sailors on the Endeavour considered they were being cheated in the trade for kaimoana. A Whakatōhea man then took a piece of cloth described as 'some linnen' from the Endeavour. Cook ordered several musket shots and a four-pounder cannon ball to be fired at the Whakatōhea waka. One man was hit by small shot, but did not appear to have been badly hurt.
- 2.9. On 11 April 1828, a Church Missionary Society (CMS) deputation, anchored the schooner Herald off the coast at Ōpōtiki. Two waka approached the vessel. While initially cautious, negotiation eventually took place after which Whakatōhea agreed to trade flax and mats with the visitors.
- 2.10. It is likely that Whakatōhea also had contact with whalers operating out of Moutohorā, Te Kaha and Waihau in the 1820s. It was, however, the arrival of Christianity in Ōpōtiki that formed the basis of a much more enduring relationship between Whakatōhea and Pākehā.

The missionaries

- 2.11. The arrival of Christianity had a profound impact on Whakatōhea, reverberating through many subsequent events. This was a consequence of early nineteenth century raids by northern iwi, who were the first Māori to acquire muskets. The raids and the wars that followed resulted in many Whakatōhea being killed or taken away as prisoners. Some Whakatōhea moved inland or to the rohe of other iwi to avoid the fighting. The wars also brought economic change as Whakatōhea traded flax for muskets.
- 2.12. Christianity was initially introduced to Whakatōhea by Piripi Taumatakura (Taumata-a-Kura), to whom Ngāti Ngahere trace connections. Taumatakura was seized by raiders in

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2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

1823 and held in captivity in the Bay of Islands. While captive, he converted to Christianity. Following his release in 1834, he returned home, where the East Coast people, including Whakatōhea, became interested in his teachings. It is estimated that there were as many as 1,500 Māori converts in the East Coast area, including Ōpōtiki, prior to the arrival of a Pākehā missionary.

- 2.13. In the 1830s some Whakatōhea supported a request to the CMS to send a missionary to the eastern Bay of Plenty. A CMS missionary took up residence in Ōpōtiki in March 1841. A Catholic mission followed shortly after. The Whakatōhea rangatira Tītoko, Rangimātānuku and Rangihaerepō welcomed the Catholic Bishop to Ōpōtiki in March 1840, and a resident priest was appointed to Ōpōtiki in August 1841.
- 2.14. The CMS missionaries negotiated with Whakatōhea rangatira for land to establish mission stations. On 27 January 1840, the Whakatōhea rangatira Rangihaerepō, Tītoko, Ake (Wi Akeake), Ōkoki and Te Āporotanga granted the original CMS missionary and two colleagues the right to purchase 3,840 acres between Ōpōtiki and Ōhiwa, at Hikūtaia.
- 2.15. The following day, Whakatōhea rangatira granted the Church Missionary Society the right to purchase 2,500 acres at Ngaio, in the Tirohanga area, in exchange for cash and trade goods to the value of £300. However the CMS did not occupy this block. In 1852 they offered to return it to Whakatōhea, asking that the value of cash and goods be paid back and the CMS allowed to retain a small area for a missionary residence. In 1854 Whakatōhea paid the CMS £280 and the block, minus a small mission station site, was returned.
- 2.16. The Catholic missionaries did not initially buy any land, but the rangatira Tītoko gifted them a small area of land in Ōpōtiki. The Catholic missionaries went on to purchase, in 1844, an area of from 1-4 acres.

Ngā Kerēme Whenua Tawhito: Old land claims in the Whakatōhea rohe

- 2.17. On 14 January 1840, Governor Gipps in New South Wales issued a proclamation stating that the Crown would not recognise the validity of any further private land purchases in New Zealand. On 30 January 1840 Lieutenant Governor Hobson issued an identical proclamation at the Bay of Islands.
- 2.18. In June 1841, Hobson appointed the Old Land Claims Commission to investigate and report to the Governor on the validity of those purchases made before the Crown had issued proclamations against private land transactions. If a land purchase was held to be valid, the Crown considered Māori title over the purchased area to have been extinguished, with the land concerned deemed to be the property of the Crown. The Crown might then grant some of the purchased land to the European buyer, while assuming that the remaining 'surplus land' was Crown property.
- 2.19. In addition to the two purchases involving the CMS and a CMS missionary, there were two other pre-Treaty purchases on Whakatōhea lands. These related to Uretara Island in Ōhiwa Harbour and to two acres in Ōpōtiki.
- 2.20. Of the four old land claims in the Whakatōhea rohe, only the CMS missionary's claim at Hikūtaia was later confirmed by the authorities. The Commissioner recognised that the purchase had been made after 14 January 1840 but considered it valid as the missionary had been 'in full & quiet possession of the land prior to that date'.
- 2.21. When the Hikūtaia land was eventually surveyed in late 1852 and early 1853, it was found to contain 11,470 acres, far more than the 3,840 acres originally claimed. The Crown

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2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

granted 3,832 acres to the CMS claimants, but without consulting the hapū, retained for itself the remaining 7,638 acres 'surplus lands'.

Te Tiriti o Waitangi

- 2.22. On 27 and 28 May 1840, an agent commissioned by the Crown convened a hui of Whakatōhea rangatira at Ōpōtiki. The Rangatira were brought together to consider signing Te Tiriti o Waitangi. The Crown's agent was a trader and former CMS worker who spoke te reo Māori, but it is not known what understanding he or the Whakatōhea rangatira had of Te Tiriti.
- 2.23. Seven Whakatōhea rangatira placed their marks on Te Tiriti o Waitangi: Tauātoro (Ngāi Tamahaua, Ngāti Ngahere); Te Takahiao (Te Ūpokorehe); Te Āporotanga (Ngāti Rua); Rangimātānuku (Ngāti Rua); Rangihārepō (Te Ūpokorehe, Ngāi Tamahaua); Wi Akeake (Te Ūpokorehe) and Whākia of Whakatōhea. Following the signing the Crown's agent gave the Whakatōhea rangatira gifts of pipes and tobacco.

Economic growth and social change

- 2.24. The warfare in the 1830s brought economic hardship and social disruption to the hapū of Whakatōhea. The two decades following the signing of Te Tiriti o Waitangi were, in contrast, a time of peace and major economic growth, accompanied by rapid social change.
- 2.25. Up until the late 1850s the growing Pākehā settlement at Auckland traded extensively with Māori coastal settlements, with Whakatōhea and the Auckland settlers having a significant trading partnership. The iwi developed a thriving economy, largely based on flax, agricultural produce and pigs. Whakatōhea grew extensive crops of wheat, maize, corn, kumara and potatoes on the rich alluvial plains surrounding the Ōtara and Waiōweka Rivers. Thousands of pigs were reared on the surplus produce.
- 2.26. Whakatōhea soon realised the advantage of controlling the transport in the Auckland trade. Beginning in the early 1840s, they acquired their own fleet of small schooners and cutters. At least 22 ships were registered to Whakatōhea owners, comprising a significant proportion of the New Zealand registered vessels over that period. Given that the majority of Māori owned ships were not registered, it is likely Whakatōhea owned many more vessels than officially recorded. So many Whakatōhea men sailed on trading vessels that by 1849 most of the male population of Ōpōtiki were reported to have visited Auckland and/or the Bay of Islands.
- 2.27. In 1844 Rangimātānuku of Ngāti Rua traded 200 pigs for a schooner – the George and Katherine. By 1847, the people at Ōpōtiki were reported to have traded large quantities of produce, including 2,500 pigs, in exchange for trading vessels.
- 2.28. Whakatōhea also invited Pākehā shipwrights to set up shipyards in their rohe with shipbuilding at Ōpōtiki from 1846. At least eight shipwrights are known to have worked at Ōpōtiki in the 1840s and 1850s and at least two at Ōhiwa.
- 2.29. Government officials visiting the Whakatōhea rohe described them as one of the most prosperous iwi in the eastern Bay of Plenty. Whakatōhea had acquired tools, ploughs, carts, horses, tobacco and clothing through trading locally and with Auckland. One official noted 'thirteen vessels... upwards of fifty ploughs, 26 drays and carts and other implements...'. Another official recorded that, 'all European goods are more plentiful', 'they dress better, have more horses, ploughs, sledges, and even drays at Opotiki; they have more tools and utensils [than other iwi he had encountered]' and 'Each place has

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2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

several fine large canoes, perhaps two or three whale-boats, and Opotiki has three or four schooners owned by Maoris'.

- 2.30. Whakatōhea also developed the local and regional infrastructure. They were involved in building a new road, opened by March 1841, linking Ōpōtiki and Tūranga (Gisborne) and in establishing a postal service between the two centres. Within their own rohe Whakatōhea built 'miles of good roads', and several bridges of exceptional workmanship, 'equal to many on the [Great] South Road'. In the early 1860s this road system provided access to a flour mill. The Whakatōhea hapū Ngāti Ira, under their rangatira Hira Te Popo, built this mill in 1858 for the cost of £800 and transported their produce to Auckland on their own cutter the Hira.
- 2.31. Whakatōhea developed political structures to deal with the changes in their economy and society. In 1861 a visiting Crown official reported that two large rūnanga were operating in Ōpōtiki; one for young people and one for adults.
- 2.32. The Crown official was visiting to promote a Crown initiative known as the 'new institutions', 'the rūnanga system' or 'tikanga hou'. The scheme envisaged a Māori local government and justice system based on village and district rūnanga, represented by a Māori Assessor, working alongside a Resident Magistrate. The official persuaded Whakatōhea to set up a smaller rūnanga with 24 members, having equal numbers of Protestants and Catholics. Whakatōhea chose Poihipi to be the local Assessor, but no Resident Magistrate or any other Crown official was based at Ōpōtiki before 1865.

CHAPTER 3: WAR, THE KĪNGITANGA, TAPUAEHARURU AND KAOKAOROA

- 2.33. Whakatōhea tradition records that, in 1856, Paora Te Ua o Ngārangi of Ngāti Ngahere represented Whakatōhea at a hui held at Pūkawa to choose the first Māori King. Each of the ariki or rangatira present indicated their support for the selection of Pōtatau Te Wherowhero by taking a flax rope tied to a flagpole named Tongariro, tying it to a mānuka peg, then driving their peg into the ground. Paora Te Ua o Ngārangi drove in a peg to show Whakatōhea support for the Kīngitanga.
- 2.34. In 1860 Crown forces attacked Taranaki Māori who opposed the sale of land at Waitara. While not involved in the fighting, Whakatōhea sent an observer from Ōpōtiki to Taranaki to keep them informed of developments. The observer only made it as far as Waikato, however, where he met with representatives of the Kīngitanga movement. He returned to Ōpōtiki accompanied by a deputation of rangatira who held a series of hui with Whakatōhea.
- 2.35. On 12 July 1863, Crown forces crossed the Mangatawhiri Stream and launched an invasion of the Waikato heartlands of the Kīngitanga movement. Whakatōhea oral tradition records that some Whakatōhea, who may have already been in the Waikato area, fought in support of the Kīngitanga in November 1863 at Rangiriri.
- 2.36. In December 1863 Kingitanga leaders requested that Whakatōhea and other East Coast iwi support them in the war. Whakatōhea debated this request carefully. The CMS missionary resident at Ōpōtiki, Carl Sylvius Völkner, wrote a series of letters to Governor Grey informing him of the people's mood. According to Völkner, while Whakatōhea were sympathetic to the Kīngitanga, the majority initially opposed giving armed support. Their opinion shifted markedly when the news reached Ōpōtiki, on 26 January 1864, that Crown forces had arrived in Tauranga. On 30 January Whakatōhea pledged military support to the Kīngitanga movement.

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2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

- 2.37. In early February 1864, around 230 Whakatōhea joined taua from other East Coast iwi in an expedition to support Tauranga iwi. About 200 Whakatōhea men returned to their rohe within five days due to difficulties obtaining supplies, threats of opposition by some neighbouring iwi and receiving word from Tauranga that no fighting was occurring.
- 2.38. In late February 1864, Whakatōhea joined the 800-strong Tai Rāwhiti taua, a combined force drawn from East Coast iwi and hapū. The Whakatōhea contingent was led by Treaty-signatory Te Āporotanga of Ngāti Rua, Hira Te Popo of Ngāti Ira and Apanui of Ngāti Patu. Völkner again wrote to Grey informing him of the movements of the taua and advising him of defensive preparations underway in Ōpōtiki. Völkner also asked Grey to protect his anonymity lest Whakatōhea become aware of his correspondence.
- 2.39. The taua gathered at Matatā before attempting to travel in-land through the Rotorua lakes district to Waikato. It was blocked at Lake Rotoiti by 400 local Māori who did not support the Kīngitanga. Tai Rāwhiti forces took up positions at Tapuaeharuru, on the eastern shore of Lake Rotoiti. During three days of fighting, over 7-9 April, Whakatōhea lost one of their great rangatira, Apanui, a leader of the Tai Rāwhiti expedition. Apanui was one of around 20 Tai Rāwhiti killed.
- 2.40. A separate party of 30 men led by Hori Te Tamaki of Ngāti Horoai, Mokomoko of Ngāti Patu, Te Iki of Ngāti Rua and Hakaraia of Ngāi Tama made their way to Waikato, where they were involved in the Battle of Ōrākau. Two others, Tamaki and Poihipi, made it to Tauranga, where, in April 1864, they fought at Gate Pā, Pukehinahina. Poihipi was killed in June 1864 at Te Ranga.
- 2.41. The main Tai Rāwhiti expedition, unable to pass through the Rotorua lakes district, turned back to the coast at Ōtamarākau, where it was bolstered by reinforcements including Ngāi Tama of Whakatōhea. After several days camped at Ōtamarākau, Tai Rāwhiti forces advanced up the coastline towards Maketū.
- 2.42. On 21 April 1864, the 800-strong Tai Rāwhiti force arrived at Waihi estuary, just east of Maketū where they surprised two Crown officers who were out duck shooting on the lagoon. Tai Rāwhiti warriors pursued the officers who narrowly escaped. The officers later lead out a party of 50 Crown troops to drive back the Tai Rāwhiti forces.
- 2.43. After a brief and indeterminate skirmish, Tai Rāwhiti forces took up positions on elevated ground at Te Whare-o-te-Rangimarere. There they faced a Crown force occupying Pukemaire, an ancient pā overlooking Maketū. The two sides maintained a desultory exchange of fire over the following three days and there were small-scale skirmishes at Kakiherea and Te Rahui.
- 2.44. On 26 April 1864, two warships, the Royal Navy sloop HMS Falcon and the Colonial Gunboat Sandfly arrived off Maketū and proceeded to bombard the Tai Rāwhiti positions. Tai Rāwhiti forces, also taking fire from field guns at Pukemaire, retreated along the coast toward Matatā. They were pursued by Crown troops and by the Falcon and the Sandfly which came in close to the shore and shelled the retreating Tai Rāwhiti forces.
- 2.45. The running battle fought along the coast was named Kaokaoroa (the long rib), after the narrow strip of sand and dunes on which it was fought. Fighting took place over three days as Tai Rāwhiti forces made their way toward Te Awa-o-Te Atua. The heaviest fighting took place on 28 April, when the warriors of Tai Rāwhiti made their last stand among the kūmara, maize and taro plantations around Pikōwai. As fighting neared Te Awa-o-te Atua, Tai Rāwhiti casualties mounted, and the survivors broke and fled, Hira Te Popo of Ngāti Ira led his troops to safety by scaling a gully in the cliff-side.

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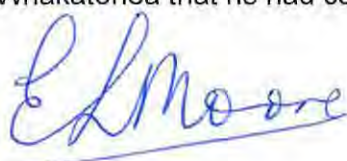
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2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

- 2.46. The battle of Kaokaoroa was a resounding defeat for the Tai Rāwhiti forces. Whakatōhea lost a number of fighters, including the rangatira Tūtakahiao and Mikaere Pihipihi. Te Āporotanga was wounded and taken prisoner. He was shot and killed the following day while in the custody of Crown forces. It was a bitter blow for Whakatōhea, as Te Āporotanga was the last of his generation of rangatira, the last of those who had signed Te Tiriti o Waitangi.
- 2.47. The loss of the rangatira Te Āporotanga, Apanui, Tūtakahiao and Mikaere Pihipihi left Whakatōhea with a considerable leadership vacuum and a loss of traditional knowledge. This made some Whakatōhea more willing to embrace the new ideas and new leaders emerging in the mid-1860s.

CHAPTER 4: PAI MĀRIRE, VÖLKNER AND WHAKATŌHEA

- 2.48. In 1862, Taranaki spiritual leader Te Ua Haumene developed Pai Mārire, a system of belief and action which sought a world based on goodness and peace. Pai Mārire rejected Pākehā religious authority and promised Māori autonomy and deliverance from European control. Te Ua Haumene saw Pai Mārire as purifying Christianity from missionary errors. Pai Mārire practices blended aspects of Christianity with traditional Māori spirituality. Te Ua called his church Hauhau a name derived from Te Hau, the breath or spirit of God.
- 2.49. The new faith gained significant momentum in 1864 with the conversion of the second Māori King, on whom Te Ua bestowed the name Tāwhiao. Emissaries preaching the new faith travelled through much of the North Island. Te Ua instructed these messengers not to harm Pākehā. In a time of conflict between Pākehā and Māori, however, the followers of Te Ua did not always obey his instructions.
- 2.50. Kereopa Te Rau was a member of Ngāti Rangiwewehi. Very little is known about his early years. In the 1840s he took the name Kereopa, a transliteration of the biblical name, Cleophas. During the 1850s Kereopa served as a policeman in Auckland. In 1862 he attended a Kingitanga hui, where he called for roads into the Waikato to be closed. On 21 February 1864 Crown forces attacked and burned the Waikato village of Rangiaowhia. At the time of the attack there were many woman and children at the settlement and the wife and daughter of Kereopa were among those killed. The next day Kereopa was part of the Kingite force that clashed with Crown troops at Hairini, not far from Rangiaowhia. At this battle, according to Ngāti Rangiwewehi korero, the sister of Kereopa lost her life.
- 2.51. In December 1864 Te Ua asked Kereopa and Patara Raukauri to go as emissaries to the tribes of the East Coast. Te Ua instructed them to go in peace. Although they issued several threats against missionaries as they went they did spread the Pai Marire message of peace in the Urewera. Their journey took them to Opotiki, in the eastern Bay of Plenty.
- 2.52. On 25 February 1865 the Pai Mārire representatives arrived in Ōpōtiki. The delegation arrived at time when morale was low among Whakatōhea, following the losses from the Tai Rāwhiti expedition. There had been a shortage of food and fewer crops had been planted with men away at war. In addition, an epidemic had killed an estimated 150 people. Whakatōhea were ready to hear a message of hope and a large party assembled to welcome the visitors.
- 2.53. The leaders of the Pai Mārire delegation made speeches and erected a ceremonial flagstaff. One told Whakatōhea that he had come to make the place sacred and to teach



2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

them about the new religion. He urged Whakatōhea to reject the teachings of the missionaries, who were only interested in land, and to expel all Pākehā from the area.

- 2.54. The speech, and the Pai Mārire message more broadly, received a mixed reception from the assembled people of Whakatōhea. Some rangatira were receptive of aspects of the message but they rejected the call to expel all Pākehā arguing that the Pākehā did Whakatōhea no harm. Other leaders, such as Hira Te Popo of Ngāti Ira, expressed doubt about the Pai Mārire message and took no part in subsequent events.
- 2.55. Two Christian missionaries were based at Ōpōtiki in the early 1860s. Carl Sylvius Völkner, the CMS missionary, was away in Auckland when the Pai Mārire delegation arrived. The resident Catholic missionary had been removed from his position in February 1864, at the insistence of Governor Grey. This followed Völkner informing Grey that the Catholic priest had carried a letter from the Tainui tribes to Whakatōhea. Völkner's action made some Whakatōhea suspicious of him, especially given rumours that the Catholic priest had been executed. Whakatōhea were also upset that Völkner had failed to condemn the killing of Te Āporotanga.
- 2.56. The Pai Mārire delegation believed Völkner was a spy for the Crown and that missionaries were preachers of false doctrines trying to take Māori land. Māori in the Eastern Bay of Plenty were aggrieved that Völkner had passed information about their activities to Governor Grey and they regarded him as an informant for the Crown. In one of his letters to Grey sent in January 1864, Völkner included a plan of the pa at Rangiaowhia. It is possible that Kereopa knew of this and that he saw his actions as utu for the deaths of his family. The fact that Bishop Selwyn, head of the New Zealand Anglican Church, was reported to be conducting services for the British Army, reinforced the Pai Mārire distaste for the missionaries.
- 2.57. The day after their arrival, members of the Pai Mārire delegation ransacked Völkner's house, auctioning off his horses and other property to members of the assembled crowd. A leader of the Pai Mārire delegation wrote a letter to Völkner informing him of events and warning him not to return to Ōpōtiki. It is unclear whether the correspondence was ever received.
- 2.58. Kateruri, a Whakatōhea woman of mana associated with Ngāi Tama, accompanied Völkner and Emma, his wife, when they travelled to Auckland. Aware of the threatening situation developing in Ōpōtiki, she cautioned Völkner not to return there. The missionary did not follow her advice. According to Whakatōhea tradition, Kateruri returned to Ōpōtiki before Völkner and was among those who warned him not to land.
- 2.59. Völkner arrived back in Ōpōtiki on 1 March 1865 aboard the schooner Eclipse. A large crowd gathered as the vessel crossed the bar into Ōpōtiki Harbour. Several of Völkner's Whakatōhea supporters warned him not to come ashore, but he chose to ignore the warnings. Once Völkner was ashore, a group of Pai Mārire supporters detained him for several hours along with a missionary from Taupo who was travelling with him, and four sailors from the Eclipse. The Pākehā were then ordered to stay overnight in a nearby house. The Taupo missionary recorded that the house was not locked or guarded, but those inside made no attempt to escape.
- 2.60. According to evidence presented in the trials of those charged with the murder the decision to take Völkner's life had been made by a group of Māori during the evening of 1 March, at a meeting in which Kereopa took a leading role. Whakatōhea rangatira including Te Piahana Tiwai and Te Rānapia of Ngāi Tama made repeated, unsuccessful attempts to intercede on Völkner's behalf.

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2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

- 2.61. At 2pm on 2 March 1865, a group of 20 armed men came for Völkner. Te Rānapia seized a tomahawk and rushed to save Völkner but was dumped into a stream by some of the armed party. Völkner was hanged in front of a large crowd and his body was ritually desecrated after his death. It seems that for Kereopa, there was also a broader, political meaning to his actions. Before he ate Völkner's eyes, Kereopa said 'these are the eyes which have witnessed the destruction of our land'.
- 2.62. Following Völkner's killing, a group at Ōpōtiki, claiming to be Te Komiti of Whakatōhea and three other iwi, wrote to Crown giving the reasons for the execution. The letter stated Völkner was killed because Church of England had practiced deception and because the Governor had killed women at the battle of Rangiriri and at Rangiaowhia.
- 2.63. The Pai Mārire group and Whakatōhea did not harm the missionary from Taupo or the other Pākehā from the schooner Eclipse. They were held at Ōpōtiki, but allowed to move around the village. After 16 days, these Pākehā were able to escape from Ōpōtiki, aboard a Royal Navy steamship, also called the Eclipse. Kateruri and her brother Tiwai helped the sailors escape.

CHAPTER 5: THE CROWN INVASION OF ŌPŌTIKI

- 2.64. News of the killing of Völkner reached the Crown officials at Maketū and Tauranga on 6 March. These reports came from coastal traders, who were not present when Völkner was killed, and from neighbouring iwi at pains to distance themselves from the act. Governor George Grey heard of the killing on 14 March, from the Commodore of HMS Eclipse.
- 2.65. The Crown took little immediate action as its military forces were under significant pressure in other parts of the North Island.
- 2.66. Most of the Pai Mārire delegation left the Whakatōhea rohe after the killing of Völkner. In the months that followed Whakatōhea were a divided and disorganised iwi. They had recently lost a number of traditional leaders and were now split between followers of the new Pai Mārire faith and those who refused to adopt it. The Anglicans and Catholics of Ngāti Rua, Ngāti Tama and Ngāti Patumoana made no defence preparations, while the Pai Mārire appear to have believed that their religion, rather than weapons and fortifications, would protect them.
- 2.67. On 5 September 1865, six months after Völkner was killed, the Crown published Governor Grey's 'Proclamation of Peace' and his declaration of martial law over Ōpōtiki and Whakatāne. The Proclamation of Peace warned that the Governor was sending troops to Ōpōtiki to apprehend those responsible for the killing of Völkner. In the Proclamation of Peace, Grey also threatened to confiscate Whakatōhea land:

If they [the killers of Völkner] are given up to justice the Governor will be satisfied; if not the Governor will seize a part of the land of the tribes who conceal these murderers, and will use them for the purposes of maintaining peace in that part of the country and of providing for the widows and relatives of the murdered people.

- 2.68. Governor Grey ordered that 'to inflict immediate and signal punishment on the Natives concerned in the late barbarous murders...any of the offenders who may be taken prisoners shall be tried forthwith by Court Martial'.
- 2.69. The Crown's declaration of Martial Law was strongly criticised in December 1865, when the Attorney-General stated his opinion that, 'Martial Law has no place in the constitution

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2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

of this country...' and that citizens should not be subject to Courts Martial, unless they were members of the military.

- 2.70. The Crown's invasion of Ōpōtiki began on 8 September 1865, just three days after the Proclamation of Peace and declaration of martial law were published. It is highly unlikely news of these proclamations reached Whakatōhea ahead of the military.
- 2.71. On 4 September 1865, the Colonial Defence Minister ordered the East Coast Expeditionary Force (ECEP) to land at Ōpōtiki and seize 'the murderers' assumed to be residing there. The Minister hoped bloodshed could be avoided, but directed that, if there was resistance, 'no opportunity should in that case be lost of inflicting summary and effective punishment on the attacking force'.
- 2.72. On the morning of 8 September 1865, the ECEP, comprising 516 troops and officers, arrived off the coast at Ōpōtiki. Crown forces were transported aboard a flotilla of ships that included the landing vessel *Huntress*. At approximately 10am, the *Huntress* crossed the Ōpōtiki bar and landed an advance force of 100 troops near the settlement of Pākōwhai. They encountered no resistance and made no attempt to communicate with the people of Whakatōhea.
- 2.73. The following day Crown troops re-embarked aboard the *Huntress* which attempted to take them further upriver to attack Ōpōtiki. The vessel grounded on a sandbar and was left stranded and vulnerable. A party of Whakatōhea, assumed by the troops to be Pai Mārire, approached within range and opened fire to defend themselves against the Crown incursion. The men on board the *Huntress* returned fire with small arms and a six-pound cannon. Later a party of soldiers was landed on the opposite riverbank and fired on the defending party, forcing them to retreat.
- 2.74. It is likely that the first fatality was Tio Te Kāhika a rangatira and tohunga, associated with Ngāti Ngahere. Te Kāhika had connections with Ngāti Maru and had moved to the Whakatōhea rohe at some time around the 1830s. He had married Tarewa (or Tareka) from Ngāti Ngahere. Te Kāhika, who was also known as Pito, was around 70 years old at the time of the invasion. As a tohunga he appears to have adopted the Pai Mārire faith. Te Kāhika held social as well as spiritual authority, being described as the 'policeman' of Pākōwhai and the area around Ōpōtiki.
- 2.75. On the morning of 10 September Tio Te Kāhika crossed the tidal flat and stood on the opposite side of the river to the stranded *Huntress*. Te Kāhika discarded his cloak and standing clearly unarmed, began gesturing and chanting karakia. Two soldiers fired on Te Kāhika, who fell but was not killed. He continued chanting as the soldiers spent five minutes using him for target practice.
- 2.76. Crown troops then rowed over to retrieve the body of Te Kāhika. This was meant as a deliberate cultural insult; the troops knowing that Whakatōhea would be 'mortified at it falling into enemy hands.' The troops found Te Kāhika was still alive, despite having at least 13 bullet wounds, including a shot through the spine. The troops took Te Kāhika away; he died within an hour. His body was never returned to his whānau and no record has been found of its fate.
- 2.77. For the rest of that day, the crew of the *Huntress* 'blazed away' with their six-pound cannon, using the spire of Hiona [Völkner's] Church as an aiming mark to zero in on the settlement of Pākōwhai.
- 2.78. On 11 September 1865 a Crown force of about 90 men landed among the sand dunes opposite Pākōwhai. For about 20 minutes they exchanged fire with a Whakatōhea party,

2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

estimated at 90-100 strong. The Whakatōhea party then retreated and were chased through the sand dunes by the Crown force. Five or six Whakatōhea were reported to have been killed in this fight. The Crown force took the village of Pākōwhai, killing a man who did not fire on them but refused to come out of his whare.

- 2.79. Whakatōhea and Crown forces exchanged several volleys at Kohipāua pā, before the Whakatōhea party retreated into the bush. Rather than pursue them the Crown troops at Kohipāua looted and burnt the pā. During the initial attack the Crown claimed to have killed 12-13 Whakatōhea and wounded an unknown number. It is uncertain how many of the casualties were combatants. The Crown forces suffered no casualties.
- 2.80. Whakatōhea was unprepared for the Crown invasion, making it difficult for them to put up effective resistance. Many people appear to have left the Ōpōtiki area when the invasion began. The Crown initially made no attempt to engage with Whakatōhea to formally investigate Völkner's death.
- 2.81. The first record of such engagement was on 15 September, after Te Wai Hapu a Rangi, a cousin of 'Te Hira a Popo' (Hira Te Popo), asked the military commander how the Crown would react if Whakatōhea handed over Völkner's killers, gave up the 'Hauhau' faith and swore allegiance to the Crown. The commander told her that Whakatōhea must surrender unconditionally. Those not involved in the killing would be pardoned, but their land would be confiscated, while if anyone was 'proved to have taken an active part in the murder they would be arrested and dealt with for it.'
- 2.82. Crown troops remained in and around Ōpōtiki for several weeks. Fighting was infrequent and Crown forces spent much of their time looting and plundering the material resources of Whakatōhea. The alluvial plains around Pākōwhai and Ōpōtiki were scattered with prosperous settlements and well-tilled cultivations. Crown soldiers helped themselves to the abundance of food crops and livestock, which including kūmara, corn and potatoes, groves of apple and peach trees, pigs, geese, ducks, chickens, cattle and horses. Letters from troops and war correspondents gave triumphant descriptions of the looting of Ōpōtiki:

Pork chops, beef steaks, fowls and everything was good. In the village, we found potatoes enough to feed an army - pigs, cattle were swarming around. I remained on shore for five days after the village was taken during which time I had glorious fun.

The force now stationed there will live in clover for some time, as the place swarms with pigs, and tame herds of cattle graze around the very confines of the village. Potatoes, kumeras [sic] and corn abound so that the hardships of the time before the capture will be amply counterbalanced by the comforts of the occupation of Opotiki.
- 2.83. Crown forces were equipped with saddles but no horses. The Minister of Defence gave his approval to seize horses from Whakatōhea, and brand them as Government horses. The Wanganui Yeoman Cavalry later used looted horses in a cavalry charge at Te Tarata Pā.
- 2.84. Crown forces adopted a scorched earth approach and much of what could not be carried away was simply destroyed. Newspapers of the day carried approving reports detailing the burning of whare, the destruction of 'everything belonging to the Maories' [sic], the shooting of horses, and the destruction of food crops.

2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

The plantations about the place were all destroyed, acres of beautiful corn were being mowed down by the sword; melons and pumpkins which were just about ripe, were served up in the same manner.

The Crown's military aggression had a devastating impact on the economic base of Whakatōhea.

- 2.85. Crown forces also pillaged Whakatōhea of important cultural artefacts such as waka and the carved figurehead of a waka, pounamu, and various weapons, as well as household items, furniture and books, including Bibles. One officer boasted that the Crown troops had looted 'thousands [of pounds] worth of property belonging to them [Whakatōhea]'. To Whakatōhea the theft or destruction of taonga was a cultural and spiritual as well as an economic loss, given that taonga were and are seen as living things.

The Battle of Te Tarata

- 2.86. In the face of Crown aggression, the hapū of Whakatōhea took to their inland refuges at Whitikau, Toatoa and the upper Waiōweka Valley. Led by their rangatira Hira Te Popo, Ngāti Ira retreated to their fortifications at Te Tarata, Te Pua and Ōpekerau.
- 2.87. On 5 October 1865, a Crown force of 304 men surrounded Te Tarata Pā. There was a heavy exchange of fire and several Crown troops were wounded. The occupants of the nearby Te Pua Pā heard the attack and sent a small party to reinforce Te Tarata. The Crown troops mounted a cavalry charge against the reinforcements, with estimates that up to 20 Whakatōhea were killed and several more wounded. Among the wounded was the rangatira Paora Taia, who received a severe sabre cut to his head.
- 2.88. Later that evening, at 8:00 pm, the Crown forces surrounding Te Tarata demanded the unconditional surrender of all inside the pā. The occupants of the pā asked for an hour to consider their surrender, expressing fears that they would all be killed regardless. During the one-hour cease fire the defenders slashed the palisade lashings and broke out of the pā.
- 2.89. In the fighting that followed Crown troops killed more Whakatōhea, but the majority escaped into the bush. Hira Te Popo, who had led Ngāti Ira in the battle, was among those who escaped. Crown forces then destroyed the pā. Approximately 35 Whakatōhea warriors were killed at Te Tarata and up to 40 more wounded.
- 2.90. After the battle Crown forces destroyed Te Tarata pā, burying the Whakatōhea dead in its trenches. In contrast the Crown gave formal burials to three of its own soldiers killed in the battle. In later years, a milking shed was built on the site where the Whakatōhea dead were interred.

Whakatōhea surrender to the Crown

- 2.91. The defeat at Te Tarata Pā was another devastating blow to Whakatōhea. In the weeks following the battle, large numbers of Whakatōhea surrendered. On 18 October around 50 Whakatōhea men, women and children came out of the bush and gave themselves up to the Crown forces. They were followed, two days later, by an additional 100 men and 120 women of Ngāti Ngahere, Ngāti Rua and Ngāi Tama hapū. In late October 200 Ngāti Rua and some sections of Ngāti Patu surrendered.
- 2.92. Among those who surrendered at this time were Mokomoko of Ngāti Patu and Paora Taia, of Ngāi Tama, who had been severely wounded at Te Tarata. The officer in

TE MĀKEOTANGA – DEED OF SETTLEMENT

2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

command was informed that Taia was unconnected with Völkner's murder and advised that Taia be released after taking the oath of allegiance.

- 2.93. By 4 November, less than two weeks later, the commanding officer had arrested Paora Taia for Völkner's murder. It is not clear what evidence the officer had for charging Taia with this crime.
- 2.94. On 30 December 1865, after receiving the Attorney General's opinion, the Crown released a memorandum on Courts Martial. The Crown stated that, as "peace and the authority of the law" had been restored, those accused of the murders of Völkner and others should be tried in the Supreme Court, rather than in Courts Martial.
- 2.95. In March 1866, Paora Taia, along with Mokomoko and three other men, was tried at the Supreme Court in Auckland for the murder of Völkner. Taia was found not guilty and released to return to the eastern Bay of Plenty.
- 2.96. Despite concluding that peace and order had been restored to the Whakatāne and Ōpōtiki districts, the Crown did not lift Martial Law until January 1867.

Whakatōhea casualties

- 2.97. The Whakatōhea casualties during the invasion have been estimated at around 60 dead, while the number of wounded are unknown. This was a very high fatality rate, probably around ten percent of the Whakatōhea population at that time.

CHAPTER 6: TE RAUPATU O TE WHAKATŌHEA

- 2.98. Governor Grey had raised the spectre of confiscation even before Crown forces were sent to Ōpōtiki. On 2 September 1865, Grey proclaimed that if Völkner's killers were not given up, he would 'seize a part of the lands of the tribes who conceal these murderers, and will use them for the purpose of maintaining peace in that part of the country, and for providing for the widows and relatives of the murdered people.'
- 2.99. The New Zealand Settlements Act 1863 was the mechanism that enabled Grey to carry out his threat. This Act had been passed by Parliament despite vociferous opposition by a small number of dissenting members. The Act enabled the confiscation of land from iwi deemed to be 'engaged in open rebellion against Her Majesty's authority'. The purpose of the Act was to establish militarised settlements, for the 'protection and security of well-disposed inhabitants of both races'. The Crown's proclamation under the Act branded iwi such as Whakatōhea with the stigma of being 'evil-disposed persons' who had committed 'outrages against lives and property' and therefore supposedly deserved to have their land confiscated.
- 2.100. The Crown proclaimed the confiscation of land in the Bay of Plenty in January 1866, just four months after Crown forces were sent to Ōpōtiki. The Crown confiscated a vast district including lands belonging to Whakatōhea and a number of neighbouring iwi. The Crown took no account of traditional boundaries between hapū or iwi. The confiscation area boundaries enclosed the most fertile and cultivatable areas in the Whakatōhea rohe, while excluding the more difficult inland country.
- 2.101. The proclamation defined the boundaries of the confiscated district as:

All that land bounded by a line commencing at the mouth of the Waitahanui River, Bay of Plenty, and running due south for a distance of twenty miles, thence to the summit of (Mount Edgecombe) Putanaki [sic: Putauaki]; thence by a straight line

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2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

in an easterly direction to a point eleven miles due south from the entrance to the Ōhiwa Harbour; thence by a line running due east for twenty miles; thence by a line to the mouth of the Ararapara River, and thence following the coast line to the point of commencement at Waitahanui.

- 2.102. The total area in the proclaimed confiscation district was approximately 448,000 acres. Approximately 118,300 acres was subsequently returned to 'loyal' Māori and an additional 112,300 acres was returned to formerly 'rebel' Māori who had submitted to the Crown's authority. A 1928 Crown Commission put the net total of confiscated land, after lands were returned, at 211,060 acres. Of this, the vast majority, approximately 144,000 acres, had formerly belonged to Te Whakatōhea.
- 2.103. The Crown's confiscation and subsequent retention of Whakatōhea land was indiscriminate, excessive and punitive. It confiscated land from all Whakatōhea hapū, without investigating whether they played a role in Völkner's death. The Crown and Pākehā settlers benefitted significantly from confiscations in the eastern Bay of Plenty and elsewhere. In 1871 Colonel Haultain, the former Minister for Colonial Defence, told Native Minister McLean, 'the Maoris have always been loth [i.e. reluctant] to part with their fertile land, and it is chiefly by confiscation that we have obtained any large tracts of really good land'.
- 2.104. The confiscation caused utter devastation for Whakatōhea, who lost everything between Ōhiwa Harbour and the Waiaua River including 'all the flat and useful land', the rich alluvial soils surrounding Ōpōtiki and Pākōwhai. The Crown confiscated around 18 of the approximately 21 miles (approximately 29 of 34 km or 86%) of the Whakatōhea coastline. The loss of coastline and rivers deprived Whakatōhea of the mahinga kai resources for eels, shellfish, flounder, kahawai, mullet and sharks at Ōhiwa, Waiōtahe, Waioweka, Ōtara and Tirohanga.
- 2.105. The Crown destroyed Whakatōhea homes, villages and took taonga. The Crown also took control of the infrastructure Whakatōhea had built up in their rohe, including ships, roads and bridges. The Crown sold looted Whakatōhea property to Pākehā buyers, including horses, cattle and the complete machinery of the Ngāti Ira flour mill.
- 2.106. The legacy of raupatu is felt keenly among the hapū of Whakatōhea to the present day. The raupatu, along with the Crown violence and looting that preceded it, largely destroyed the thriving economy that Whakatōhea had built up since the 1840s. Raupatu also caused great cultural and spiritual loss as Whakatōhea were cut off from access to their traditional sites.

CHAPTER 7: MOKOMOKO

- 2.107. Mokomoko was a member of Ngāti Patumoana and Te Ūpokorehe. He was born in Ōpōtiki and lived in pā at Paerata, Waiōtahe and Maraerohutu. Mokomoko was the great-grandson of the paramount Whakatōhea and Ngāti Patu rangatira Ruamoko. Mokomoko had three wives, Kimohia, Horiaana and Hirotipa. At the time of his execution, he was survived by two of his wives Horiaana and Hirotipa, and by five children; Hohi, Mahanga and Tapae to Kimohia, and Te Warana and Tekau to Hirotipa.
- 2.108. Mokomoko was a leading figure in re-establishing Te Whakatōhea in the Ōhiwa Harbour area following warfare and disruption during the 1830s. Whānau oral traditions state Mokomoko lived at various pā between Maraetotara and Paerata, with his main pā being Maraerohutu located at Paerata. His lands consisted of 7,400 acres (3000 hectares) that lay directly beyond Maraerohutu. Most of this land was cultivated and provided an

2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

established source of revenue, with goods being transported aboard his trading ships for trade.

- 2.109. During the 1840s and 1850s and up until his surrender in 1865, Mokomoko was responsible for protecting the western boundary of the Whakatōhea rohe. This role brought him into direct conflict with neighbouring iwi.
- 2.110. During the early 1860s Mokomoko and the other Whakatōhea Rangatira were aware of the land conflicts between Maori and Crown forces in the Waikato region. Initially, Te Whakatōhea was not involved in the Waikato War given its locality, however Whakatōhea support was prompted after Crown forces occupied land at Te Papa in the Waikato/Bay of Plenty district.
- 2.111. Mokomoko whānau oral tradition states that in February 1864, Mokomoko successfully led a small ope made up of his whanaunga of a southern neighboring iwi, to support the Kingitanga forces in the Waikato.
- 2.112. After providing support to Kingitanga forces at Ōrākau, Mokomoko returned to the Ōhiwa harbour area. The journey back was via Tauranga Moana, where he stayed with whanaunga and other friendly hapū. Mokomoko actively supported his whanaunga in the battle at Pukehinahina.
- 2.113. Mokomoko was in Ōpōtiki in February 1865, when the Pai Mārire delegation arrived there. Mokomoko was at the meeting where the Pai Mārire group and their supporters decided to hang Völkner, but he maintained Whakatōhea had resisted demands to hand Völkner and the other Pākehā over to the Pai Mārire leaders for execution.
- 2.114. Mokomoko later testified that he left Ōpōtiki on the night of the meeting, returning to his settlement before the execution took place. At least three witnesses stated that Mokomoko was not present when Völkner was killed.
- 2.115. In the invasion of September 1865, Crown forces attacked before making any attempt to communicate with Whakatōhea or ascertain who was responsible for Völkner's killing. Prior to raupatu, Mokomoko's pā and lands at Paerata and Maraerohotu were seized by Crown troops and the pā destroyed, along with a large quantity of Mokomoko's potatoes, kumara and wheat crops. It is remembered in Mokomoko whānau oral tradition that at Maraerohotu a number of Crown troops raped, abused, and killed Mokomoko's first wife Kimohia, mutilated her body and then threw her over a cliffside.
- 2.116. In late October, a Crown officer reported that Mokomoko and twenty followers had surrendered to Crown forces. According to whānau traditions, Mokomoko surrendered to help end the fighting and prevent further harm coming to Whakatōhea. Mokomoko did not expect to be accused of Völkner's murder.
- 2.117. At the time Mokomoko surrendered there was no indication Crown officials considered him a suspect in Völkner's killing. The expeditionary force officer who accepted his surrender wrote to the Defence Minister the next day, 'I find it very difficult to arrive at the truth of who were the real murderers of Mr. Volkner.' In this letter the officer asked for any information that would help identify the killers.
- 2.118. By 4 November 1865, the officer had arrested Mokomoko, alleging that he had been 'concerned in the Volkner murder'. Another Whakatōhea man and three men from other iwi were also held as murder suspects. There is no clear indication from written or oral sources as to why the officer decided Mokomoko was a suspect.

2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

The trial of Mokomoko

- 2.119. The Crown established a Court Martial, at Ōpōtiki in November 1865, to try those they had accused of killing a Government official and others at Whakatāne and of killing Völkner at Ōpōtiki. In December the Attorney-General gave his opinion that the Court Martial was illegal and its proceedings had no standing. The Crown then decided that those tried by the Court Martial would have to be tried again by the Supreme Court. No evidence has been found that Mokomoko and his co-accused were tried before the Court Martial was disbanded.
- 2.120. In March 1866, the Crown transferred Mokomoko and his co-accused to Auckland to face a Supreme Court trial. Their trial began on 27 March 1866, with the Chief Justice presiding as judge. The defendants were tried as a group, with one lawyer acting as defence counsel for them all.
- 2.121. Although the trial of Mokomoko and his co-defendants began on 27 March, it had to be restarted from the beginning on 28 March. A juror had committed contempt of court, resulting in the Judge dismissing the original jury. An entirely new jury was empanelled with the whole case then being reheard over one day. Both juries were composed solely of Pākehā men.
- 2.122. The Crown called six witnesses, the first simply giving details of the scene of the crime and not mentioning Mokomoko at all. The second witness, the missionary who had been held captive with Völkner, also made no mention of Mokomoko.
- 2.123. Another Crown witness said Mokomoko was in Ōpōtiki at the time Völkner was killed, but was not among the group who took him to be hanged. This witness stated that a member of the execution party took a rope from Mokomoko's horse, which was later used to hang Völkner.
- 2.124. A further prosecution witness stated he saw Mokomoko in Ōpōtiki on the day of the hanging, but not among Völkner's executioners. Mokomoko was instead some distance away from the execution.
- 2.125. One of the prosecution witnesses was a Pākehā resident of Ōpōtiki who, in June 1865, had made a formal statement to a Crown official, claiming to give an eyewitness account of Völkner's murder. In the June 1865 statement, the witness did not claim Mokomoko had any involvement in the murder. The June statement did include the allegation that Mokomoko had sent for the Pai Mārire leaders when Völkner returned to Ōpōtiki.
- 2.126. When called as a witness in Court, this man gave evidence that contradicted much of his statement of June 1865. The witness now told the Court that Mokomoko was among those who had taken Völkner to his death and that he had carried the rope used to hang the missionary.
- 2.127. Another prosecution witness was a rangatira from a neighbouring iwi, who had a long history of personal enmity with Mokomoko. This included a series of disputes over the iwi boundary marker at Maraetotara, in the west of the Ōhiwa Harbour.
- 2.128. This witness told the Court Mokomoko was in command of the armed party that led Völkner to his death. He also claimed Mokomoko was carrying a gun rather than a rope, as the rope and block used to hang Völkner were already set up.
- 2.129. While the defence lawyer cross-examined the Crown's witnesses, he did not call any defence witnesses. It was standard practice that defendants were not called to give

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evidence in their own trials and Mokomoko and his co-defendants had no opportunity to speak in their own defence.

- 2.130. On Thursday 29 March 1866, the jury found Mokomoko, along with three other defendants from neighbouring iwi, guilty of Völkner's murder, despite the discrepancies in the evidence. The jury recommended mercy for the youngest of those convicted, who was still in his teens. The jury found the other accused Whakatōhea man not guilty.
- 2.131. The Court was adjourned until 4 April 1866, as the defence lawyer had asked to be allowed to call character witnesses before sentencing. On 4 April the convicted men were called on to speak for the first time. Mokomoko and two of the convicted men denied the evidence given by the rangatira from the neighbouring iwi. They stated the rangatira was a leader of the Pai Mārire group and had played a prominent role in Völkner's death.
- 2.132. In their statements to the Court, Mokomoko and the other convicted men all maintained that the Pākehā who claimed to have seen Mokomoko with the rope had given false evidence and was not present when Völkner was killed.
- 2.133. The missionary who had appeared as a Crown witness was also deeply concerned over the evidence given at the trial. On 31 March 1866, before the convicted men had been sentenced, the missionary wrote to the Chief Justice, who had also been the trial judge. The missionary pointed out the discrepancies between the alleged eyewitness's original June 1865 statement and the evidence that same witness gave in Court.
- 2.134. The Chief Justice passed these concerns on to Governor Sir George Grey, but recommended they be discounted. The Chief Justice suggested the discrepancies between the witnesses' statement in June 1865 and the evidence he gave in Court in March 1866, were due to the witness, who was Portuguese, being more fluent in te reo Māori than he was in English. The Governor followed the recommendation of the Chief Justice and of Government Ministers that the death sentence should be carried out.
- 2.135. After the trial, another Pākehā commentator raised the issue of an Ōpōtiki ship's captain, who claimed to have been a witness to Völkner's execution, but had not been called as a witness at the trial. According to the commentator, the ship's captain maintained Mokomoko had not been present at the hanging.

The sentencing and execution of Mokomoko

- 2.136. The convicted men were sentenced on 7 April 1866, with the Judge imposing the death penalty on Mokomoko and two of the other men. The Governor followed the recommendation of the Chief Justice and of Government Ministers to commute the death sentence for the youngest man, who was released from custody a year later.
- 2.137. Mokomoko maintained his innocence until the end. On Wednesday 16 May 1866, the day before his execution, Mokomoko and the other condemned men were visited by a Member of the House of Representatives (MHR), who had previously tried to intercede on their behalf. The MHR received an acknowledgement of guilt from the other two men, but Mokomoko, 'solemnly protested his innocence'. The two men who had confessed their own guilt agreed that Mokomoko was innocent of Völkner's murder and had not been present when he was killed.
- 2.138. The MHR visited Mokomoko again on the morning of the execution, when Mokomoko once again pleaded his innocence. He also told the MHR that he hoped that neighbouring iwi would not profit from his death by getting possession of his land.

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- 2.139. Relatives of Mokomoko applied to be given custody of his body after the execution, pointing out that in several recent cases the bodies of executed Pākehā had been released. According to Te Whānau a Mokomoko oral histories, Crown authorities told Mokomoko his body would be returned to his relatives. Newspapers reported that the Sheriff of Auckland, before the execution, told the relatives that the body would not be given up, but Mokomoko was not informed of this.
- 2.140. As the rope was placed around his neck, Mokomoko turned to his executioners and declared 'Hei kona, e pākehā mā. E mate hara kore au. Hei aha (Farewell Pākehā. I die innocent. So be it)'.
- 2.141. The Mokomoko whānau and Whakatōhea today maintain that Mokomoko was innocent, that he did not receive a fair trial and should not have been executed for the killing of Völkner.

Stigma and shame: The impact on Te Whānau-a-Mokomoko

- 2.142. The arrest, trial and execution of Mokomoko led to him and his whānau being blamed for the confiscation of almost all of the productive Whakatōhea lands. In 2003 the great, great grandson of Mokomoko, detailed the sense of shame and stigma that the whānau had and continue to suffer:

Not only has the family had to live with the shame and stigma of him being accused of murdering Volkner and hung, we also had to deal with the accusations made against us, including from our own people, that we brought the raupatu to Whakatōhea. Our whānau has been branded murderers and criminals. Some of our whānau would not take the Mokomoko name. Some of our whānau have attempted to delete Mokomoko from their whakapapa.

- 2.143. As a result of the fighting in 1865, the whānau was reduced to less than 30 women and children, who took refuge with their whanaunga in Te Urewera, where they lived in the forests on roots and berries. They were sheltered by their relatives, but the Crown's military intervention in Te Urewera eventually forced them out. Mokomoko whānau oral tradition states the whānau and their relatives were specifically targeted by the military. The Mokomoko whānau returned to the Ōhiwa Harbour area where they became part of a labour force for former soldiers and other settlers on confiscated Whakatōhea land.
- 2.144. According to the oral traditions of the Mokomoko whānau, the women were 'used and abused by the Military settlers'. Elders of the Mokomoko whānau reported they obeyed the settlers' every command, 'They were always right, we were afraid to question or refuse, we were treated worse than servants, we could not resist'. Other oral histories recall the whānau being treated as less than animals. The whānau survived by doing marginal work digging drains and breaking wild horses.

The return of Mokomoko and campaign for a pardon

- 2.145. In October 1987 the Te Whānau-a-Mokomoko Committee resolved to work for the exhumation and re-interment of Mokomoko and to campaign for recognition of Mokomoko's innocence. In 1988 the Crown agreed to release the bodies of Mokomoko, and those buried with him, from Mt Eden jail. Mokomoko was re-interred, on 21 October 1989, at Waiaua urupā.
- 2.146. In 1990 the Mokomoko whānau lobbied to have the Crown formally recognise Mokomoko's innocence. The Whānau aspiration has always been acquittal, which, due to legal confines, cannot be pursued. As acquittal was unachievable, the whānau's initial

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request to the Crown sought statutory intervention equivalent to an acquittal. In December 1990 the Crown considered that the case presented was not sufficient for a posthumous pardon. The Mokomoko whānau presented more evidence in 1991 and filed the Wai 203 claim with the Waitangi Tribunal, which sought recognition of Mokomoko's innocence and raised other grievances with the Crown.

- 2.147. On 15 June 1992 the Governor-General granted Mokomoko a free pardon. The Mokomoko whānau were not consulted on the wording of the pardon and considered it did not restore the mana, character and reputation of their tipuna. The whānau and the Crown came to an agreement in 2011, leading to Parliament passing the Mokomoko (Restoration of Mana, Character and Reputation) Act Te Ture O Mokomoko (Hei Whakahoki i te Ihi, te Mana, me te Rangatiratanga) in 2013. The Act stated, 'It is declared on and after the passing of this Act, the character, mana, and reputation of Mokomoko are restored and the character, mana, and reputation of his uri are restored.'

The impact of the Crown's treatment of Mokomoko on Whakatōhea

- 2.148. Whakatōhea consider that the Crown used the criminal offence of Völkner's murder as a pretext to invade the Whakatōhea rohe, exposing Whakatōhea to military violence, including the cavalry charge at Te Tarata.
- 2.149. Whakatōhea also consider that Mokomoko was innocent of Völkner's murder, but that the Crown used his conviction to justify confiscating Whakatōhea lands. This gave rise to the false impression that the suffering of Whakatōhea was due to actions of Mokomoko, rather than the actions of the Crown. Such a misunderstanding led over time to acts of retribution from some members of Whakatōhea towards the Mokomoko whānau.

CHAPTER 8: THE ŌPAPE NATIVE RESERVE

- 2.150. Following the invasion and the confiscation of their lands, the majority of Whakatōhea were forced to move to Ōpape. The Crown's creation of the Ōpape Native Reserve on confiscated Whakatōhea land has been described by one historian as, 'New Zealand's closest equivalent to a North American Reservation'.
- 2.151. Ōpape, in the north-eastern reaches of the Whakatōhea rohe, was the traditional territory of Ngāti Rua. The Crown confiscated Ngāti Rua lands despite evidence the hapū had played no part in the killing of Völkner.
- 2.152. In early 1866 the Crown appointed a Special Commissioner of Claims to the Bay of Plenty. In April 1866, acting on the instructions of Frederick Whitaker, the Superintendent of Auckland Province, the Commissioner allocated confiscated land at Ōpape for Whakatōhea 'surrendered rebels.' The Commissioner later wrote, 'I immediately moved the said tribe from Opotiki Valley and located it at Opape.'
- 2.153. In May 1866 the Commissioner reported that he had allotted between 3,200 and 4,000 acres at Ōpape, noting that 260 Whakatōhea men, women and children were now on the land. He estimated about 500 Whakatōhea had yet to surrender and intended to settle them on Ōpape when they did. He was also considering relocating about 30 Te Ūpokorehe from Ōhiwa to Ōpape.
- 2.154. One of the reasons the Special Commissioner gave for allotting land at Ōpape was that its geographical features separated it from confiscated land granted to Pākehā settlers. The Commissioner deliberately allotted only a limited amount of good quality land to the Ōpape reserve. He believed around 1,500 acres was good farmland in the Waiaua

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Valley, a similar area was land 'which though unadapted for European labor is well suited for Maori cultivations', and about 1,000 acres was swamp or rough, hilly country. The Commissioner was careful to stress that Whakatōhea would only get a small amount of good land, noting, 'I thought the whole of the Waiawa [sic] Valley was too large for them.'

- 2.155. The area within the boundaries of the Ōpape Native Reserve was not accurately defined until the survey of 1880, when it was found to contain around 20,300 acres. Despite the reserve being larger than the Commissioner had originally envisaged, it contained very little fertile land. The Native Land Commission of 1907 stated, 'It is not good land, and at best can only be called second-class land.' In 1914 petitioners Mēhaka Wātene, Tauhā Nikora and Paora Taia complained of, 'the sterility of the land-broken with numerous cliffs and gullies-only about 200 acres of Ōpape Reserve being ploughable...'
- 2.156. Whakatōhea accounts relate that hapū may have had some say in the allocation of Ōpape. In 1895, Ranapia Waihuka stated that in 1866 the Crown had offered to settle most of Whakatōhea either at Ōhiwa or Ōpape, leading Ngāti Rua to offer Ōpape as their crops were growing there. Rewita Niwa, in 1902, stated that the Special Commissioner had told Whakatōhea to move to Ōpape and Waiaua. Whakatōhea had agreed to go to avoid the fighting that was still going on near Ōpōtiki.
- 2.157. In May 1866, Whakatōhea at Ōpape were reported to be preparing the ground for cultivation, catching fish and trading the surplus catch with the occupying military. The military then took Whakatōhea's only remaining ocean-going waka, which the iwi needed for fishing in the winter months. Whakatōhea, who had owned a fleet of trading ships and fishing waka, were now forced to ask the Crown to provide them with an ocean-going canoe.
- 2.158. The Crown allocated confiscated Ōpape land to Ngāti Ira, Ngāti Patu, Ngāti Ngahere, Ngāi Tama, Te Ūpokorehe and Ngāti Rua. Ngāti Rua effectively lost control of much of their own land when their relatives were forcibly moved on to Ōpape.
- 2.159. The Crown had confiscated nearly all of the lands of Ngāti Ira, Ngāti Patu, Ngāti Ngahere, Ngāi Tama at Waiōtahi, Paerātā, Hikutaia, Pakowhai and Waioweka. The Crown also took land from Te Ūpokorehe, but allocated reserves at Hiwarau and Hokianga Island at Ōhiwa. Some hapū were moved to Ōpape in 1866, but others did not move there until years later. While some Te Ūpokorehe moved to Ōpape others stayed at Ōhiwa. Most Ngāti Ngahere did not take up residence at Ōpape.
- 2.160. The first official description of the boundaries of the Ōpape Reserve was given in June 1867, setting out the geography without any indication of the area covered:

Bounded on the North by the sea; on the East by a line from point Titoi to Tarakeha, thence to Tawatihitihi, thence by a straight line running through Puketeko to the southern boundary of the confiscated block, on the West by Waiawa River [sic] from its mouth to the point where it passes between Makeo and Wakahau Hill to the southern boundary of the confiscated block; on the South by the boundary of the confiscated block.

- 2.161. The Ōpape Native Reserve contained just one and a half miles (2.4 km) of coastline between Waiaua River and Ōpape. Whakatōhea lost around 18 miles (29 km) of coastline in the confiscation.
- 2.162. The Crown's forcible resettlement of Whakatōhea on the Ōpape Native Reserve had drastic and lasting impacts. Ngāti Rua had to bear the burden of all the other Whakatōhea hapū being forced on to Ngāti Rua lands. With the Whakatōhea access to arable land

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and natural resources now severely diminished, tensions flared between the various hapū. In 1872, the Commissioner reported that the hapū of Whakatōhea 'were quarrelling about the possession of their cultivations on the land' and that the land at Ōpape 'is now an apple of discord'.

- 2.163. When the Ōpape Native Reserve was established the Special Commissioner allocated each Whakatōhea hapū a coastal farm block and a bush block. The subdivisions were not surveyed until 1880, followed in 1883 by Crown officials issuing lists of names for 13 subdivisions of the original Ōpape block.
- 2.164. The Crown officials took no account of the wishes or traditions of Ngāti Rua when allocating the subdivisions to the various Whakatōhea hapū. They did, however, allocate land according to traditional connections between hapū. Te Ūpokorehe and Ngāti Patu were assigned adjacent blocks, as Ngāti Patu had been based at Waioatahe and had many intermarriages with Te Ūpokorehe. Ngāti Ira also had land adjacent to Ngāti Patu, reflecting the historical connections between the hapū.
- 2.165. The original subdivisions were: Ngāti Rua, blocks 3 and 12 (total area around 6660 acres) Ngāi Tama, blocks 1 and 11 (around 5703 acres); Ngāti Ngāhere, blocks 2 and 10 (around 2868 acres); Ngāti Patu, blocks 5 and 9 (around 1879 acres); Ngāti Ira, blocks 6 and 8 (around 1118 acres) and Te Ūpokorehe, blocks 7 and 4 (around 704 acres).
- 2.166. Between 1880 and 1883, an additional subdivision, block 3A of 660 acres, was surveyed out for Ngāti Muriwai, a small hapū with close whakapapa connections to Ngāti Rua. Paku Erūera, of Ngāti Rua, successfully applied for a subdivision to be made for Ngāti Muriwai, as his grandfather Eru Pōnaho was from that hapū. Ngāti Muriwai had originally been included in the list of Ngāti Rua names and many Ngāti Rua opposed a separate grant of land being made to them. The Crown went ahead with the subdivision, on the condition that Ngāti Muriwai covered the cost of the survey.
- 2.167. The Governor directed that Crown Grants for the subdivisions should be issued, but as the relevant legislation had been repealed there was no authority to issue the titles. The Ōpape Native Reserve technically remained Crown land until the early 1900s.
- 2.168. In 1904 new legislation empowered the Native Land Court to determine the legal titles to the Ōpape Native Reserve subdivisions. From February 1904 the Court heard partition applications and ordered lists of owners' names to be handed in. The partitions made by the Court in 1904 were formally validated at a further Native Land Court sitting in 1907.

CHAPTER 9: THE COMPENSATION PROCESS

- 2.169. Land confiscation under the New Zealand Settlements Act 1863 was a blunt instrument. Its impacts were felt by all members of an affected iwi, not just those who had supposedly been in 'rebellion'. The New Zealand Settlements Act 1863 and subsequent amendments provided for the establishment of a Court to compensate 'loyal' Māori who had lost land through confiscation through the return of land, by making cash payments, or by issuing land scrip.
- 2.170. The months immediately preceding the sitting of the Compensation Court in Ōpōtiki were marked by ongoing tensions and sporadic fighting in the Whakatōhea rohe. The Ōpōtiki area remained under martial law until January 1867. There were several violent episodes during court proceedings, involving the occasional loss of life, and these likely impacted the operation of the Compensation Court and the wider process of returning confiscated land.

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- 2.171. The Compensation Court sat in Ōpōtiki from 7 March 1867. There were over 160 claims registered but not all claims were heard. The Court set out to determine if the claimants had been in rebellion or had been involved with Pai Mārire. Section 4 of the Confiscated Lands Act 1867 allowed the Governor to grant lands 'to such persons of the Native race as shall be proved to his satisfaction to have been in rebellion and have subsequently submitted to the Queen's authority'. The Crown provided no compensation to anyone it deemed to have been in rebellion who had then failed to surrender when the Crown called on them to do so.
- 2.172. Once claimants had established their 'loyalty' in the Court, the ancestral basis of their claims were considered by a Special Commissioner appointed by the Crown. The Commissioner was given wide-ranging powers but little time to exercise them. He negotiated the return of confiscated lands with Whakatōhea and with a number of neighbouring iwi during hearings at Ōpōtiki, Maketū and Te Awa o te Atua, (Matatā). Despite the complexities of the cases, they were generally decided very rapidly in comparison with Native Land Court title investigation.
- 2.173. Where claims were approved by the Court, grants of land, cash and, in one case, a cow were made. The Court dismissed claims it did not consider proved. Contrary to customary forms of Māori land tenure, a successful claimant was granted individual title to land. This was part of a process that transformed communally owned land held under customary papatipu title to individual private property.
- 2.174. The Special Commissioner made a number of out-of-court settlements with individual Whakatōhea rangatira and in a small number of cases created reserves for hapū. Some of these arrangements were made before the Compensation Court sat. The hapū reserves were not awarded to the hapū itself, but to lists of hapū members. The lists of members were usually drawn up by the Crown, not by the hapū in question.
- 2.175. Among the individual settlements for rangatira were 50-acre blocks at Tirohanga granted to Rānapia Te Ūatahi, Piri Te Makarīni and Rangimātānuku. Rānapia was granted an additional 50 acres at Ōpōtiki for his attempt to save Völkner's life. Tiwai Piahana was granted £50 and 230.5 acres of land at Ōpōtiki, Ohui and Onekawa for 'loyalty'.
- 2.176. In addition, 50 acres were granted to Rewiri Te Rapata Moka (Ngāti Ira), 48 acres to Miriama Makawe (Ngāi Tama), 25 acres to Te Merimana and 100 acres to Hohi Ngapuhi (Ngāi Tama) at Waioweka.
- 2.177. Ngāti Ira were granted 102 acres at Ōpōtiki and 300 acres at Waioweka. Hira Te Popo, Pera Makau, Wharenui, Tuwhakia, Maka Rangihū, Hane Tapatahi and Mihaka Mataika were named as trustees for this land. Ngāti Ira were later also granted 9 acres at Te Rere, Ngāti Rua were granted 11 acres at Te Ngaio and Ngāi Tama and Ngāti Ngahere were granted 12 acres at Te Rere.
- 2.178. The Special Commissioner arranged Crown grants of reserves at Hiwarau and Hokianga to the 'Loyal Natives' and 'Returned Rebels' of Te Ūpokorehe. The Hiwarau block is steep, marginal land, that is difficult to cultivate, while Hokianga is a small island. Both are located at Ōhiwa Harbour, toward the western end of the Whakatōhea rohe.
- 2.179. In December 1866, before the sitting of the Compensation Court, the Crown official agreed to award a Te Ūpokorehe reserve of around 1,500 acres at Hiwarau. By April 1867 he had also agreed to award them Hokianga Island as a reserve. The two reserves were not officially proclaimed until November 1874, with Hokianga Island, of just under 14 acres, granted to 48 members of 'Upokorehe Hapu', with four trustees. The Hiwarau

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block, now described as only 1073 acres, was granted to 66 'Members of the Upokorehe Tribe', with seven trustees. The Crown grant of the Hiwarau block was not registered until June 1886, when the area was recorded as 1260 acres.

CHAPTER 10: WHAKATŌHEA AND TE KOOTI 1868-1888

- 2.180. Whakatōhea tradition records that, in mid-1868, Whakatōhea heard of the escape of Te Kooti Arikirangi from Wharekauri (the Chatham Islands) and of his "Ameko, Iperene, Ūtiera" prophecy. Many were excited that Te Kooti might come to their rohe, believing he was under the protection of God.

Ameko: Ā, kua kaha tōku wairua ki te whakaora i tōku iwi, e kore tētahi kē atu e kaha ake i ahau. Awhi mai ki ahau i roto i te ponangatanga, ā, māku koutou e whakateitei ake.

Iperene: I tēnei wā ka whakahoki ahau i tōku iwi ka whakatupu ahau i a rātou, e kore anō tētahi ringa e pā atu ki a rātou ā muri nei.

Ūtiera: Ū tonu taku riri ki ngā iwi nāna i whakamate tōku iwi, ka whakamate ahau i ngā mātua, ā, tae noa ki ngā tamariki, e kore e tākina taku riri ake, ake.

Ameko: My spirit is empowered to save my people and no other shall be stronger than I. Draw near to me in your bondage and I will raise you up.

Iperene: At this time I shall return my people and I will nourish them, and no hand shall be raised against them after this.

Ūtiera: My wrath shall always abide on those who oppress my people, I will punish the parents and even the children, my anger will never abate.

- 2.181. In late 1868, while based at Ngā Tapa, Te Kooti sent two emissaries to Hira Te Popo and Ngāti Ira, seeking their active support. Ngāti Ira agreed to support Te Kooti and Hira Te Popo wrote to other Whakatōhea hapū encouraging them to do the same.
- 2.182. Crown forces took Ngā Tapa in early January 1869 and summarily executed many of the prisoners taken after the battle. Te Kooti escaped with about 30 followers and made his way to the Waioweka gorge. Hira Te Popo sheltered Te Kooti and his people at Maraetahi, near his own village.
- 2.183. Ngāti Ira soon accepted the teachings of Te Kooti, which many other Whakatōhea also came to identify with. According to Whakatōhea tradition, they saw the faith of Te Kooti as springing from the oppression he had suffered at the hands of the Crown, experiences very similar to their own sufferings. Whakatōhea saw Te Kooti as being unjustly persecuted by the Crown, in the same way it was persecuting them. The faith that became known as Ringatū also resonated with Whakatōhea as its tikanga encouraged the continuation of many of their traditional practices.
- 2.184. Ngāti Ira and other Whakatōhea converts believed that by following Te Kooti's teachings their mana would be upheld and they would receive justice. At Waioweka Te Kooti made the following new prophecy, stating that God would act as an eternal father who would save the remnant of his people, drive out their oppressors and restore their lands:

Te kupu whakaari ki Waioeka

I. Eripi

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Ko ahau hei matau mo koutou ake ake

Tani

II. Ka whakaorangia e ahau te toenga o te tangata i hanga e toku ringa i timatanga ake ake

III. Ka pei ahau i te hūnga kino. Ka whakahou ahau i nga rohe o Reneti = Hawira.

The prophetic saying at Waioeka

I. Eripi

I shall be as father for you forever

Tani

II. I shall save the remnant of the people who were formed by my hand from the beginning and ever after

III. I shall drive out the wicked. I shall restore the borders of Reneti= Hawira.

- 2.185. Te Kooti established Maraetahi as his refuge and base of operations. Ngāti Ira built him a substantial kainga; including a large whare karakia or house of prayer. They planted extensive gardens, with acres of maize, taro and other vegetables.
- 2.186. Te Kooti left Maraetahi in mid-February 1869, not returning for a year. In early March 1869, he sent a force to Hokianga Island in Ōhiwa Harbour. Crown officials reported that the force captured a number of Te Upokorehe. Many of these Upokorehe 'prisoners' became followers of Te Kooti and the Hokianga people may have gone voluntarily with his force.
- 2.187. In the late 1860s Whakatōhea were in disarray following the Crown's military intervention, its plundering and destruction of Whakatōhea property and the confiscation of their land. The Crown stigmatised Whakatōhea as 'rebels' and maintained a strong Crown military presence in their rohe. According to Whakatōhea tradition, having lost almost everything through Crown actions, some Whakatōhea decided to fight for the Crown to avoid being beaten yet again. In early 1869, Piahana Tiwai led a small group who joined with Crown forces hunting for the prophet.
- 2.188. In March 1870, soon after returning to Maraetahi, Te Kooti led a taua that raided Ōmarumutu and Ōpape. His force took away over 200 resident Whakatōhea, along with weapons, powder and ammunition. The Whakatōhea group consisted largely of women and children, with around 60 men.
- 2.189. Crown forces later found a letter at Maraetahi, apparently written by Whakatōhea leader Ranapia Waiheka, offering Te Kooti ammunition and inviting him to raid Ōpape. Ranapia denied writing the letter and declared his loyalty to the Crown. It is possible Ranapia and others at Ōpape secretly supported Te Kooti colluding in the 'raid' so Whakatōhea 'captives' could join Te Kooti without appearing to be 'rebels.' Alternatively, Te Kooti may have taken the Ōpape people as hostages to discourage Ranapia, Piahana and others from assisting the Crown against him.

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- 2.190. Te Kooti returned to Maraetahi, securing the Ōpape Whakatōhea at Waipuna pā, further upstream at Wairātā. Some of the Whakatōhea taken from Ōpape joined the fighting forces of Te Kooti.
- 2.191. From mid-February 1870 a Crown force, largely consisting of Māori from other iwi, occupied Ōhiwa and Ōpōtiki, plundering the plantations on the small local Whakatōhea reserves. Piahana Tiwai refused the Crown commander's order to supply food from Ōpape without payment. A section of the Crown force then raided Ōpape, killing Whakatōhea pigs and digging up 100 baskets of their potatoes. Whakatōhea had intended to sell the bulk of this crop to pay off their debts to a Pākehā storekeeper. A Crown officer noted the military could have purchased all its needs from Pākehā settlers, but preferred to forcibly seize supplies from Whakatōhea.
- 2.192. Piahana Tiwai and Ranapia Waiheka urged the Crown force commander to pursue Te Kooti and rescue their relatives. Instead the commander waited almost two weeks before setting off.
- 2.193. Ranapia Waiheka and Piahana Tiwai wrote to the Crown Civil Commissioner, complaining that Crown forces had taken no action to retrieve Whakatōhea women and children from Te Kooti, but had instead plundered Whakatōhea food supplies. The leaders were anxious for the safety of their people, particularly given previous Crown actions against Whakatōhea and its stigmatization of them since the Völkner killing. They wrote they were, "anxious to be enrolled or attached to the expedition against Te Kooti, to assist in the work now going on, lest we make the same mistake as we made before."
- 2.194. In February 1870, Native Minister Donald McLean announced that the Crown would pay a £5,000 reward if Te Kooti was killed or captured. This reward would be shared among all the troops involved in his death or capture. The troops would receive no other payment, so would get nothing if Te Kooti escaped. With Whakatōhea facing a dire economic situation, Ranapia Waiheka and Piahana Tiwai insisted that any Whakatōhea accompanying Crown forces be paid daily wages.
- 2.195. When the Crown force finally set off on 20 March, Whakatōhea guides led them through the Otara river valley and Tutaetoko track to attack Wairātā and Maraetahi. Another Crown force, consisting of Māori from another iwi, made its way up the Waioweka gorge to make a frontal assault on Maraetahi.
- 2.196. On 23rd and 24th March 1870, the Crown force approaching from Tutaetoko attacked the Wairātā kainga and stormed the Waipuna pā. Crown troops killed 18 supporters of Te Kooti, most, if not all, being executed without trial after their surrender. Two Whakatōhea men, identified as Rehara and Timoti Maruru, were among those killed.
- 2.197. The Crown contingent took over 300 prisoners, although almost 200 were the Whakatōhea Te Kooti had taken from Ōpape. The other prisoners included at least 20 Whakatōhea supporters of Te Kooti.
- 2.198. The other Crown force, travelling up the Waioweka river, took Maraetahi on 25th March after a brief fight. Most of the residents escaped, including Hira Te Popo and Te Kooti, with only two defenders killed and two captured. The Crown troops burned all the whare at Maraetahi, including the elaborate Whare karakia. They destroyed the gardens, which one officer described as 'the largest Native plantation I can ever remember to have seen.' No Crown casualties were reported from the actions at Wairātā and Maraetahi.
- 2.199. The Crown forces had returned to Ōpōtiki by the end of March, with the Ōpape Whakatōhea and other prisoners. On 11 April, Donald McLean presided over an inquiry

2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

at Ōpōtiki into allegations arising from the letter Crown forces found at Maraetahi, in which Ranapia had apparently offered secret assistance to Te Kooti. Ranapia and other Whakatōhea accused with him denied all charges.

- 2.200. The charges against Ranapia and the others were not proven, but McLean decided to keep Whakatōhea under surveillance. He appointed a Crown commander to watch them with permission to punish any 'misbehaviour'. The commander was to be assisted by three chiefs from a Crown ally: a neighbouring iwi involved in long-standing disputes with Whakatōhea. McLean ordered all Whakatōhea living at Ōpape to move into one kainga to make such surveillance easier.
- 2.201. Te Kooti abandoned Maraetahi, but Hira Te Popo and Ngāti Ira resettled there after Crown forces withdrew. In April 1870, the Crown military commander at Ōpōtiki wrote to Hira Te Popo promising the 'past offences' of Ngāti Ira would be forgiven if they surrendered and helped the Crown catch Te Kooti. On 7 May, a party of 25 men and 31 women and children arrived at Ōpōtiki from Waioweka to surrender. The group consisted of Ngāti Ira, some other Whakatōhea supporters of Te Kooti and a number of members of other iwi.
- 2.202. In early May 1870, the Crown military commander at Ōpōtiki received information claiming that Te Kooti was at Te Tahora, in the Waioweka gorge, with Hira Te Popo. The commander assembled a Crown force, including some Whakatōhea, and followed the Tutaetoko track route to the Waioweka gorge. With ten days of rain the expedition was flooded out, struggling back to Ōpōtiki without encountering Ngāti Ira or Te Kooti.
- 2.203. Hira Te Popo came into Ōpōtiki on 17 June 1870, offering the surrender of Ngāti Ira to the Crown. He was accompanied by "the greater portion" of Ngāti Ira based at Waioweka; a total of 13 men, 11 women and 10 children. He informed the Crown officials that 'the remainder of the hapu were engaged in searching for some women who were missing, and may be expected in shortly'. Hira Te Popo and Ua a te Rangī told a Crown officer that Ngāti Ira surrendered because they believed they would all be captured and killed when the fighting resumed in the summer.
- 2.204. Crown officials acknowledged that Hira Te Popo had not been involved in the killing of Völkner and had on a number of occasions warned Bay of Plenty iwi that Te Kooti planned to attack them. A Crown official described Hira Te Popo as 'a man of considerable ability and of good character'.
- 2.205. On 27 January 1871, Donald McLean visited Ōpōtiki to receive the formal surrender of Hira Te Popo and Ngāti Ira. Hira Te Popo declared his loyalty to the Crown, reportedly stating he had previously been misled by deceivers.
- 2.206. In the campaign against Te Kooti the Crown had killed a number of Whakatōhea. Crown forces plundered or destroyed large quantities of Whakatōhea crops and other property. Whakatōhea were aggrieved at the Crown's attack on them for supporting Te Kooti, which had sown angst and division among a people already suffering the effects of war and raupatu.
- 2.207. Crown officials claimed Ngāti Ira had lost faith in the God of Te Kooti. Despite this, Hira Te Popo, Ngāti Ira and many other Whakatōhea remained strong in their Ringatū faith. Through the 1870s and 1880s the majority of Whakatōhea converted to Ringatū.
- 2.208. In the late 1880s, Whakatōhea built two significant houses for Te Kooti at Waioweka. One of these was the large finely carved and painted Tanewhirinaki. The other was the smaller Te Taramu (the Drum) also carved and painted. Building the two houses

2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

demonstrated the people's faith in Ringatū, but was also symbolic of Whakatōhea resilience. Despite military defeat, raupatu and other land loss and ongoing struggles, the two magnificent houses symbolised the continued Whakatōhea presence in their rohe

- 2.209. Te Kooti opened Tanewhirinaki on 1 July 1888, but never entered the house. Instead he made a prophecy or kupu whakaari regarding it, which some interpreted as warning people against division and erosion of the faith:

1 Hurae 1888 ki Ōpeke, Waiwoeka: Ka mea a Te Kooti: Ko te kupu tēnei i tēnei rā mō tēnei whare. Tēnei ake ngā rā, kai te haere mai, ka pokapoka ia tēnei whare e te kiore, kia pūareare, ā ka puare. Ka pokaia mai hoki e ngā kiore i te tūārongo puta rawa ake i te kuaha. Ka rere mai te kāhu, ka titiro, ā ka kite i ngā kiore e karikari ana i tēnei whare, i tēnei wāhi, ka hiahia ki te hopu; kia mau aua kiore. Ka mea te kāhu ki te hiahia ki te hopu, ā heoi ka rērere mai tē kāhu ki tēnei wāhi ki te tiroiro.

1 July 1888 at Ōpeke, Waiwoeka: Te Kooti said: This is the saying today for this house. The days will come when this house will be gnawed by rats so that it is opened up and exposed. It will be dug out by the rats from the back right to the door. A hawk will fly in, look, and when it sees the rats digging in this house, at this place, it will wish to catch and carry off those rats. The hawk will think that if he wants to catch [them], then it will have to continue to fly to this place to watch.

CHAPTER 11: THE NATIVE LAND COURT

- 2.210. The total, pre-1840, area of the Whakatōhea rohe has been estimated at 491,000 acres. In the decades following the Crown's confiscation of approximately 144,000 acres, the Native Land Court individualised the tenure of Whakatōhea's remaining lands. The Crown and private parties subsequently purchased so much Whakatōhea tribal land from individual owners that by 1908 Whakatōhea retained just 35,400 acres.
- 2.211. The Native Land Court was established by the Crown under the Native Lands Acts of 1862 and 1865, to determine title to Māori owned land and convert customary papatipu title to individualised freehold title derived from the Crown. This legislation also ended the Crown's pre-emptive right to purchase Māori land, allowing Māori to sell or lease their lands to private parties or to the Crown. The Crown anticipated transforming customary Māori land ownership to individual rights under Crown title would make it easier to transfer Māori land to Pākehā settlers. The Crown expected this change would eventually lead Māori to abandon their traditional communal land-holding structures, promoting their 'amalgamation' into European society.
- 2.212. Any individual Māori could claim land in the Court, and once a claim was lodged any Māori with interests had to participate if they wanted to have their interest reflected in the title. Māori were not compelled to have their land investigated and were able to leave their land in customary title if they so wished. However, a freehold title from the Court was necessary for Māori to sell or legally lease land or to use it as security to enable development of the land.
- 2.213. The Crown did not consult Te Whakatōhea about the new land laws and Māori were not represented in Parliament when the Acts passed into law. Moreover, the Native Land Court was the only mechanism available to Whakatōhea if they sought legally recognised land titles protected from the claims of other iwi and hapū. Freehold title was also required if Whakatōhea wished to legally sell or lease their lands.

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- 2.214. The investigation of title by the Native Land Court could be triggered by an application from individual Māori without the consent of, or consultation with, wider tribal interests. Once an application had been accepted by the Court, however, all of those with customary interests in the land in question were obliged to participate in the process or risk losing those interests.
- 2.215. For Whakatōhea, participation in the Native Land Court process was an exceedingly costly enterprise. The Native Land Court process included a requirement that all land blocks be surveyed prior to title investigation and that the survey costs be met by the Māori owners.

Te Whakapaupākihi

- 2.216. Te Whakapaupākihi is a rugged inland block of approximately 9,000 acres in the east of the Whakatōhea rohe. In July 1879, Te Awanui te Aporotanga of Ngāti Rua and a rangatira from a neighbouring iwi wrote to the Resident Magistrate at Ōpōtiki offering to sell the Whakapaupākihi and adjacent Whitikau blocks to the Crown. The Crown made an advance payment of £100 to individuals of Whakatōhea and of a neighbouring iwi. Ten days later it advanced an additional £200 to individuals of Whakatōhea hapū 'for the land known as the Whakapaupākihi block'.
- 2.217. In March 1880, the Chief Surveyor reported that the survey of the Whitikau and Whakapaupākihi blocks was underway. When the survey was complete, the blocks were brought before the Native Land Court. The hearings into the blocks began in Ōpōtiki in November 1881.
- 2.218. The Court awarded the majority of the Whakapaupākihi block to individuals of Whakatōhea and the Whitikau block to individuals of a neighbouring iwi. The land was awarded in two sections, Whakapaupākihi No. 1 (6,960 acres) and Whakapaupākihi No. 2 (2,000 acres). Whakatōhea owners identified by the Court agreed to sell the larger of the two blocks to the Crown. The Native Land Court declared Whakapaupākihi No. 2 to be inalienable, while Whakatōhea hapū recognised it as 'whenua rāhui' an area set aside for future generations. It remains in Māori ownership today.

Oamaru

- 2.219. The Oamaru block is a large, inland block in the Whakatōhea area of interest on the eastern side of the Waioweka River south of the confiscation line. In February 1885, the Assistant Surveyor General received an application for the survey of the Oamaru block, estimated at 15,000 acres. The government approved the survey for a set-fee of £312 which it intended to recover in land.
- 2.220. The original applicant for the survey told the Minister of Native Affairs that the Oamaru block belonged to 'a few individuals...the hapū or tribe have no interest in it'. The applicant also told the Minister that he intended to sell the land to the Crown.
- 2.221. During the survey, the area within the Oamaru block was at first found to include around 75,000 acres, and then around 106,000 acres, far more than the original 15,000-acre estimate. The surveyor therefore asked for an increased fee of £1250, up from the £312 initially agreed upon. Despite significant and sustained Māori opposition, the Government decided to pay the surveyor and have the Oamaru title investigated by the Native Land Court, so the full survey cost could be recovered in land. The Under-secretary of the Native Department advised Native Minister Ballance that this would be 'a good bargain' for the government.

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- 2.222. At different times during the Survey, both the Under-secretary of the Native Department and the Assistant Surveyor General expressed unease about the escalating costs of the survey and the 'very obscure' boundaries of the block. Despite this, no Crown official questioned how a block of 15,000 acres could be found to include over 100,000 acres. Nor did any Crown official consult with Whakatōhea or any other iwi to ascertain if the original applicants for the Oamaru block survey had rights to the larger area now being brought before the Native Land Court.
- 2.223. When the Native Land Court began its investigation in August 1888, the Oamaru block title was contested among the hapū of Whakatōhea and neighbouring groups. Individuals from Whakatōhea hapū were prominent among those were awarded portions of the block. The owners of the Oamaru block were obliged to pay the survey costs, which had increased again to £1306. An area of 28,825 acres, more than 25 per cent of the total area of Oamaru, was taken by the Crown in lieu of survey fees.

Tahora No. 2

- 2.224. Tahora No. 2 was a large block of land comprising 213,350 acres. The block sits east of what has since become Te Urewera and stretches from the Bay of Plenty raupatu line in the north to the Raukīturi River near Lake Waikaremoana in the south. The Tahora No. 2 block had previously been known as Te Wera and Te Houpapa. It was a vast and rugged inland block where the interests of Whakatōhea intersected with those of a number of other iwi and hapū.
- 2.225. In January 1887, the surveyor responsible for surveying the Oamaru block approached the Assistant Surveyor General for approval to survey the adjacent Tahora No. 2 block. He was declined but proceeded anyway with a survey that was referred to by local Māori as 'ruuri tahae', a 'stealing', 'thieving' or 'secret' survey. The Assistant Surveyor General recounted the events leading up to the 'secret survey':

I told him [the surveyor] he should not attempt this [survey of Tahora No. 2] ...and that until he had the proper statutory authority he would not obtain any security for his work. He went away to finish Oamaru, and the next thing I hear about it is that he has finished the Tahora survey as well... He now wants to deposit a plan of the block, I decline to receive it as the survey has not been legally made.

- 2.226. The survey of the Tahora No. 2 block was conducted in 1887 and 1888 without statutory authority and against the wishes of the majority of Whakatōhea and other iwi and hapū with interests in the block. Witnesses complained about the 'clandestine' nature of the survey, which was sometimes conducted under the cover of night.
- 2.227. Whakatōhea joined with neighbouring iwi in opposing the survey and petitioned Native Minister Mitchelson. In his petition to the Minister, Hira Te Popo of Ngāti Ira, referred to the survey as an act of 'grabbing'. Other Whakatōhea rangatira took more direct action, Hemi Kakitu of Te Ūpokorehe forced the surveyor from the land at Waitahe and confiscated his equipment. Tiwai Piahana of Ngāti Patu also spoke out against the validity of the survey.
- 2.228. The Native Land Court was similarly unimpressed with the survey. When the Native Land Court sat at Ōpōtiki in August 1888 to consider a title investigation for Tahora No. 2, the judge dismissed the case:

[The] survey has been made without authority... The punishment of the surveyor I cannot define, perhaps a cancellation of his licence. This is the protection that the law gives to the natives. Surveys of this nature might be made in any part of

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TE MĀKEOTANGA – DEED OF SETTLEMENT

2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

New Zealand and spurious claims be set up...I will see that the surveyor's conduct does not go unnoticed...No survey can be made without the consent of the Surveyor General...An infraction of the law has taken place.

- 2.229. Having completed the survey without authority and against the wishes of most Māori with interests in the block, the surveyor responsible lobbied the Native Department for retrospective authorisation of his survey. The Native Minister initially denied the request, stating plainly that the surveyor 'did the work at his own risk and must now take the consequences'.
- 2.230. The Native Land Court judge presiding at the Ōpōtiki hearings wrote to the Native Department complaining that the surveyor had breached section 80 of the Native Land Court Act, 1886 and should face some form of censure. The Native Department rejected the judge's advice, choosing instead to retrospectively authorise the survey and thereby reversing the Minister's earlier decision.
- 2.231. The Crown's retrospective decision to authorise the survey of Tahora No. 2 was made in the face of widespread opposition. The decision negated the protective provisions of the Native Land Court Act, 1880 and entirely disregarded the survey regulations.
- 2.232. With an 'authorised' survey in place, the 213,350-acre Tahora No. 2 was free to be brought before the Native Land Court. The individuals who made the application did not represent their own hapū; the Court found the applicants had 'no shadow of a right' to the land. The hearings took place at Ōpōtiki from February 1889 and were characterised by a high degree of cooperation between the various iwi and hapū involved.
- 2.233. On the opening day of hearings, a steady procession of speakers challenged the legitimacy of the survey. All the leading rangatira of the many hapū involved agreed the survey should not have taken place and the hearings should not proceed. In the face of such unified opposition the Native Minister could have intervened. He chose not to, and the hearings went ahead.
- 2.234. The Court delivered its judgement on 4 April 1889. The presiding judge allocated title to individual members of a number of iwi and hapū including Whakatōhea, essentially all those groups that had opposed the survey had their interests recognised by the Court. On 12 April 1889, the surveyor applied for costs of £1887.7.11. The owners of Tahora No. 2 now faced the prospect of being saddled with an enormous survey lien for a survey they never wanted and had opposed at every point.
- 2.235. There was unified opposition to the imposition of the survey costs in the Native Land Court. Despite speaker after speaker objecting, the presiding judge, on 13 April 1889, ordered the sum of £1887.7.11d to be placed as a lien on the Tahora No. 2 block. One witness expressed his dismay at the decision: 'I look upon this survey as a murder – and I look upon the result of the proceedings of this court in the same light'.
- 2.236. The survey lien was subject to a subsequent re-hearing and was adjusted down to £1600. The Crown eventually took 6,291 acres of the Tahora No. 2 block to recover the costs of the survey. Of this, over 3,900 acres came out of the blocks awarded to individual members of hapū of Whakatōhea. While this was a significant portion of land, it was far less than the 124,403 acres acquired by the Crown in less than five years between July 1891 and April 1896.

2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

CHAPTER 12: CROWN PURCHASING IN THE WHAKATŌHEA ROHE

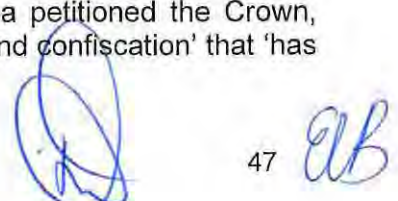
- 2.237. The approximate area of land eventually granted to individual members of Whakatōhea by the Native Land Court was 177,000 acres across just three blocks. This comprised: 10,000 acres of the Whakapaupākihi block; 106,000 acres of the Oamaru block and 61,000 acres of the Tahora No.2 block. Crown purchasing of the remaining Whakatōhea lands began in December 1881 with the purchase of the 6,960-acre Whakapaupākihi No.1 block.

Whakapaupākihi

- 2.238. On 26 December 1881, the owners of Whakapaupākihi No.1 signed a document conveying the block to the Crown and acknowledging receipt of £875. A committee of 12 was appointed to receive the money and they proceeded to distribute it among the hapū of Whakatōhea. Even those hapū that did not have a direct interest in Whakapaupākihi were gifted part of the proceeds of the sale.
- 2.239. In July 1882, the Native Land Court reheard the title determination of Whakapaupākihi No.2 at the request of another iwi and the Judge confirmed the original award to individual members of Whakatōhea. In September 1882, fifteen Whakatōhea rangatira sought a rehearing of the Whakapaupākihi No.2 and Whitikau on the grounds that a surveying error in 1881 had resulted in some Whakapaupākihi No.2 land being erroneously included in the Whitikau block.
- 2.240. However, as the case had already been reheard, no further rehearing could be ordered without special legislation. Whakatōhea rangatira instead applied to have a clause inserted into the Special Powers and Contracts Bill that would allow Whakapaupākihi to be reinvestigated.
- 2.241. The Special Powers and Contracts Act 1883 empowered the Native Land Court to reinvestigate title to several parcels of land, including Whakapaupākihi No. 1, 'for the purposes of rectifying certain procedures under the Native Lands Acts, and to more satisfactorily determine the titles, according to Native customs and usages'. A re-hearing for Whakapaupākihi No.1 was scheduled for 19 December 1884.
- 2.242. Before the hearing even began, the Crown and Whakatōhea agreed on a compromise. Twelve hundred acres of Whakapaupākihi No. 1, previously purchased by the Crown, would be returned to Whakatōhea in three sections. Whakapaupākihi No. 1 (200 acres), Whakapaupākihi No. 3 (200 acres) and Whakapaupākihi No. 4 (800 acres). The Court declared each of these new blocks was inalienable but allowed a number of ways such inalienability could be lifted.
- 2.243. Whakatōhea owners currently retain 3104 acres of the 3200 acres of Whakapaupākihi originally reserved for future generations. While 96 acres were compulsorily acquired by the Crown for public works between 1913 and 1952, the overwhelming majority of the land remains in the possession of members of Whakatōhea through ahu whenua trusts. This stands in stark contrast with the Oamaru and Tahora No. 2 blocks where Crown acquisition of Whakatōhea interests was total.

Oamaru

- 2.244. In 1889 the Crown acquired 28,825 acres of the Oamaru block as payment for the survey necessary for the Native Land Court to determine the title of this 106,000-acre block. Many Whakatōhea had opposed this survey and Whakatōhea petitioned the Crown, stating that the loss of this land to be a 'great injustice', a 'second confiscation' that 'has

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broken our hearts.’ The severe economic impact of ongoing land loss for Whakatōhea was, even then, apparent. ‘We have already lost all our ancestral lands on the front...[w]e have lost so much that we cannot afford to send a deputation to give evidence on our behalf’.

- 2.245. Between 1893 and 1896 the Crown purchased more than 50,000 acres in Oamaru from individual owners. Some owners offered to sell because they were living in desperate circumstances and did not have enough income to plant cultivations in their remaining lands. The Native Land Court met at Ōpōtiki on 7 May 1896 to award the Crown the interests it had purchased in the Oamaru blocks.
- 2.246. The very next day, many of those who had sold lands to the Crown realised that they had not agreed reserves in return for the lands they had sold and wrote to officials seeking the return of portions of the block. In two separate letters Whakatōhea rangatira including Rewita Niwa, Te Awanui Aporetanga and Wiremu Rangiharepo pleaded for the return of ‘a portion of each subdivision’ of the Oamaru block. In response, the Crown declined to create reserves and one official wrote ‘I cannot recommend the application. The Natives have plenty of other land to cultivate and reside on’.
- 2.247. Māori retained just 16,789 acres of the originally 106,000-acre Oamaru block. Some Crown officials had concerns about the rapidly diminishing land holdings of Whakatōhea. When, in 1898, members of Whakatōhea offered more of Oamaru up for sale to the Crown, a representative of the Native Minister replied ‘me mutu te mahi a nga Māori ki te hoko i o ratou nei whenua’ (Māori should not sell any more of their land).
- 2.248. At the turn of the century the Crown came under increased pressure from Pākehā settlers to acquire Māori land. Most of the Oamaru block owners continued to struggle financially. With few other sources of income, many sold their rugged Oamaru lands to finance development on more arable land or simply to provide for their families. The Crown purchased most of the Oamaru block between 1910 and 1923. The final 83-acre portion passed into Crown ownership in 1955.

Tahora No. 2

- 2.249. Crown purchasing in the Tahora block began in 1893. Successive Native Land Purchase Officers made numerous purchases in most subdivisions of Tahora No. 2 at two shillings an acre. The Crown purchased the interests of minors and paid some Māori rangatira to persuade others to sell land.
- 2.250. This Crown purchasing took place despite restrictions on alienation placed on most of the Tahora subdivisions by the Native Land Court in 1889. These restrictions, effective for twenty-one years, were intended for the ‘support of any owner who does not have sufficient other land’. They could only be removed by an Order in Council following a public inquiry carried out by the Court and announced in the Gazette. Further, the Court could only remove restrictions on alienation if the owners possessed sufficient other lands and consented to the removal of restrictions. There is no record of any application for the removal of restrictions on the alienation of Tahora No. 2.
- 2.251. The Crown applied to the Native Land Court for a partition of its interests and, on 15 April 1896, the Court began the case at Gisborne for the definition of the Crown’s interests in Tahora No.2. The Court determined that the Crown had purchased 124,403 acres or 58 per cent of the original block. In addition, 6,291 acres were taken to cover the cost of the ‘clandestine’ survey. The Crown’s acquisitions in the block in 1896 totalled 130,694 acres.

2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

- 2.252. Crown purchasing in the Tahora No.2 block resumed into the twentieth century. In 1907, the Crown acquired 1614 acres of Tahora 2B2A, which was proclaimed Crown land on 4 July 1908. The Crown acquired an additional 1112 acres of Tahora No. 2 in 1914 and another 555 acres of the block in 1920. In 1969 the last of Whakatōhea's lands in the Tahora No. 2 block, Tahora 2B2B1, was sold to the Crown and was subsequently included in the Waioeka Gorge Scenic Reserve.

CHAPTER 13: PUBLIC WORKS

- 2.253. During the twentieth century the Crown compulsorily took more land from the small remnant left to Whakatōhea. This began in 1912, when the Crown took 48 acres of Hiwarau A for "scenic purposes" and just under an acre of Whakapaupākihi No. 2 for a public road. The Crown took another 5 acres from Whakapaupākihi No. 2 in 1916, for railway purposes, followed in 1919 by 5 acres from Whakapaupākihi No. 3 for a public school.
- 2.254. The most significant Crown taking was the Moutohora (Motuhora) Quarry, depriving Whakatōhea of one of their few sources of income. In 1911, the owners had leased Whakapaupākihi No.2 for 50 years, commencing in August 1912. In 1916, they granted the lessee quarrying rights, through to 1962, with the owners being paid a royalty of 3d (three pence) per cubic yard of stone quarried.
- 2.255. In 1933 the Whakapaupākihi No. 2 lessee sub-leased quarrying rights to a private contractor. The contractor agreed to pay the lessee 9d (nine pence) per cubic yard quarried, including the 3d per cubic yard royalty for the Whakatōhea owners.
- 2.256. Up to June 1938, the contractor paid the land owners a total of £514 in royalties on stone quarried. The Crown purchased approximately 82% of this stone for road building and other purposes in Poverty Bay, local bodies bought around 14%, while private buyers accounted for the remainder, around 4%.
- 2.257. By January 1937, officials had concluded that the Crown was paying too much for Moutohora Quarry stone. The Crown decided it therefore needed to compulsorily take the Moutohora quarry land from Whakatōhea. On 5 July 1937 the Crown took around 31 acres of the Whakapaupākihi No. 2 block under the Public Works Act. The Crown permitted the private contractor to continue working the quarry, with royalties now being paid to the Crown rather than to the Whakatōhea owners.
- 2.258. On 16 January 1939, the Native Land Court at Gisborne heard the Moutohora quarry compensation case. Based on a December 1937 special valuation, the Crown estimated the area taken had a £5 capital value; being the entire monetary value it set on the land itself. The Court considered the land had no value other than for quarrying and did not include the £5 in the compensation awarded.
- 2.259. The Court awarded only minimal compensation to the Whakapaupākihi No. 2 owners for lost royalties. The relevant legislation provided that the Court could not order compensation when a Government Department or local body was the only purchaser of a product. The Court ordered that no compensation would be awarded for 96% of the royalties lost, as these royalties were for metal sold to the Crown and local bodies. The Court awarded the Whakatōhea owners £98 compensation. This was solely for the royalties from metal sold to private purchasers: 4% of the total royalties. On 10 July 1939 the Crown paid £107 9s, which included Court costs of £9 9s, to the Tairāwhiti District Māori Land Board.

2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

- 2.260. The Crown took one of the few remaining Whakatōhea productive assets at very little cost to itself. The Crown paid no compensation to the Whakatōhea owners for their land or for 96% of the income it had generated for them.
- 2.261. In the late 1930s, the Crown took another two areas of Whakatōhea land. An area of just under 10 acres was taken from Hiwarau A for scenic purposes. This land was added to the adjacent Hiwarau Scenic Reserve, created from the land taken in 1912. The Crown stated the taking was to preserve a number of historic pā sites and a mamaku grove, as well as to reduce the scenic reserve's fencing costs.
- 2.262. The expanded Hiwarau Scenic Reserve had an area of 57 acres 3 roods 32 perches. In 1971 the Crown was made aware of an 'extensive ridge pa,' the Matekerepu or Whakarae pā, on the reserve. In 1979 the reserve was reclassified and renamed the Matekerepu Historic Reserve.
- 2.263. In May 1939, the Crown took 51 acres from Whakapaupākihi No. 4 for an aerodrome, the Motuhora Emergency Landing Ground. The Crown made one further taking in 1952, acquiring just under 2 acres from Whakapaupākihi No. 1 for the Gisborne-Rotorua railway. The Crown's total public works takings removed more than 150 acres from the already diminished Whakatōhea estate.

CHAPTER 14: TE PETIHANA

- 2.264. In 1907, the Crown appointed the Chief Justice, Sir Robert Stout, and Āpirana Ngata, Member for Eastern Māori, to assess how much Māori land remained idle and to explore ways in which such land might be brought into some form of productive capacity. The Stout-Ngata Commission found Māori in a perilous position owing to the widespread loss of land in the nineteenth century and the lack of opportunity to develop those lands they had retained.

The Māori race is, in our opinion, in a most difficult and critical position. There is great pressure from European settlers to obtain their lands...They [Māori] are looking to the future with no hope... What is to become of the Maori people? Is the race to pass away entirely? ...The spectacle is presented to us of a people starving in the midst of plenty.

- 2.265. Whakatōhea were in a similarly perilous position. The Stout-Ngata Commission stated:

Dealing first with the Whakatohea tribe, we find that they have little land left in their hands. The lands about Opotiki were confiscated by the State...The Government subsequently granted reserves out of the confiscated area, the principal block being Opape Reserve...It is not good land and at best can only be called second-class land.

- 2.266. From the start of the twentieth century the hapū of Whakatōhea sought to improve their position with a series of petitions to the Crown.
- 2.267. The first petition was submitted to Parliament by Mēhaka Wātene, Tauhā Nikora, Paora Taia (who had been found not guilty of Völkner's killing) and 166 others on 14 September 1914. In it, the petitioners '[p]rayed for a Commission be appointed to inquire into the matter of confiscated lands of the Whakatōhea tribe'. They also noted 'the great wrongs that were done to [their] hapus':

All the permanent properties of our ancestors were taken...When the troubles were over and the confiscation had been established, Opape Reserve was

TE MĀKEOTANGA – DEED OF SETTLEMENT

2: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (HISTORICAL ACCOUNT)

returned to the hapus of Whakatohea. Past Governments have heard the great lamentation of this division of the Maori people on account of the sterility of the land – broken with numerous cliffs and gullies – only about 200 acres of Opape Reserve being ploughable – this being for the six hapu of Whakatōhea.

- 2.268. The Native Affairs Committee made no recommendation regarding this petition and the Crown therefore took no action. The hapū of Whakatōhea resolved to continue their struggle and levied a 'tax' of 2s. 6d. per person in support of further petitions. A second petition calling for a commission of inquiry followed in 1915. The Native Affairs Committee again made no recommendation.
- 2.269. In 1917, Whaiora Renata and others submitted a third petition on behalf of Whakatōhea. The petition sought the return of lands in Ōpōtiki. In June 1920, following further correspondence from Whakatōhea, this time seeking relief for 'landless tamariki', a Native Lands Commission was finally established to inquire into the confiscation of Whakatōhea lands.
- 2.270. The Jones Commission, headed by the Chief Judge of the Native Land Court, inquired into and reported upon a number of petitions from Māori regarding lands in a number of locations around the country, including the eastern Bay of Plenty, Taranaki, Waikato, Aotea and Te Wai Pounamu. With regard to the confiscation of Whakatōhea lands, the Jones Commission was highly critical of the actions the Crown had taken in 1865.

In our opinion the fact that punishment was inflicted on the Whakatohea by a punitive expedition in 1865, and that the actual offenders were captured and dealt with according to civil law, should have had some effect of lightening the punishment that was imposed on the tribe by confiscating so much of their land...the penalty paid by the Whakatohea Tribe...was heavier than their desserts.

- 2.271. The Commission's critical report on the confiscation of Whakatōhea land had little immediate effect. The Commission made no recommendation and the desire of Whakatōhea to have their land returned remained unaddressed. In June 1922, Harihari Rānapia and 65 others submitted yet another petition. The petitioners pleaded with the Minister for Native Affairs for timely relief, fearing that the older generation might not live to see any benefit. The Native Affairs Committee recommended the petition be referred to the Government, but the Crown does not appear to have taken any action.
- 2.272. In October 1926, Sir Āpirana Ngata, Chairman of the Native Affairs Committee, and Sir Māui Pōmare, Minister of Health, took action following a number of petitions from iwi in Waikato, Taranaki, Urewera and the Bay of Plenty, including Whakatōhea. Ngata and Pomare persuaded the Prime Minister, Gordon Coates to establish a Royal Commission of Inquiry into the confiscations. Supreme Court Judge William Sim was appointed to head the Commission.
- 2.273. The Sim Commission reported back in 1928. With regard to the eastern Bay of Plenty, the Sim Commission found that the confiscation did not exceed what was 'just and fair', except for Whakatōhea, where it was excessive, 'but only to a small extent'.
- 2.274. For the 143,870-acres confiscated from Whakatōhea, which included 'all the flat and useful land' - the Sim Commission recommended an annual payment of £300, 'for the purpose of providing higher education for the children of members of the tribe'.
- 2.275. Whakatōhea rejected the offer of a £300 annuity and continued their struggle. In 1944 a fifth petition was submitted to Parliament by Te Amoamo Te Riaki and 172 others. A sixth

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Maurice W. Smith Kelly

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petition was submitted by Hoera Tūpara and 29 others the following year. In its assessment of the £300 annuity offered Whakatōhea, this latest petition was scathing:

What generous gentlemen those Commissioners were! What magnanimity! What liberality! 143,870 acres of the flat, fertile and alluvial lands in and around the township of Opotiki politically and scientifically filched from the Natives by the early administrators of this country – and the said liberal gentlemen recommended £300! What lavish prodigal generosity...It was political robbery from people who were defenceless; it was spoliation of a Native race; it was robbery from children who really could not defend themselves...

- 2.276. The petition concluded by rejecting the 'paltry yearly sum of £300' and demanding a more equitable offer. The Crown saw no point in a third inquiry and decided to offer compensation. On 14 November 1946, 32 years after the first Whakatōhea petition, the Crown paid £20,000 into the Whakatōhea Claims Settlement Account held by the Māori Trustee. The Crown passed legislation in 1949, to set up a Trust Board to administer these funds to purchase and lands for the benefit of Whakatōhea. This led to the establishment, in 1952, of the Whakatōhea Māori Trust Board, which became the principal organisation for Whakatōhea economic development.
- 2.277. In 1946 the Crown set up to a Royal Commission chaired by Chief Justice Myers to investigate claims over 'surplus lands'. These were lands the Crown had retained after investigating 'Old Land Claims,' where Pākehā buyers claimed to have bought land before 14 January 1840. One claim concerned the Hikutaia land in the Ōpōtiki district, which CMS missionaries claimed to have purchased from Whakatōhea. The Crown had granted 3,832 acres to the CMS claimants, but presumed Crown ownership of an area of 7,638 acres 'surplus lands,' rather than returning it to Whakatōhea.
- 2.278. In 1948 the Myers Commission recommended compensation be paid for lands that passed into Crown ownership through the surplus lands policy. Under the Māori Purposes Act 1953 and on the recommendation of the Myers Commission, the Crown paid the Whakatōhea Māori Trust Board £4,648 14s in compensation for the 6,641 acres of surplus land in the Ōpōtiki District. No explanation was given as to why land that had originally been recorded as covering an area of 7,638 acres was now defined as being only 6,641 acres.

CHAPTER 15: LAND DEVELOPMENT SCHEMES

- 2.279. It was only in the 1930s that the Crown switched its focus from purchasing Māori land to assisting the development of the small areas of land Māori still retained. In 1931, Native Minister Ngata noted that the Crown had erroneously assumed that 'native land owners had more [land] than they could possibly use' and that they could turn it to productive use 'without direction or supervision or financial assistance'.
- 2.280. Instead, Ngata noted that many iwi including Whakatōhea had been pushed to the 'verge of landlessness' by the processes of confiscation and Crown purchasing. The large-scale infrastructure projects which had provided stable employment to many local Māori had slowed down, while the effects of the Depression were being felt. Ngata observed that, 'the day of reckoning came for the Maori communities in the Bay of Plenty. They were thrown back on their depleted resources'.
- 2.281. The Native Land Amendment and Native Land Claims Adjustment Act 1929 allowed the Crown to lend Māori the funds necessary to develop the lands that they retained.

William Rankin

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Previous to this legislation, 'Parliament had not been moved to apply state funds to the development and utilization of lands owned or occupied by Maoris'.

- 2.282. The Crown insisted on taking control of all land included in development schemes. This was a burden for Whakatōhea who still remembered the confiscation of their lands, and deeply distrusted the Crown's motives for promoting development schemes.
- 2.283. However, in 1931 the Crown agreed to a Whakatōhea request for the Crown to implement a development scheme. The benefits of this scheme for Whakatōhea were inhibited by the previous confiscation and alienation of most of their land. In 1935, at a meeting attended by Prime Minister George Forbes, Ngata stated that Whakatōhea lands were 'absolutely at the end of land capable for development'. They were shut between the sea on one side and the hills on the other, the hills being 'the cemetery of many lost Pākehā fortunes'.
- 2.284. The Crown spent funds developing land at the Wainui Reserve and at Ōpape, where there were three distinct schemes. It used the schemes to alleviate the economic hardship many Whakatōhea endured through the depression of the 1930s. Whakatōhea occupants had some success in developing farming operations on the lands in the schemes.
- 2.285. In 1935 the population of Whakatōhea was between 450 and 500. By 1940, the Whakatōhea Development Scheme at Ōpape was supporting 42 settlers, 34 labourers, and 256 dependents, and the Wainui Reserves supported 31 people. Despite the relative success of the schemes, Whakatōhea continued to be plagued by the perennial problem of landlessness. There quite simply was not enough land left to the hapū of Whakatōhea on which to develop and to share in the growing prosperity of the nation.

CHAPTER 16: ENVIRONMENTAL ISSUES IN THE WHAKATŌHEA ROHE

- 2.286. Whakatōhea had a deep spiritual relationship with the environment of their traditional rohe, while also depending on natural resources for their physical survival and material needs. Whakatōhea tikanga enabled them to act as kaitiaki of the land, fresh waters and sea. The Whakatōhea understanding of tapu, mauri and wairua and their whakapapa connections with the natural world defined this relationship.
- 2.287. Ōhiwa Harbour was home to 'Ngā Tamāhine a Whakatōhea', great quantities of kaimoana including cockles, mussels and sea snails, while the Waiotāhe river was renowned for pipi. Pāua, kina, mussels and koura (crayfish) were abundant along the rocky shore from Ōpape to Awaawakino and the Waiaua River was a rich food source. Whakatōhea had strict tikanga defining how, when and where to harvest coastal kaimoana, ensuring the resource was not depleted.
- 2.288. The Ōhiwa Harbour was a prime site for ocean fish, while kahawai, flounder, mullet, herring, whitebait and kingfish ran seasonally up the Waioweka, Otara and Pakihi rivers. Rivers and wetlands were also important as sites for tuna (eels). Fishing in rivers, estuaries and the open sea was controlled by tikanga, including following the phases of the moon and applying rahui. Whakatōhea had strict rules about the uses of sections of rivers, ensuring bathing was kept separate from food gathering and that human waste was not deposited in the rivers or the ocean.
- 2.289. Whakatōhea had an intricate knowledge of the indigenous plants, animals, minerals and soils of the forests, wetlands, coastal habitats and offshore islands. They were therefore able to provide themselves with food, clothing, housing, tools, waka and rongoa (medicine). Whakatōhea regularly hunted titi (grey-faced petrel) from Whakaari (White



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Island) during the birds' breeding season. Whakatōhea hunted and gathered in their mountainous hinterland on a seasonal basis. They gathered fern root and hunted kereru (pigeons), kākā, weka and kiwi at places such as Toatoa, Whitikau and Waioweka.

- 2.290. Whakatōhea used areas of flat coastal land for crops such as kumara. From the early 1800s, the introduction of plants and animals such as potatoes, grains, fruit trees, pigs, cattle, horses and poultry, along with the adoption of Pākehā technology led to changes in land use and hunting methods. Whakatōhea, nevertheless, continued to follow their own tikanga in their hunting, fishing and gathering practices.

Deforestation and river control

- 2.291. The raupatu of Whakatōhea land in 1866 effectively placed 143,870-acres of flat, fertile land in the hands of Pākehā settlers. Much of this land was progressively cleared of forest and readied for farming. From 1906, the steep, forested inland blocks of Tahora and Oamaru were also opened up for settlement as farmland. While there was some awareness of the flood risks associated with forest clearance in hill country, the Crown placed greater emphasis on economic development than environmental protection. The Crown was supportive of timber logging in the area, even after the increased risks of flooding, slips, sedimentation and erosion were highlighted by engineers and conservation advocates.
- 2.292. Both the Otara and Waioweka Rivers were prone to flooding and this was exacerbated by the clearance of bush in the hill country. Sediment was carried down the watercourse where it was deposited in the river channel, altering the course of the river and leading to erosion. Prime Minister Massey was made aware of the flood risk during a visit to Ōpōtiki in 1914. The Crown agreed to subsidise protection works but they were never carried out.
- 2.293. Engineers continued to highlight the risks associated with the felling of native bush in the river catchment. In 1922 the District Engineer noted that:

[I]t is a well-known fact that the floods experienced since the felling in the back country have been of a far greater intensity, bringing with them much solid matter that deposits in the river bed along the flats, raising the bed and causing scour and erosions along the banks.

- 2.294. In 1946 the Resident Engineer at Tauranga wrote to the under-secretary for Public Works advising comprehensive protection works for the whole course of both the Otara and Waioweka Rivers through the Ōpōtiki plains. The Crown did not follow this advice as it considered any comprehensive scheme should wait until an Ōpōtiki Catchment Board was appointed. A catchment board was not appointed until 1962. In the meantime, piecemeal protection works, such as the planting of willow trees, were carried out by individual landowners. Decades of forest clearance led to catastrophic floods striking Ōpōtiki in 1957, 1958, and 1964, causing widespread destruction and some loss of life.
- 2.295. Whakatōhea felt this ongoing environmental degradation was an injury to the mauri, tapu and wairua of the rivers. The Waioweka and Otara Rivers were further degraded in the mid-twentieth century by pollution from sewage discharge. Flood damage and pollution prevented Whakatōhea practicing their traditional tikanga in relation to the rivers.

Water pollution

- 2.296. Ōpōtiki's poor sanitation was a major source of river pollution. In 1947, some 460 properties in the Ōpōtiki borough still lacked access to proper sanitation. Two hundred

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homes had septic tanks, with the contents disposed of in sump holes or onto fields through irrigation systems. A further 260 homes had only pan privies, the waste collected weekly by the borough council and dumped at Te Ngaio on the outskirts of the borough. The porous sand leaked sewage into the sea, which the tide washed back into the Otara River. Heavy rain also caused sewage leakage into the river.

- 2.297. In the early-1950s the Ōpōtiki Borough Council began constructing a sewerage scheme. The system discharged treated liquid effluent into the Waioweka River. It was planned to separate out the sludge and dispose of this on land, but constant flooding of the separation tanks made this impossible. Throughout the 1960s sludge was also discharged into the Waioweka River. The section of the river used for sewage disposal was also used for fishing and recreation. Whakatōhea hapū were not consulted over the sewerage scheme.

Ōhiwa Harbour

- 2.298. From the late nineteenth century commercial activities had impacts on Ōhiwa Harbour. In 1896 the Crown approved a private company building a wharf on the Ōhiwa spit. In 1919 the Crown approved a wharf at Kutarere, which the Council constructed in 1922. In 1926 the Crown vested a landing reserve at Kutarere in the Opotiki County Council. The Crown did not consult Whakatōhea hapū over these developments.
- 2.299. In the 1920s Whakatōhea became concerned that commercial fishing was depleting their traditional fisheries. In 1927 a group of Whakatōhea wrote to the Minister of Public Works, who was MP for Bay of Plenty, protesting over trawlers fishing very close to the shore. It is not clear whether the Crown took any action on this.
- 2.300. In 1929 the Opotiki County Council wrote to the Secretary of Marine, raising concerns that the Ōhiwa Harbour mussel population was being depleted by 'wholesale exploitation'. In July 1944 Te Ūpokorehe were among a group of 115 Ōhiwa Māori who petitioned Parliament requesting they and future generations retain 'all fishing rights and pipi, tuangi, mussel beds rights' in a proposed Ōhiwa Harbour reserve. The proposed reserve included the coastline of the Hiwarau A and B blocks. The petition asked for the protection of shellfish beds by legislation. The Native Affairs Committee recommended this petition for 'favourable consideration.'
- 2.301. In response to the petition, the Chief Inspector of Fisheries visited Ōhiwa in September 1944, but did not talk to any local Māori. The Chief Inspector did not support granting a large area of the harbour to the Māori petitioners, but did consider a smaller reserve worth investigating. As the Crown took no action to establish a reserve, in 1949 the lead petitioner wrote to the Minister of Maori Affairs repeating the requests of the 1944 petition. The Minister wrote back recommending the petitioners contact the Maori Welfare Office in Whakatane, but there is no record of further Crown action.
- 2.302. During the 1970s the mussel population in Ōhiwa Harbour declined. In 1977 the Whakatōhea Maori Executive Committee joined with neighbouring Maori Executive Committees in calling on the Department of Fisheries to temporarily close mussel harvesting in Ōhiwa Harbour. They also asked for ongoing dialogue with the Fisheries Department. The Crown did not implement any closures until 1981, nor is it clear whether they consulted with Whakatōhea.

Native and introduced fauna and flora

- 2.303. Whakatōhea traditionally hunted kereru (pigeons), an activity that was carried out seasonally and with specified tikanga. One practice was for hunters to leave some

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preserved birds in specified places for hunters who came after them. From the 1860s the Crown sought to regulate the hunting of kereru, but without taking note of existing tikanga. The Crown promoted legislation that, in 1922, prohibited kereru hunting without special permission. In 1953, the Crown promoted legislation to completely outlaw the hunting of kereru. These laws, effectively restricting or prohibiting Whakatōhea traditional hunting practices, were introduced without consulting the iwi.

- 2.304. Many new species of birds, fish, animals and plants have been introduced into the Whakatōhea tribal rohe. In 1883, the Ōpōtiki Acclimatisation Society was established to introduce and protect 'animals, fishes, birds and plants useful or beneficial to man'. From 1917, the Crown gave the Ōpōtiki Acclimatisation Society the right to issue fishing licences. Whakatōhea were not consulted, but became subject to these fishing regulations. In 1929 the Ōpōtiki Acclimatisation Society was disestablished, and many of its functions were assumed by the Government Tourist Bureau in Rotorua, and later by the Conservator of Wildlife in Rotorua.
- 2.305. The introduction of possums, goats, trout and other exotic species led to significant damage to indigenous plants and animals, many of which were integral to the Whakatōhea way of life. Whakatōhea were not consulted over the introduction of any of these species.
- 2.306. The Crown consistently ignored the Whakatōhea world-view and failed to consult the iwi when taking actions to exploit or preserve natural resources. The Crown did not value or adopt the Whakatōhea tikanga- based approach to natural resources, nor did the Crown take into account concepts such as tapu, mauri and wairua.

CHAPTER 17: SOCIAL AND ECONOMIC ISSUES

- 2.307. Whakatōhea remember the years before 1865 as a time of prosperity. In the years following the musket wars of the 1830s, Whakatōhea successfully adopted Pākehā technology to grow their economy. Traditional and introduced foods were abundant enough to feed local people and produce surpluses to trade with settler communities. The socio-economic conditions for Whakatōhea changed markedly following invasion and raupatu.

Education

- 2.308. In the years before 1865 Whakatōhea took care of their own education in traditional matters, but were keen to learn about the Pākehā world. The desire for education was a key factor in encouraging missionaries to settle. By the mid-1860s many Whakatōhea were literate in te reo Māori and were reported to own many books.
- 2.309. Despite the severe impact of the raupatu, Whakatōhea remained determined their children should have access to educational facilities. The Native Schools Act 1867 provided for the establishment of village primary schools, initially administered by the Native Department but in 1879 transferred to the Department of Education. Those Māori communities wanting a native school had to provide land for its establishment. Whakatōhea were so keen for education that, in the 1870s, Hira Te Popo established a school for Ngāti Ira children at Waioweka. The school was set up independently, without Government assistance.
- 2.310. In 1873, following a request from Ngāti Rua, the Crown set up a native school at Ōmarumutu. Ngāti Rua, impoverished by the Crown confiscation of much of their most fertile land, nevertheless gave 'four acres of choice land' for Ōmarumutu Native School.

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Tūturu*

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The hapū contributed labour rather than money for the school's construction, while the Crown provided cash.

- 2.311. In the early 1880s, the Crown agreed to a Ngāti Ira request to set up a state supported native school at Waioweka. The Crown established the Waioweka Native School in 1884, on land provided by Ngāti Ira. The school was attended by Whakatōhea children from around the rohe.
- 2.312. The Inspector General of Schools, after visiting the Eastern Bay of Plenty in June 1899, heaped praise on the native schools in the area. The Inspector found Ōmarumutu Native School 'very good throughout; the children work with diligence and intelligence, and show much interest in their lessons'.
- 2.313. At Waioweka the Inspector found that the children's education 'was being well attended to', and that, the school had 'never before been so attractive to the students and so satisfactory to the parents'.
- 2.314. Whakatōhea tamariki often went to extraordinary lengths to attend schools in the rohe, crossing swamps and rivers, even after 'incessant rain'. In 1905 the head teacher of the Ōmarumutu Native School reported that three girls travelling the four miles from Tirohanga swam the swollen Waiau River, drifting downstream for some distance but eventually making it across. Many Whakatōhea children lacked shoes and wore clothes made from flour sacks, yet braved the cold weather to attend school in the winter.
- 2.315. The Crown's priority was to teach skills for Māori to enter the new colonial economy. Apart from basic reading, writing and arithmetic, the native school curriculum emphasised instruction in manual and domestic skills.
- 2.316. The Crown saw native schools in part as a means of assimilating Whakatōhea into Pākehā culture. The Native Schools Code 1880 specified that senior classes be taught exclusively in English, while for junior classes teachers should aim "to dispense with the use of Maori as soon as possible." Whakatōhea children were, therefore, strongly discouraged for many decades from speaking their own language in state run schools. While this policy softened somewhat in the 1930s, in native primary schools it largely remained in place until the 1960s. Whakatōhea elders recall being punished for speaking te reo Māori at school.
- 2.317. At times Whakatōhea tamariki faced significant discrimination and outright racism from teachers, which may have reflected the difficulty of finding teachers with the appropriate skills and motivation. At Ōmarumutu Native School in the early-twentieth century, one teacher described his Māori pupils as 'thieves, liars and cheats'. He wrote to the Secretary for Education outlining his disciplinary methods in response to their 'impudent' behaviours:
- Well, Sir I thrashed them. I thrashed them well. Whenever I got 'cheek' I gave the offender a double dose. I turned the worst ones out of school. I kicked one boy down the steps.*
- 2.318. The Education Department followed up the teacher's correspondence by sending an inspector, who found that attendance at Ōmarumutu Native School had dropped significantly.. Whakatōhea informed him that the teacher was 'no good as a master and they wanted a better one'. The Education Service subsequently dismissed the teacher.
- 2.319. Waioweka Native School came to be attended by Māori and Pākehā alike. In 1907, when Pākehā pupils began to outnumber Māori, the Pākehā parents sought to take control of



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the school. From 1907 through to 1916, Pākehā parents campaigned to have Waioweka classified as a general school rather than a native school.

- 2.320. In 1914 the Inspector of Schools noted that events at Waioweka Native School reflected a broader problem of discrimination in the Ōpōtiki district, based on the 'uncompromising attitude of the Europeans'. The Director of Education followed the Inspector's advice and refused to reclassify the school.
- 2.321. In 1917 Māori enrolments increased to over 50 percent of the Waioweka school roll and Pākehā gave up agitating to reclassify the school. Both Waioweka and Ōmarumutu remained native schools, renamed in 1947 as Maori schools. In 1969, as with all other Maori schools, they were integrated into the public school system.
- 2.322. In the nineteenth and twentieth centuries Whakatōhea children also attended the Kutarere, Toatoa, Wairata, Tirohanga, Wainui, Onekawa and Waingangara Schools. Some of these students also suffered discrimination from members of the Pākehā community. In 1907 cases were reported of Māori attended general schools being 'sworn at, insulted and teased'. In 1913 Pākehā in the Ōpōtiki district came up with a proposal to have a school built for Māori at Te Rere, with all Māori pupils currently at general schools being sent there. The Crown did not take up this proposal.

Health, living conditions and economy

- 2.323. Whakatōhea oral tradition states that in the years before 1865 iwi members generally enjoyed good health, with many tipuna living to an advanced age. Whakatōhea trade with Pākehā in the early nineteenth century brought some negative health impacts. The consumption of alcohol and tobacco became common and there were occasional outbreaks of introduced diseases. Whakatōhea became more exposed to infectious diseases after 1865, with the influx of Pākehā into the rohe following the invasion and raupatu.
- 2.324. By 1866, the Crown had destroyed a large portion of Whakatōhea property and confiscated most of their productive land. Whakatōhea worked hard to grow food on their remaining land, but their health was affected by being forced into poverty. The confiscation of food gathering sites, agricultural land and coastal areas reduced the range of food sources available. Some Whakatōhea responded to defeat by increasing their alcohol consumption. Whakatōhea mental and spiritual health was affected by the loss of access to important traditional sites. A missionary visiting in 1877 wrote:

One could not help being struck at the great change that has taken place in these people since I was here in 1865! Instead of their large populous villages and good native houses, they are now living in small places...in scattered parties, from 5 to 10 miles out of Opotiki. Without doubt they are industrious, but being so close to a town their inducements to spend money are so many... They are more or less drunken, ill-fed, always poor and, if the reports of the settlers are to be taken, passing away.

- 2.325. The large numbers of Pākehā settling on confiscated lands made Whakatōhea more vulnerable to introduced diseases. In 1872, the Crown carried out a smallpox vaccination campaign among Whakatōhea. The iwi suffered from epidemics of measles and mumps in 1878 and of typhoid fever in 1883.
- 2.326. The shortage of land made Whakatōhea dependent on a narrower range of crops. The failure of the potato crop at Ōpape in 1905 and again in 1906, brought the threat of starvation. Hapū who had previously been prosperous and self-sufficient were now

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forced to rely on the Government for food. In 1912 the teacher at Ōmarumutu reported local people were in dire poverty with hardly enough ground to grow kumara and potatoes. These conditions made Whakatōhea susceptible to diseases associated with poverty.

- 2.327. Whakatōhea had their own traditional healers, who used a combination of rongoa, traditional plant medicines, and spiritual practices. In 1907 Parliament enacted the Tohunga Suppression Act, authorising the prosecution of anyone 'who misleads or attempts to mislead any Maori by professing or pretending to profess supernatural powers in the treatment or cure of any disease...' The Crown did very little to enforce this and Whakatōhea healers continued with their work. However, according to Whakatōhea oral tradition, the stigma the Act created made many tohunga reluctant to pass on traditional knowledge.
- 2.328. Between 1901 and 1909 outbreaks of measles, cholera, enteric fever, influenza and tuberculosis were reported. Most of the victims were children. Very little western medicine was available to Whakatōhea at this time. In 1905 concern over Whakatōhea ill health led Paora Te Pakihi and 84 others to petition the Minister of Native Affairs for a doctor to take charge of Māori health in the Ōpōtiki district.
- 2.329. The Maori Health Officer recommended a local doctor, who was already providing care to Whakatōhea patients. The doctor asked the Crown for a salary of £150 per annum plus a mileage fee of 5 shillings per mile for visits to Whakatōhea settlements. The Crown considered the doctor's fees were too high and did not appoint anyone to the position.
- 2.330. In the absence of a Crown subsidised medical practitioner teachers at Native Schools were sometimes authorised to purchase medicines and were provided with instructions on their use. There is no evidence the teachers had any medical training.
- 2.331. In 1909 the head teacher at Ōmarumutu Native School reported a case of tuberculosis and 70 cases of skin disease. In 1913 the teacher at Waioweka Native School reported cases of smallpox and measles, with a further measles outbreak in 1916.
- 2.332. The 1918 influenza epidemic had a major impact on Whakatōhea. By 13 December it was reported that 57 Māori residents between Ōpape and Raukokore had died. Ōmarumutu suffered badly, with the victims having to be buried in a mass grave.
- 2.333. In subsequent years there were reports of outbreaks of typhoid at Ōmarumutu in 1919 and Ōpape in 1934. In 1925 it was reported that catarrhal conjunctivitis was widespread among Māori at Ōpōtiki. In 1938 measles and pneumonia were reported to be prevalent in the community at Ōmarumutu.
- 2.334. The 1920s and 1930s saw only limited improvement for the Whakatōhea economy. In 1927 two Pākehā residents of Ōpōtiki gave evidence to the Sim Commission summarising the Whakatōhea situation. The witnesses estimated there were around 1,000 Whakatōhea in the rohe. They also noted there was some dairying and maize growing on the Opape Native Reserve, but many people had to work outside the reserve on road works, bush felling, shearing or agricultural labour. Others made a living through fishing.
- 2.335. The witnesses reported a similar situation for Whakatōhea living in settlements outside the Ōpape reserve, including at Tirohanga, Waioweka and Te Rere. Whakatōhea were unable to survive on agriculture alone, but had to also work for wages in jobs such as labouring, bush felling and shearing. About 100 Whakatōhea lived in Ōpōtiki township,

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where most worked for Pākehā. One of the witnesses estimated that between 100 to 150 Whakatōhea had left the rohe, mostly to look for work.

- 2.336. Whakatōhea did retain some small areas of fertile land and worked to make these productive. In 1930, the kāinga at Ōmarumutu was reported to be thriving, despite the limited acreage. Located in a fertile valley 'a few miles east of Ōpōtiki', it supported a large Māori population as well as a sizeable number of Pākehā. A December 1930 newspaper report painted a picture of this nascent prosperity:

[Ōmarumutu] sends out much wool and butterfat, and a fair amount of maize is grown...some very good dairy herds are to be seen, and several of them are owned by Maori farmers, who are making good progress. The Maoris seem very industrious and prosperous each little holding has a small cultivation of potatoes, kumara and maize, besides a vegetable garden.

- 2.337. The Ngāti Ira settlement at Waioweka was a mere 20 acres, yet by 1936 it was providing a permanent home to 118 people. Ngāti Ira were famed for their hospitality, with their settlement playing host to 'pilgrims and visitors' travelling between the Bay of Plenty and Gisborne districts.
- 2.338. Authorities described Waioweka pā in 1936 as being 'as clean as can be', the inhabitants 'industrious' and 'law abiding' and their health 'surprisingly good'. The pā was governed by a village committee that exercised 'good influence and control in the communal life of the pa'. Despite this, conditions at the settlement were overcrowded and the facilities dilapidated.
- 2.339. The Crown provided little assistance to improve Whakatōhea living conditions until the late 1940s, when it built a number of State Houses at Waioweka pā. From this time on, however, the Crown's main emphasis was on encouraging young, rural Māori to move to urban areas, where more jobs and facilities were available.
- 2.340. A report from the mid-1950s indicated that 145 people at Waioweka were living in 19 houses, with nine houses still in sub-standard condition. Up until the 1950s the Waioweka residents used the local stream for washing, bathing and drinking water. A water reticulation scheme was installed in 1951, with all the houses in the village being connected by 1954.
- 2.341. Whakatōhea who lived in the Ōpōtiki region in the 1940s and 1950s describe many cold and leaky houses in the rohe. A 1955 report described poor housing conditions at the Whakatōhea settlement of Waiotahi Pā. The residents had a number of small uneconomic farms, but relied on rural labouring work for income. The population of 72 lived in eight houses within the settlement and another four nearby. Ten of these houses were described as sub-standard.
- 2.342. By the late 1950s there was a shortage of Māori housing. During the 1960s the Department of Maori Affairs responded by building houses in Ōpōtiki township and encouraging Whakatōhea living in remote rural areas to move to the town. In 1971 the Department reported there was little demand for new Māori housing in Ōpōtiki. This may have been due to the Crown encouraging migration to larger centres.
- 2.343. In the 1950s, the majority of Whakatōhea young people could not find year-round employment in their rohe. Work opportunities in the Ōpōtiki district declined during the late 1950s and early 1960s. Ōpōtiki was primarily an agricultural district, but Whakatōhea rural workers were largely dependent on working for Pākehā farmers. Raupatu and land

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sales had stripped Whakatōhea of their land, denying their young people the opportunity to work on their own farms.

- 2.344. After the Second World War, large numbers of young Whakatōhea were forced to leave the rohe in search of paid employment. They went to many parts of the country including Nelson, Rotorua, Kawerau, Tokoroa, Auckland, Wellington and other larger cities, while some went to Australia.
- 2.345. The post WWII urbanisation of Māori impacted Whakatōhea greatly. An estimated 80 per cent of Whakatōhea left the rohe in the decades following the war. Urbanisation was actively promoted by the Crown, which provided a range of assistance to Māori moving to urban areas where there were more employment opportunities.
- 2.346. Those Whakatōhea who left the rohe were separated from the main source of their tikanga and language. Most of their children attended state schools, which, from the 1940s through to the 1970s, had very limited, if any, facilities to teach te reo Māori. Government education policies through to the 1960s had discouraged the use and learning of te reo Māori. One consequence of these policies was that there were very few teachers with the skills to teach the language. The 2013 census recorded that almost 70% of those affiliated to Whakatōhea stated they could not hold a conversation about everyday things in te reo Māori.
- 2.347. For many years the Crown's education system had low expectations for Māori students, but Whakatōhea have worked hard to achieve within it. In 2013, 73% of Whakatōhea living in New Zealand held a formal qualification and a further 14% held a bachelor's degree or higher.
- 2.348. In 2020 only about 10% of Whakatōhea live within the iwi rohe. Whakatōhea elders have noted that it only takes one generation to lose connections with iwi and turangawaewae. Many of those who have left have lost contact with their whanaunga, their reo and their tikanga. The implications of these losses continue to plague urban Māori communities today.

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He wahanga a 'ka rangaranga te muri' o tētahi whakataukī ā Tūtāmure. Hei tō mai i te muri e tītina ai tēnei whakataunga mō ngā uri kāre anō kia whānau mai; whakaritenga.

Ka rangaranga te muri is part of a whakataukī by Tūtāmure. It is used here to bring together the past securing this settlement for the future generations.

THE WHAKATŌHEA SIGNING OF TE TIRITI O WAITANGI/THE TREATY OF WAITANGI: TE HAINATANGA A TE WHAKATŌHEA I TE TIRITI O WAITANGI

- 3.1. The Crown acknowledges that, on the 27th and 28th May 1840 at Ōpōtiki, seven Whakatōhea rangatira signed te Tiriti o Waitangi/the Treaty of Waitangi. The rangatira who placed their marks on te Tiriti were Tauātoro of Ngāi Tamahaua and Ngāti Ngahere; Te Takahiao of Te Ūpokorehe; Te Āporotanga of Ngāti Rua; Rangimātānuku of Ngāti Rua; Rangiharepō of Te Ūpokorehe and Ngāi Tamahaua; Wī Akeake of Te Ūpokorehe and the rangatira Whākia (Wakiia).
- 3.2. Ka whakaae te Karauna nō te 27 me te 28 o Mei i hainatia te Tiriti o Waitangi e ngā rangatira tokowhitu o Te Whakatōhea. Ko ngā rangatira nāna nei i tāmoko te Tiriti ko Tauātoro o Ngāi Tamahauā me Ngāti Ngahere; ko Takahiao o Te Ūpokorehe; ko Te Āporotanga o Ngāti Rua; ko Rangimātānuku o Ngāti Rua; ko Rangiharepō o Te Ūpokorehe me Ngāi Tamahauā; ko Wī Akeake o Te Ūpokorehe me te rangatira Whākia (Wakiia).

THE WHAKATŌHEA PURSUIT OF JUSTICE: KO TĀ TE WHAKATŌHEA WHAI I TE TIKĀ

- 3.3. The Crown acknowledges that:

Ka whakaae te Karauna anā:

- 3.3.1. despite the promise of te Tiriti o Waitangi/the Treaty of Waitangi, many Crown actions created long-standing grievances for Whakatōhea and over the generations Whakatōhea has sought to have their grievances addressed;

hakoa ngā kī taurangi kai te Tiriti o Waitangi, ina noa atu ngā whiu taumaha a te Karauna, anā i whānau mai ko ngā nawe mauroa pōuri nui mō Te Whakatōhea, ā, o roto i ngā whakatipuranga, whāia ko tā Te Whakatōhea whai kia whakatauhia ā rātou nawe;

- 3.3.2. the work of pursuing justice for these grievances has placed a heavy burden on the whānau and hapū of Whakatōhea and impacted on the physical, mental, spiritual and economic health of the people; and

nā te mahi whai i te tika mō wēnei nawe i ūhia he pīkaunga taumaha ki runga ki ngā whānau me ngā hapū o Te Whakatōhea, anā, ko ngā pāpātanga wōna ki te oranga tinana, oranga wairua me te oranga ohaoha o te iwi; ā

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- 3.3.3. the Crown has never properly addressed these historical grievances and recognition is long overdue.

kāore anō kia whakatau tika i te Karauna wēnei nawe o tūāuriuri, ā, ka aua atu te wā e tatari ana ki te whakaaetanga.

THE KILLING OF TE ĀPOROTANGA: KO TE KŌHURUTANGA I A TE ĀPOROTANGA

- 3.4. The Crown acknowledges that the deaths of the rangatira Apanui, Tūtakahiao, Mikaere Pihipihi and Te Āporotanga in fighting against Crown forces in April 1864 contributed to the loss of leadership within Whakatōhea. The Crown acknowledges that the Ngāti Rua and Whakatōhea rangatira Te Āporotanga, a signatory of te Tiriti o Waitangi, was killed while held prisoner in the custody of Crown forces, and the Crown's failure to keep him safe was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Ka whakaae te Karauna ko te matenga o ngā rangatira a Apanui, a Tūtakahiao, a Mikaere Pihipihi rātou ko Te Āporotanga i ngā whakauenga-riri ki ngā ope tauā a te Karauna i te marama o Āperira, i te tau 1864, he whai wāhi nui tērā ki te whakamukutanga i te mana arikitanga o roto o Te Whakatōhea. Ka whakaae te Karauna ko Te Āporotanga he rangatira nō Ngāti Rua, nō Te Whakatōhea whānui hoki, nāna i tāmoko te Tiriti o Waitangi, he mea kōhuru, nōna e mauhere ana e te Karauna, ā kīhai hoki te Karauna i mātua tiaki i a ia kia ora tonu, he takahi tērā i te Tiriti o Waitangi me wōna mātāpono.

THE CROWN ATTACK IN ŌPŌTIKI IN 1865: KO TE KŌKIRI WHAKAEKENGĀ A TE KARAUNA KI RUNGA O ŌPŌTIKI

- 3.5. The Crown acknowledges that it sent forces to attack Ōpōtiki in September 1865, without sufficient prior warning or explanation to Whakatōhea. That invasion was unjustified, an injustice, and was in breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Ka whakaae te Karauna; nāna i tuku hē wōna ope tauā ki te kōkiri whakaeke ki runga o Ōpōtiki me te korenga o te whakatūpato, o te whakamārama tika rānei i a Te Whakatōhea. Ko te kōkiri whakaeketanga i parahau kore, i manatika kore hoki, ā he takahi tērā i te Tiriti o Waitangi me wōna mātāpono.

- 3.6. The Crown further acknowledges that Whakatōhea suffered a loss of life and destruction of property during its attack on Whakatōhea including such actions as:

Ka whakaae anō te Karauna i mate tangata, i mate whenua a Te Whakatōhea i tana kōkiri whakaeketanga ki runga o Te Whakatōhea me ana mahi tūkino pēnei i:

- 3.6.1. bombardment of the Pākowhai settlement by a Crown warship; and
te whakapahūtanga i te pā o Pākowhai e te Karauna me tana manua; ā
- 3.6.2. the desecration of the bodies of at least 35 Whakatōhea killed in the cavalry charge and subsequent fighting at Te Tarata Pā and afterwards buried by Crown forces in a mass grave.
te whakataurekarekatanga i ngā tūpāpaku 35 neke atu o Te Whakatōhea i mate i te kōkiri whakaeketanga ā hoiho ki te whakauenga-riri i tū ki te pātūwatawata o Te Tarata, ā nō muri mai i tanumia tokomahatia ki tētahi rua tūpāpaku kaitā rawa atu.



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- 3.7. The Crown acknowledges that a combination of extensive looting and destruction of property which amounted to the use of scorched earth tactics by Crown forces caused widespread devastation to Whakatōhea's once thriving economy. The Crown acknowledges that its forces destroyed Whakatōhea crops, killed horses and livestock, destroyed houses, ships and the Ngāti Ira flour mill. These actions damaged Whakatōhea's social structure, as well as the mana, and rangatiratanga of the hapū involved. The Crown acknowledges that its conduct showed reckless disregard for Whakatōhea, went far beyond what was necessary or appropriate in the circumstances and was in breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Ka whakaae te Karauna nā ngā mahi whānako me ngā mahi whakatakakino i ngā rawa katoa, i tahuri ai ngā ope tauā a te Karauna ki tāna kaupapa, arā te urupatu; ko te whakangarotanga atu tērā i te ohaoha kaha nuitanga o tērā wā i a Te Whakatōhea. Ka whakaae te Karauna i whakatakakinotia e wōna ope tauā ngā māra kai a Te Whakatōhea, i kōhurutia ngā hoiho me ngā kararehe, i tahuna ngā whare, ngā kaipuke me te mira puehu parāoa o Ngāti Ira hoki. Nā wēnei mahinga i whakatakakinotia ai ngā tikanga whakahaere i te iwi a Te Whakatōhea me tōna mana anō hoki, me te rangatiratanga o ngā hapū. Ka whakaae te Karauna nā tēnei mahinga raukeke wāna ki te mana o Te Whakatōhea, i tino tawhiti atu i tērā e tika ana mō tēra kaupapa i taua wā, ā he takahi tērā i te Tiriti o Waitangi me wōna mātāpono.

THE KILLING OF TIO TE KĀHIKA: TE KŌHURUTANGA I A TIO TE KAHIKA

- 3.8. The Crown acknowledges that Crown forces:

Ka whakaae te Karauna nā ngā ope tauā o te Karauna i:

- 3.8.1. killed Tio Te Kāhika despite clearly identifying him as a non-combatant;

kōhuru a Tio Te Kahika hakoā i mārama te tautuhi i a ia, ehara ia i te tangata hāpai ake i te rākau a Tūmataunga ki te pakanga;

- 3.8.2. desecrated his body and gratuitously took possession of it to offend Whakatōhea;

whakataurekareka i tōna tūpāpaku me te whānako i tōna tūpāpaku hei whakamanioro i a Te Whakatōhea;

- 3.8.3. failed to return his body to his relatives; and

kore ai i whakahoki i tōna tūpāpaku ki wōna whanaunga; ā

- 3.8.4. that these actions were a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

takahi wēnei mahi tūkinō i te Tiriti o Waitangi me wōna mātāpono.

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THE EXECUTION AND PARDON OF MOKOMOKO: KO TE TĀRONATANGA I A TE
MOKOMOKO ME TE MURU I WŌNA HARA

3.9. The Crown acknowledges:

Ka whakaae te Karauna:

- 3.9.1. the sense of grievance and pain suffered for generations by Te Whānau a Mōkomoko in relation to the Crown's treatment and execution of Mōkomoko; and

ki ngā mamae me ngā nawe i wahaina e Te Whānau a Mōkomoko mō te hia whakatipuranga e pā ana ki ngā whakawhiu a te Karauna me te tāronatanga i a Mōkomoko; ā

- 3.9.2. that its actions led to the stigmatisation of Mōkomoko and his descendants, and the burden of shame and culpability Te Whānau a Mōkomoko have carried for generations.

nā wāna mahinga kinotanga, ko te whakaparahakotanga tērā i a Mōkomoko me wōna uri, me te taumaha o te whiu o te whakamā me ngā whakapae teka i pīkaungatia e Te Whānau a Mōkomoko mō te hia whakatipuranga te roa.

- 3.10. The Crown acknowledges that it interred the body of Mōkomoko without ceremony within the Mount Eden prison walls after his execution in 1866 and retained his body until 1989.

Ka whakaae te Karauna nō muri mai i tana tāronatanga i te tau 1866, nāna i tanu tikanga kore te tūpāpaku o Mōkomoko ki roto i ngā pātū o te whareherehere o Mautini, ā i puritia tonutia tōna tūpāpaku tae rā anō ai ki te tau 1989.

- 3.11. The Crown acknowledges that the whānau of Mōkomoko were unable to perform the rites of tangi for Mōkomoko due to the Crown's refusal to return his body to them after his execution.

Ka whakaae te Karauna kīhai rawa Te Whānau a Mōkomoko i tukuna kia whai wāhi ki te whakahaere i ngā tikanga o te ūhunga Māori mō Mōkomoko, he whakakeke nō te Karauna ki te whakahoki i tōna tūpāpaku ki a rātou i muri mai i tana tāwharonatanga.

- 3.12. The Crown acknowledges that the Mōkomoko (Restoration of Character, Mana, and Reputation) Act 2013 Te Ture mō Mōkomoko (Hei Whakahoki i te Ihi, te Mana, me te Rangatiratanga) 2013:

Ka whakaae te Karauna ko te Te Ture mō Mōkomoko (Hei Whakahoki i te Ihi, te Mana, me te Rangatiratanga) 2013:

- 3.12.1. restored the character, mana and reputation of Mōkomoko and the character, mana and reputation of his uri, and acknowledged that;

i whakahokia te Ihi, te Mana me te Rangatiratanga ki a Mōkomoko me te Ihi, te Mana me te Rangatiratanga ki wōna uri; me te whakaae anō ki tērā;

- 3.12.2. the free pardon of June 1992 did not expressly restore the character, mana and reputation of Mōkomoko and his uri; and

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kīhai rawa te whakapāhatanga kore herenga o te marama o Hune 1992 i whakahokia tikatia te Ihi, te Mana, me te Rangatiratanga ki a Mokomoko me wōna uri, ā

- 3.12.3. the Crown should have consulted with Te Whānau a Mokomoko about the wording of the free pardon.

ko tōna tikanga me whai kupu te Karauna ki Te Whānau a Mokomoko e pā ana ki ngā tuhinga kupu mō te whakapahātanga kore herenga.

- 3.13. The Crown further acknowledges that it breached te Tiriti o Waitangi/the Treaty of Waitangi and its principles when it failed to consult with Te Whānau a Mokomoko about the wording of the 1992 free pardon.

Ka whakaae atu anō te Karauna i takahi ia i te Tiriti o Waitangi me wōna mātāpono, nā tōna korenga ki te whai kupu atu ki Te Whānau a Mokomoko e pā ana ki ngā tuhinga kupu mō te whakapāhatanga kore herenga nō te tau 1992.

MILITARY ACTIONS IN 1870: NGĀ MAHINGA A NGĀ OPE TAUĀ I 1870

- 3.14. The Crown acknowledges that during the occupation by Crown forces of Ōhiwa and Ōpōtiki and the campaign against Te Kooti in the Whakatōhea rohe in 1870:

Ka whakaae te Karauna nō te wā i nōhia e te ope tauā a te Karauna a Ōhiwa me Ōpōtiki me te pakanga ki a Te Kooti ki te rohe o Te Whakatōhea i 1870:

- 3.14.1. Crown forces looted Whakatōhea crops and livestock at Ōpōtiki and Ōpape;

I whānakotia e ngā ope tauā a te Karauna ngā māra kai me ngā kararehe a Te Whakatōhea i Ōpōtiki me Ōpape;

- 3.14.2. Crown forces carried out scorched earth tactics against Whakatōhea at Maraetahi, Wairātā and Waipuna, burning whare, including a whare karakia, and destroying large quantities of crops; and

I urupatutia a Te Whakatōhea e ngā ope tauā a te Karauna i Maraetahi, i Wairātā, i Waipuna hoki, i tahuna ngā whare, me tētahi whare karakia, me te whakatakakinetanga i ngā māra kai kaitā; ā

- 3.14.3. Crown forces summarily executed prisoners at Wairātā and Waipuna, with two Whakatōhea men, Rehara and Timoti Maruru listed among the dead.

I kōhurutia ā turetia e ngā ope tauā a te Karauna ngā whakarau i Wairātā, i Waipuna hoki, ā tokorua hoki ngā tāne o Te Whakatōhea ko Rehara rāua ko Timoti Maruru i rārangitia o rāua ingoa ki te rārangi o te hunga i kōhurutia.

- 3.15. As a result of Crown actions Whakatōhea suffered loss of life, and the destruction of their homes, property, and cultivations, disrupting their attempts to rebuild their struggling economy after the devastation of war and raupatu. The Crown acknowledges that its conduct showed reckless disregard for Whakatōhea, went far beyond what was necessary or appropriate in the circumstances and was in breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Nā runga i ngā whakawhiu taumaha a te Karauna i mate anō ngā tāngata o Te Whakatōhea, me te whakamōti i wō rātou kāinga, rawa me ngā māra kai me te

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whakapōraruraru i tā rātou whakanana ki te whakatipu anō i tō rātou ohaohatanga i hauwareatia ai nō muri mai i te penupenutanga a te pakanga me te raupatu. Ka whakaae te Karauna he mahinga raukeke wāna ki te mana o Te Whakatōhea, i tino tawhiti atu i tērā e tika ana mō tēra kaupapa o taua wā, ā he takahi tērā i te Tiriti o Waitangi me wōna mātāpono.

**OLD LAND CLAIMS/SURPLUS LANDS - THE PAKIHI LAND: KO NGĀ KERĒME
WHENUA TAWHITO/NGĀ TOENGA WHENUA- NGĀ WHENUA O PĀKIHI**

- 3.16. The Crown acknowledges that 7,638 acres of Whakatōhea land at Pakihi became Crown land under its surplus land policy, after settlers claimed 3,840 acres of Pakihi land from Whakatōhea on 27 January 1840 and confirmation of the transaction in 1844. The Crown acknowledges that it breached te Tiriti o Waitangi/the Treaty of Waitangi and its principles by confirming the pre-Treaty transaction without ensuring the Pakihi block had been adequately surveyed, and by later applying its surplus lands policy to the block, without having assessed whether Whakatōhea would retain adequate lands for their needs after the Pakihi land was taken.

Ka whakaae te Karauna anā, i raro i tana ture toenga whenua i roto ai ngā whenua o Te Whakatōhea e 7,638 eka i te Karauna, i muri i te haotanga a ngā Pākehā, i te 3,840 eka o te whenua ki Pākihi, mai i ngā ringaringa o Te Whakatōhea i te 27 o Hānuere 1840 me te whakamanatanga i tērā hokotanga i te tau 1844. Ka whakaae te Karauna he takahi nōna i te Tiriti o Waitangi me wōna mātāpono i tana whakamanatanga i tērā hokotanga ā-mua-te-Tiriti me te kore e mātua rūri tika i te poraka o Pākihi, ā nō muri ko te whakahaeretanga i te ture toenga whenua ki te poraka, me te kore e āta whakatau mēnā ka whai whenua nui tonu a Te Whakatōhea e rite ai mō wō rātou hiahia i muri mai i te tangohanga i ngā whenua o Pākihi.

**THE CONFISCATION OF WHAKATŌHEA LAND AND THE CREATION OF THE
ŌPAPE NATIVE RESERVE: KO TE RAUPATUTANGA I TE WHENUA O TE
WHAKATŌHEA ME TE WĀHITANGA I TE ŌPAPE NATIVE RESERVE**

- 3.17. The Crown acknowledges that:

Ka whakaae te Karauna anā:

- 3.17.1. its confiscation and subsequent retention of a significant proportion of land in which Whakatōhea had interests was unjust and unconscionable;

ko te mutunga kē mai o te parahau kore me te manatika kore tāna raupatutanga me tāna mautanga ki te nuinga o te whenua e whai pānga atu ana ki a Te Whakatōhea;

- 3.17.2. the Crown compounded the impact of the raupatu by requiring Whakatōhea hapū to move to the Ōpape Native Reserve, established on traditional lands of Ngāti Rua which had been included in the confiscation;

i tāparatia e te Karauna te whakawhiunga taumahatanga a te raupatu, mā te whakahau kia hūnuku ngā hapū o Te Whakatōhea ki te Ōpape Native Reserve, i wāwāhingia ai ki runga ki ngā whenua taketake ake o Ngāti Rua i murua i te raupatu;

- 3.17.3. those hapū the Crown forced to move to the Ōpape Native Reserve were separated from their maunga, awa, wāhi tapu and other traditional sites and deprived of links with their history and whakapapa;



TE MĀKEOTANGA – DEED OF SETTLEMENT

3: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (ACKNOWLEDGEMENT AND APOLOGY)

i tapahia te pito tangaengae o ngā hapū, i panaia ki te Ōpape Native Reserve mai i wō rātou maunga, awa, wāhi tapu me wētahi atu whenua tipu, anā i raupatutia tō rātou tātai ki wā rātou kōrero tuku iho, whakapapa hoki;

- 3.17.4. by requiring Whakatōhea hapū to live within the Ōpape Native Reserve the Crown contributed to tensions between hapū as they competed for limited resources; and

nā te whakahau kia noho ngā hapū o Te Whakatōhea ki roto ki te Ōpape Native Reserve ko te Karauna te kaitātaki i te whakatutūtanga i te puehu i waenganui i ngā hapū i tā rātou pakanga mō ngā rawa mōtī noa iho nei; ā

- 3.17.5. the Crown's extinguishment of Whakatōhea customary title over a wide area of land, including Ōpape, and its retention of most of this confiscated land were breaches of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

ko te raupatutanga a te Karauna i te mana o Te Whakatōhea ki runga ki te nuinga o te whenua tae atu ki Ōpape, me tāna mautanga ki te nuinga o tēnei whenua raupatu, he takahi tērā i te Tiriti o Waitangi me wōna mātāpono.

- 3.18. The Crown further acknowledges that it unfairly labelled Whakatōhea as rebels and that the confiscation of land, taonga and other resources under the New Zealand Settlements Act 1863 has had a profoundly harmful impact on the welfare, economy and development of Whakatōhea, devastating the iwi's mana and mauri and causing great distress and suffering.

Ka whakaae anō te Karauna kīhai i tika tāna whakaingoa i a Te Whakatōhea hai iwi whakakeke, ā ko te raupatutanga i te whenua, ngā taonga me wētahi anō rawa i raro i te New Zealand Settlements Act 1863, ā he whakarihariha rawa te pā kinotanga maitanga ki te oranga, ohaohatanga me te whakawhanaketanga o Te Whakatōhea, ā he whakataurekarekatanga anō nō tērā ki te mana me te mauri o te iwi, ā me te whakawhiunga anō ki te mamae me te māuiui tino nui.

THE IMPACT OF THE COMPENSATION COURT AND OUT-OF-COURT SETTLEMENTS: KO TE PĀNGA MAITANGA O TE KŌTI KAMAPEIHANA ME NGĀ WHAKATAUNGA O-WAHO-O-TE-KŌTI

- 3.19. The Crown acknowledges that:

Ka whakaae te Karauna:

- 3.19.1. inadequacies in the Compensation Court and out-of-court settlement process exacerbated the prejudice to Whakatōhea caused by the confiscation of their lands;

nā te kore i whai take o te tukanga a te Kōti Kamapeihana me ngā whakataunga o-waho-o-te-kōti i nui ai te whakahāweatanga ki a Te Whakatōhea nā runga tonu i te raupatutanga o wō rātou whenua

- 3.19.2. in most cases the Compensation Court awarded lands confiscated from Whakatōhea to individuals rather than to hapū, which was not consistent with customary tenure. The Compensation Court system was imposed on Whakatōhea without consultation with them; and



3: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION
(ACKNOWLEDGEMENT AND APOLOGY)

i te nuinga o te wā i tukuna e Te Kōti Kamapeihana ngā whenua i raupatutia mai i Te Whakatōhea ki te tangata takitahi kaua ki te hapū, ehara tēnei i te tika e ai ki te tikanga, mana whenua. I pūkaitia te pūnaha o Te Kōti Kamapeihana ki runga i a Te Whakatōhea me te kore whai kupu atu ki Te Whakatōhea; ā

- 3.19.3. the impact of the Compensation Court and the Crown's out-of-court settlements eroded the traditional social structures, mana, and rangatiratanga of Whakatōhea. The Crown failed to adequately protect Whakatōhea from the impact of these processes and this was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

ki te pānga maitanga o te Kōti Kamapeihana me ngā whakataunga o-waho-o-te-kōti i whakatānoanoatia ko te noho tūturu a te Māori me ngā tikanga a te iwi, te mana, me te rangatiratanga o Te Whakatōhea. Kīhai te Karauna i mātua tiaki tika i Te Whakatōhea i te pānga kino maitanga o wēnei tukanga, ā he takahi tērā i te Tiriti o Waitangi me wōna mātāpono.

THE IMPACT OF THE NATIVE LAND LAWS: KO TE PĀNGA MAITANGA O NGĀ
TURE O TE KŌTI WHENUA

- 3.20. The Crown acknowledges that the operation of the Native Land laws caused great prejudice to Whakatōhea and that:

Ka whakaae te Karauna nā ngā whakahaere i ngā ture a Te Kōti Whenua i whakahāwea nuitia a Te Whakatōhea, ā

- 3.20.1. the awarding of lands to individuals rather than to iwi or hapū, made Whakatōhea lands more susceptible to fragmentation, partition and alienation;

ko te tukutanga i ngā whenua ki te tangata takitahi kaua ki te iwi, ki te hapū rānei, i whakangāwari ai ki te wāwahitanga, ki te wāwāhanga ki te hoko, ki te whakarere hoki i ngā whenua a Te Whakatōhea;

- 3.20.2. Whakatōhea had to alienate land to meet the significant survey costs imposed on them by the Native Land Court process; and

i mate a Te Whakatōhea ki te whakarere i tana whenua hai utu i ngā utu nui mō te rūri i whiua ki a rātou e ngā whakahaere a Te Kōti Whenua; ā

- 3.20.3. the overall operation of the Native Land laws eroded the traditional social structures, mana, and rangatiratanga of Whakatōhea. The Crown failed to adequately protect Whakatōhea from the impact of these processes and this was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

ko te katoa o ngā whakahaere i ngā ture a Te Kōti Whenua i whakatānoanoatia ai ko te noho ā iwi tūturu a te Māori me ngā tikanga a te iwi, te mana, me te rangatiratanga o Te Whakatōhea. Kīhai te Karauna i mātua tiaki tika i Te Whakatōhea i te pānga kino maitanga o wēnei tukanga, ā he takahi tērā i te Tiriti o Waitangi me wōna mātāpono.

- 3.21. The Crown acknowledges that in introducing the Native Lands Act 1862 and 1865 it imposed a new land tenure system without consulting with Whakatōhea. Whakatōhea had no choice but to participate in the system which was the only means to obtain legally recognisable land title which was protected from claims by others.

**3: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION
(ACKNOWLEDGEMENT AND APOLOGY)**

Ka whakaae te Karauna ko te whakature i te Native Lands Act 1862 me te 1865 i pūkai atu he pūnaha ture whenua hou me te korenga wōna e whai kupu ki a Te Whakatōhea. Kāore he huarahi ki a Te Whakatōhea atu i te whaiuru ki te pūnaha koirā anake te huarahi i taea ai te whai taitara whenua i raro i te ture hai kaupare atu i ngā kerēme a wētahi atu.

**OAMARU BLOCK SURVEY COSTS: KO NGĀ UTU MŌ TE RŪRĪ I TE PORAKA O
ŌAMARU**

- 3.22. The Crown acknowledges that in lieu of survey fees, it took 28,825 acres of the Oamaru block land as awarded to Whakatōhea. This was more than a quarter of the total area of the block awarded to Whakatōhea. This was an unreasonable amount of land to take to cover survey costs and was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Ka whakaae te Karauna nāna i tango e 28,825 eka o te whenua o te poraka o Ōamaru i tukuna ki Te Whakatōhea hai whakahoki mai i ngā utu mō ngā rūri. Neke atu tēnei i te koata o te katoa o te poraka i tukuna ki Te Whakatōhea. Kātahi te hē ko tēnei tangohanga i tēnei nui o te whenua hai utu i ngā utu rūri, ā he takahi tērā i te Tiriti o Waitangi me wōna mātāpono.

TAHORA NO.2 BLOCK SURVEY: KO TE RŪRĪ I TE PORAKA NO.2 O TAHORA

- 3.23. The Crown acknowledges that:

Ka whakaae te Karauna anā:

- 3.23.1. it retrospectively authorised the secret survey of Tahora No.2, which had been conducted without approval and contrary to survey regulations;

tōna whakamanatanga murihanga i te rūri muna i a Tahora No. 2, anā i whakahaeretia me te kore i whakamanatia, ā he takahitanga tēra e ai ki ngā ture rūri;

- 3.23.2. it was aware of significant Whakatōhea opposition to the survey, its authorisation and subsequent court hearings;

i marama oti ia he kaha whakahē nō Te Whakatōhea ki te rūritanga, tōna whakamanatanga me ngā kōtītanga i whāia;

- 3.23.3. it acquired land from Tahora No. 2 that Whakatōhea had wished to retain, when Whakatōhea transferred land to meet the resulting survey costs; and

i riro i a ia mai i a Tahora No. 2 i te tukutanga a Te Whakatōhea i te whenua hai utu i ngā utu rūri; ahakoa he whenua i pīrangi tonutia kia mau tonu e Te Whakatōhea; ā

- 3.23.4. its failure to act with utmost good faith and honesty, and to actively protect Whakatōhea interests in land they wished to retain was in breach of the Treaty of Waitangi and its principles.

i te korenga wōna ki te mahi i runga i te tika me te pono, ā ki te tiaki marikatia ngā pānga whenua o Te Whakatōhea i pīrangi tonutia e rātou te pupuri, ā he takahi tērā i te Tiriti o Waitangi me wōna mātāpono.

**3: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION
(ACKNOWLEDGEMENT AND APOLOGY)**

**PUBLIC WORKS - MOUTOHORA QUARRY: NGĀ MAHI TANGO WHENUA A TE
KĀWANATANGA- TE RUA KŌHATU O MOUTOHORĀ**

3.24. The Crown acknowledges that:

Ka whakaae te Karauna anā:

- 3.24.1. its compulsory acquisition of the Moutohora quarry in 1937 deprived the Whakapaupākihi No. 2 owners and Whakatōhea of one of the few sources of income left to them in the aftermath of raupatu and Crown land purchasing;

nā tōnā mātua tango ā ture i te rua kōhatu o Moutohorā i te tau 1937, i aukatitia te whakawhiwhinga ā pūtea ki ngā kaipānga o Whakapaupākihi No. 2 me Te Whakatōhea tonu, mai i tētahi o ngā toenga rawa i a rātou whai muri iho i te raupatu me te hokotanga whenua a te Karauna;

- 3.24.2. the Crown did not adequately consult the owners before taking their land, and failed to consider alternatives to compulsory acquisition such as attempting to negotiate a lower price for metal from the quarry;

kīhai te Karauna i kōrero marikatia ki ngā kaipānga i mua i te tangohanga i wā rātou whenua, kīhai hoki i titiro ki ngā huarahi atu i te mātua tango ā ture pērā ki te whakarite, whakatau i tētahi utu mō ngā mētara mai i te rua kōhatu i tētahi utu iti iho;

- 3.24.3. while the Crown paid the compensation required under the relevant legislation, this did not properly compensate the owners for the taking, and the Crown did not pay any compensation for the land taken or for the loss of royalties on the quarry metal sold to Government or local bodies; and

hakoa i utua e te Karauna te kamapeihana e tika ana i raro i te ture, kīhai hoki tēnei i kamapeihanatia tikatia ngā kaipānga mō te tangohanga, ā kīhai hoki te Karauna i utu kamapeihana mō ngā whenua i tangohia, rānei hoki ko te ngarohanga o ngā utu rōera mō ngā mētara mai i te rua kōhatu i hokona atu ki te Kāwanatanga, ki ngā kaunihera ā rohe rānei; ā

- 3.24.4. the taking was unnecessary, and it caused great prejudice to owners and Whakatōhea already enduring economic hardship, and was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

korekore rawa te tangohanga i tika, ā i whakahāwea nuitia ngā kaipānga me Te Whakatōhea kua rongo kētia te uauatanga o te taha ōhanga, ā he takahi tērā i te Tiriti o Waitangi me wōna mātāpono.

ENVIRONMENTAL ISSUES: KO NGĀ TAKE PŪTAIAO

- 3.25. The Crown acknowledges that environmental changes and pollution since the nineteenth century have been a source of distress and grievance for Whakatōhea. The Crown acknowledges that the natural environment of the Whakatōhea rohe has been degraded by deforestation and subsequent erosion and flooding, by pollution, by over-exploitation of fish and kaimoana and by the introduction of weeds and pests, which has severely damaged traditional food sources and mahinga kai.

Ka whakaae te Karauna ko ngā whakarerekētanga me te paitini ki te taiao mai i te rautau tekau mā iwa kua noho hai take ngaukino, ngākau pōuri mō Te Whakatōhea. Ka

TE MĀKEOTANGA – DEED OF SETTLEMENT

3: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION (ACKNOWLEDGEMENT AND APOLOGY)

whakaae te Karauna ko te tūturutanga o te taiao o te rohe o Te Whakatōhea i whakaparahakotia ki te tope ngahere e ngā horonga whenua me ngā waipuke i whāia, ki te paitini, ki te tata pau monemone o te ika i te haotanga, me te hari mai i ngā tarutaru me ngā riha rāwaho, i kōhuru kino i ngā pātaka kai me ngā mahinga kai.

WHAKATŌHEA LANDLESSNESS: WHAKATŌHEA WHENUAKORE

- 3.26. The Crown acknowledges that the cumulative effect of its acts and omissions, including raupatu, Crown purchasing practices, survey costs and the operation and impact of Native Land laws, has left Whakatōhea virtually landless. This has caused deep pain to Whakatōhea, leaving them separated from maunga, awa and traditional sites, contributing to the loss of traditional knowledge and hindered their economic, social and cultural development. The Crown's failure to ensure that Whakatōhea retained sufficient land for their present and future needs was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Ka whakaae te Karauna nā te moanatanga o wāna ture me wōna hara, hui katoa ko te raupatu, ngā tikanga hoko a te Karauna, ngā utu rūri me te whakahaere me te whiunga o Ngā Ture Whenua, kua tata whenuakore a Te Whakatōhea. Nā konei kua ngau kino te mamae nui ki a Te Whakatōhea, kua motu te pito tāngaengae ki ngā maunga, ki ngā awa, ki ngā tūtohu whenua tapu, whāia ko te raupatutanga o ngā kōreroa tuku iho a Te Whakatōhea taketake, ā i pā kinotia ai ki tō rātou whakawhanaketanga ā ohaoha, ā iwi, ā ahurea. Ko te korenga o te Karauna kia mātua whai whenua a Te Whakatōhea e rahi ake ana mō wō rātou hiahia mō te nāiane, me te ao o āpōpō hoki, ā he takahi tērā i te Tiriti o Waitangi me wōna mātāpono.

SOCIO-ECONOMIC ISSUES: KO NGĀ TAKE OHAOHA-Ā-HĀPORI

- 3.27. The Crown acknowledges that:

Ka whakaae te Karauna anā:

- 3.27.1. Whakatōhea had little access to adequate healthcare over a prolonged period and that Whakatōhea suffered from diseases such as measles, mumps, cholera, influenza, tuberculosis, typhoid, catarrhal conjunctivitis and pneumonia;

he iti rawa te āhei o Te Whakatōhea ki te ratonga hauora e tika ana mō te hia kē te roa, anā, i mate nuitia ki ngā mate urutā pēnei i te mītera, mate pupuhi repe, korara, rewharewha, kōhi, taipō, mate pīkaru me te niumōnia;

- 3.27.2. for many years the education system had low expectations of Whakatōhea achievement and strongly discouraged the use of te reo Māori, and this contributed to the Crown's failure to actively protect te reo Māori and encourage its use by Whakatōhea in breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles; and

e hia kē te roa i titiro whakaparahako te tāhuhu o te mātauranga ki te āheitanga o Te Whakatōhea me te kaha aukati i te kōrerotia o te reo Māori, nā konei i āpiti atu ki te korenga o te Karauna ki te mātua tiaki i te reo Māori me te āki i tōna kōrerotiatanga e Te Whakatōhea, ā he takahi tērā i te Tiriti o Waitangi me wōna mātāpono, ā

- 3.27.3. the lack of employment opportunities and Crown support for urban migration encouraged a situation where, by 2020, 90% of Whakatōhea live outside their



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traditional rohe, with a subsequent separation from their whanaunga, reo and tikanga.

nā te kore mahi me te āki a te Karauna i te hekenga ki ngā taone nunui whāia nō te tau 2020, e 90% o Te Whakatōhea ka noho manene ki waho atu o tō rātou rohe whenua ake, nā konei ko te motunga i te here ki ngā whanaunga, ki te reo me ngā tikanga.

- 3.28. The Crown acknowledges that its acts and omissions in breach of the Treaty, have caused devastating prejudice to Whakatōhea. Insufficient arable land, lack of infrastructure, poor housing and lack of economic opportunities have left Whakatōhea impoverished and suffering significant economic hardship.

Ka whakaae te Karauna nā wāna ture, nā wōna hara, he takahitanga i te Tiriti, i kaha nui whakahāwea i a Te Whakatōhea. Kāore i waiho kia tika te rahi o te whenua mōmona, te korenga o te hanganga ā hāpori, te korenga o te whare nōhanga tika, me te korenga o te āheinga ki ngā kaupapa ohaoha kua waiho a Te Whakatōhea hai iwi rawakore rawa atu, me te rongo kino i te taikaha uaua o te kore ohaohatanga.

TE REO MĀORI

- 3.29. The Crown acknowledges:

Ka whakaae te Karauna:

- 3.29.1. the significant harm Whakatōhea children suffered by being punished for speaking their own language in Crown-established schools for many decades; and

ki te tūkinotanga nui i whiua ki ngā tamariki a Te Whakatōhea mō te hia kē ngā tau mō te kōrero i tō rātou reo ake ki roto ki ngā kura o te Karauna, ā

- 3.29.2. that it failed to actively protect te reo Māori and encourage its use by Whakatōhea, which had a detrimental impact on te reo Māori and the iwi of Whakatōhea, and that this failure was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

ki te korenga o te Karauna ki te mātua tiaki i te reo Māori me te āki i tōna kōrerotiatanga e Te Whakatōhea, nā konei i pā kinotia ki te ora o te reo Māori me te iwi o Te Whakatōhea, anā ko tēnei korenga, he takahi tērā i te Tiriti o Waitangi me wōna mātāpono.

WHAKATŌHEA RESILIENCE: TE WHAKATŌHEA TOHENIHORAU

- 3.30. The Crown acknowledges Whakatōhea resilience in the face of the injustices they have endured as a consequence of Crown actions since the iwi signed te Tiriti o Waitangi/the Treaty of Waitangi. The Crown pays tribute to Whakatōhea efforts to maintain their identity and tikanga despite the social, economic and cultural hardship they have endured due to Crown actions.

Ka whakaae te Karauna ki te tohenihorau o Te Whakatōhea i ngā whiunga taumaha kino o te manatika kore kua wahaina e rātou i ngā mahinga whakaparahako a te Karauna mai i te hainatanga a te iwi i te Tiriti o Waitangi. Ka whakamānawatia e te Karauna te tohenihorau a Te Whakatōhea ki te pupuri i tō rātou mana toherauariki me ngā tikanga



3: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION
(ACKNOWLEDGEMENT AND APOLOGY)

hakoa ngā whiunga taumaha nā ngā mahi whakaparahako a te Karauna ki te taha hāpori, ki te taha ohaoha, ki te taha ahurea.

CROWN APOLOGY TO WHAKATŌHEA: TE WHAKAPĀHA A TE KARAUNA KI A TE WHAKATŌHEA

- 3.31. To ngā uri o Te Whakatōhea, to ngā tūpuna and ngā mokopuna.

Ki ngā uri o Te Whakatōhea, ki ngā tūpuna me ngā mokopuna.

- 3.32. When Whakatōhea rangatira signed te Tiriti o Waitangi/the Treaty of Waitangi, they did so in a spirit of trust and co-operation, with a view to the benefits Treaty partnership could bring to their people. The Crown betrayed that trust by waging war and confiscating Whakatōhea land in a raupatu for which the Crown alone is responsible. The Crown's actions caused significant loss of life, devastated Whakatōhea communities, created conflict between Whakatōhea hapū and whānau, and led to the loss of mātauranga Whakatōhea which is still felt today.

Nō te hainatanga a ngā rangatira o Te Whakatōhea i te Tiriti o Waitangi, i mahia i runga i te wairua o te whakapono me te mahitahi, me te aro ki ngā hua ka hua mai ki tō rātou iwi mā te mahitahi i raro i te Tiriti. I takahia tērā whakapono e te Karauna nā tāna tahu i te ahi o Tūmataunga me te raupatu i te whenua o Te Whakatōhea, ka noho ko te Karauna anake hai whakairinga mō wēnei mate. Nā ngā mahi hara o te Karauna i mate parekura a Te Whakatōhea me te whakangaromanga i wōna papakāinga, i tipu ai te riri i waenganui i ngā hapū me ngā whānau o Te Whakatōhea, ā i raupatutia ai ngā pātaka kōrero o Te Whakatōhea, ā kai te rongohia nuitia tonutia wēnei whakawhiunga i wēnei rā tonu.

- 3.33. The Crown apologises to the rangatira who died at its hands. The Crown apologises to ngā uri o Te Whakatōhea, who have lived with economic, cultural and spiritual loss and deprivation as a result of the Crown's actions. The Crown has failed to uphold its obligations under te Tiriti o Waitangi/the Treaty of Waitangi and brought dishonour upon itself. For its breaches of te Tiriti o Waitangi/the Treaty of Waitangi, and for the pain it has caused Whakatōhea through its acts and omissions, the Crown is deeply sorry.

Ka whakapāha te Karauna ki ngā rangatira i mate taurekarekatia i ngā ringaringa o te Karauna. Ka whakapāha te Karauna ki ngā uri o Te Whakatōhea, nāna i whakarawakore ā ohaoha, ā ahurea, ā wairua, ā kua noho matekai nā ngā mahi hara a te Karauna. Kīhai hoki te Karauna i whakatutuki i wōna oati i raro i te Tiriti o Waitangi, anā kua tau te whakamā o te hōnōre-kore ki runga ki a ia anō. Nā runga i ana takahitanga i te Tiriti o Waitangi me ngā mamae pōuri nui i whiua kinotia ki runga ki Te Whakatōhea i wāna mahi hara me wōna hara nunui rawa atu e koropiko nei, e tūohu nei me te tuku i te aroha tino nunui rawa atu.

- 3.34. The Crown pays tribute to the resilience of ngā uri o Te Whakatōhea, who have strived for justice and fought to retain and rebuild Whakatōheatanga over generations. Through this settlement, the Crown hopes to honour the promise of partnership it made with Whakatōhea in 1840. Let us look forward to a future of prosperity for the people of Whakatōhea and move towards it together in a spirit of good faith, partnership and respect for te Tiriti o Waitangi/the Treaty of Waitangi.

Ka whakahōnoretia e te Karauna ngā uri o Te Whakatōhea, kua tohenihorautia te tohe nui ki te whakatau tika i te hē, kua tohenihorautia te pakanga ki te pupuri, ki te whakarauora i Te Whakatōheatanga o roto i ngā whakatipuranga tangata. Mā roto mai i tēnei whakataunga, ko te tūmanako o te Karauna, ko te whakahōnōre i te oati o te

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TE MĀKEOTANGA – DEED OF SETTLEMENT

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3: KA RANGARANGA TE MURI, KA RANGARANGA TE MUA: RECONCILIATION
(ACKNOWLEDGEMENT AND APOLOGY)

mahitahi nāna i kī taurangi ki a Te Whakatōhea i te tau 1840. Me kupu whakaari tātou ki te anamata o te hua rau nui ki ngā uri o Te Whakatōhea me te haere ngātahi i runga i te mahitahi o roto i te wairua o tūmanako nui me te aroha o maruwehi ki te Tiriti o Waitangi.

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4 KAPU-Ā-RANGI: SETTLEMENT

Te maunga tapu o Nukutere. Ko tana whakamāori ko te kapu tonu o te ringa o Rangi te matua o te rangi. Ki te iwi te whakaaetanga mō tenei Mākeotanga.

The maunga tapu o Nukutere. The translation meaning the palm of the hand of Rangi the skyfather. This reflects the settlement in the hands of the iwi.

ACKNOWLEDGEMENTS

- 4.1. Each party acknowledges that –
- 4.1.1. the other parties have acted honourably and reasonably in relation to the settlement; but
 - 4.1.2. full compensation to Whakatōhea is not possible; and
 - 4.1.3. the settlement is intended to enhance the ongoing relationship between Whakatōhea and the Crown (in terms of te Tiriti o Waitangi/the Treaty of Waitangi, its principles, and otherwise).
- 4.2. Whakatōhea acknowledge that, taking all matters into consideration (some of which are specified in clause 4.1), the settlement is fair in the circumstances.

SETTLEMENT

- 4.3. Therefore, on and from the settlement date, –
- 4.3.1. the historical claims are settled; and
 - 4.3.2. the Crown is released and discharged from all obligations and liabilities in respect of the historical claims; and
 - 4.3.3. the settlement is final.
- 4.4. Except as provided in this deed or the settlement legislation, the parties' rights and obligations remain unaffected.

REDRESS

- 4.5. The redress, to be provided in settlement of the historical claims, –
- 4.5.1. is intended to benefit Whakatōhea collectively; but
 - 4.5.2. may benefit particular members, or particular groups of members, of Whakatōhea if the governance entity so determines in accordance with the governance entity's procedures.

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4: KAPU-Ā-RANGI: SETTLEMENT

IMPLEMENTATION

- 4.6. The settlement legislation will, on the terms provided by sections 15 to 20 of the draft settlement bill, –
- 4.6.1. settle the historical claims; and
 - 4.6.2. exclude the jurisdiction of any court, tribunal, or other judicial body in relation to:
 - (a) the historical claims; and
 - (b) the settlement; and
 - 4.6.3. despite clause 4.6.2(a), provide that the Waitangi Tribunal may complete and release a report on the North-Eastern Bay of Plenty District Inquiry (Wai 1750) which may include findings on, but will not include recommendations in relation to, the historical claims of Whakatōhea; and
 - 4.6.4. to avoid doubt, the parties confirm and acknowledge that, except as set out in clause 4.6.2, the settlement legislation will not affect the jurisdiction of any court, tribunal or other judicial body in relation to contemporary aspects of the claims listed in clauses 8.2.2 and 8.2.3 (being aspects of those claims that arise from, or relate to, acts or omissions that occurred on or after 21 September 1992); and
 - 4.6.5. provide that the legislation referred to in section 17 of the draft settlement bill does not apply –
 - (a) to a redress property, any RFR land referred to in clause 6.27.1, or any land in the RFR area; or
 - (b) for the benefit of Whakatōhea or a representative entity; and
 - 4.6.6. require any resumptive memorial to be removed from any record of title for a redress property, any RFR land referred to in clause 6.27.1, or any allotment solely within the RFR area; and
 - 4.6.7. provide that the maximum duration of a trust pursuant to the Trusts Act 2019 does not –
 - (a) apply to a settlement document; or
 - (b) prescribe or restrict the period during which –
 - (i) the trustees of Te Tāwharau o Te Whakatōhea, being the governance entity, may hold or deal with property; and
 - (ii) Te Tāwharau o Te Whakatōhea may exist; and
 - 4.6.8. require the chief executive of the Office for Māori Crown Relations – Te Arawhiti to make copies of this deed publicly available.
- 4.7. Part 1 of the general matters schedule provides for other action in relation to the settlement.

5 TE HAKA-Ā-TAMAURO: CULTURAL REDRESS

He rāangi uru kahikatea i whanake i te kotinga tonga o Moutohora. He rite anō te āhua o ngā rākau ki ō ngā rāangi o te kapa haka. Ka horapa te ingoa nei ki ngā puretumu katoa, te taiao, te whenua, ngā tikanga, te reo.

This is a grove of kahikatea trees that grew in a line at Moutohora on the southern boundary. The trees looked like a kapa haka in rows. This name addresses all the areas of cultural redress - the environment, whenua, culture, language.

STATUTORY ACKNOWLEDGEMENT

- 5.1. The settlement legislation will, on the terms provided by sections 29 to 37 and 39 to 42 of the draft settlement bill, –
- 5.1.1. provide the Crown's acknowledgement of the statements by Whakatōhea of its particular cultural, spiritual, historical, and traditional association with the following areas:
- (a) Nukuhou River and its tributaries within the area of interest (as shown on deed plan OMCR-087-01);
 - (b) Opape Stream and its tributaries (as shown on deed plan OMCR-087-02);
 - (c) Ōtara River and its tributaries (as shown on deed plan OMCR-087-03);
 - (d) Waiaua River and its tributaries within the area of interest (as shown on deed plan OMCR-087-04);
 - (e) Waiotahe River and its tributaries within the area of interest (as shown on deed plan OMCR-087-05);
 - (f) Waioweka River and its tributaries within the area of interest (as shown on deed plan OMCR-087-06); and
- 5.1.2. require relevant consent authorities, the Environment Court, and Heritage New Zealand Pouhere Taonga to have regard to the statutory acknowledgement; and
- 5.1.3. require relevant consent authorities to forward to the governance entity –
- (a) summaries of resource consent applications for an activity within, adjacent to or directly affecting a statutory area; and
 - (b) a copy of a notice of a resource consent application served on the consent authority under section 145(10) of the Resource Management Act 1991; and
- 5.1.4. enable the governance entity, and any member of Whakatōhea, to cite the statutory acknowledgement as evidence of the association of Whakatōhea with an area.

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TE MĀKEOTANGA – DEED OF SETTLEMENT

5: TE HAKA-Ā-TAMAUURU: CULTURAL REDRESS

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- 5.2. The statements of association are in part 1 of the documents schedule.

DEEDS OF RECOGNITION

- 5.3. The Crown must, by or on the settlement date, provide the governance entity with a copy of each of the following:

- 5.3.1. a deed of recognition, signed by the Minister of Conservation and the Director-General, in relation to the following areas:

- (a) Nukuhou River and its tributaries within the area of interest (as shown on deed plan OMCR-087-01):
- (b) Opape Stream and its tributaries (as shown on deed plan OMCR-087-02):
- (c) Ōtara River and its tributaries (as shown on deed plan OMCR-087-03):
- (d) Waiaua River and its tributaries within the area of interest (as shown on deed plan OMCR-087-04):
- (e) Waiotahe River and its tributaries within the area of interest (as shown on deed plan OMCR-087-05):
- (f) Waioweka River and its tributaries within the area of interest (as shown on deed plan OMCR-087-06); and

- 5.3.2. a deed of recognition, signed by the Commissioner of Crown Lands, in relation to the following areas:

- (a) Nukuhou River and its tributaries within the area of interest (as shown on deed plan OMCR-087-01):
- (b) Opape Stream and its tributaries (as shown on deed plan OMCR-087-02):
- (c) Ōtara River and its tributaries (as shown on deed plan OMCR-087-03):
- (d) Waiaua River and its tributaries within the area of interest (as shown on deed plan OMCR-087-04):
- (e) Waiotahe River and its tributaries within the area of interest (as shown on deed plan OMCR-087-05):
- (f) Waioweka River and its tributaries within the area of interest (as shown on deed plan OMCR-087-06).

- 5.4. Each area that a deed of recognition relates to includes only those parts of the area owned and managed by the Crown.

- 5.5. A deed of recognition will provide that the Minister of Conservation and the Director-General, or the Commissioner of Crown Lands, as the case may be, must, if undertaking certain activities within an area that the deed relates to, –

- 5.5.1. consult the governance entity; and

- 5.5.2. have regard to its views concerning the association of Whakatōhea with the area as described in the relevant statement of association.

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PROTOCOLS

- 5.6. Each of the following protocols must, by or on the settlement date, be signed and issued to the governance entity by the responsible Minister:
- 5.6.1. the Crown minerals protocol; and
 - 5.6.2. the primary industries protocol.
- 5.7. A protocol sets out how the Crown will interact with the governance entity with regard to the matters specified in it.

FORM AND EFFECT OF DEEDS OF RECOGNITION AND PROTOCOLS

- 5.8. Each deed of recognition will be –
- 5.8.1. in the form in part 2 of the documents schedule; and
 - 5.8.2. issued under, and subject to, the terms provided by sections 38 to 41 of the draft settlement bill.
- 5.9. Each protocol will be –
- 5.9.1. in the form in part 3 of the documents schedule; and
 - 5.9.2. issued under, and subject to, the terms provided by sections 22 to 28 of the draft settlement bill.
- 5.10. A failure by the Crown to comply with a deed of recognition or a protocol is not a breach of this deed.

NATURAL RESOURCES ARRANGEMENTS

Background

- 5.11. Whakatōhea are seeking new arrangements through their settlement that will enhance the exercise of kaitiakitanga in their rohe and improve the quality of the environment and rivers. The rivers that flow through the Whakatōhea Rohe (area of interest) are of immense cultural significance as they intertwine with Whakatōhea whakapapa and provide traditional food sources.
- 5.12. Whakatōhea's grievances relating to rivers are significant. The 1866 raupatu and forced displacement of Whakatōhea hapū disconnected them from their ancestral rivers, preventing them from exercising kaitiakitanga within their traditional rohe and over the waterways. Later Crown policies, which excluded Whakatōhea, contributed to pollution and degradation of the waterways.
- 5.13. Aspirations for the rivers in their rohe are outlined in the 1993 Tawharau o ngā hapū o Whakatōhea Iwi Management Plan (the Whakatōhea Management Plan). The Whakatōhea Management Plan outlined river-related issues, particularly concerning environmental degradation and consultation on development. It sought greater involvement for Whakatōhea in planning and recognition of the Crown's te Tiriti o Waitangi/Treaty of Waitangi obligations. The aspirations expressed in the Whakatōhea Management Plan were incorporated into the first Bay of Plenty Regional Policy Statement which was made operative in 1999 (but those aspirations are not reflected in the current Regional Policy Statement). However, despite taking advantage of the

5: TE HAKA-Ā-TAMAU: CULTURAL REDRESS

opportunity to produce an iwi management plan through the Resource Management Act 1991, Whakatōhea are of that view that the rivers in their rohe have continued to be degraded.

- 5.14. Whakatōhea hapū are currently concerned about the impact of gravel extraction on the integrity of rivers and water quality in the rohe. Bay of Plenty Regional Council resource consents for river gravel extraction expired in April 2019 and the bid for fresh consents became a contentious issue for hapū, who feel they have been unable to exercise kaitiakitanga over the rivers in a meaningful manner. Whakatōhea hapū and Bay of Plenty Regional Council have been working closely together on that issue, with an emphasis on reducing the impact of flooding on the community, and will continue to do so.
- 5.15. Poor water quality in rivers can also impact marine and coastal water quality, and Whakatōhea are concerned about the impact of freshwater degradation on the marine ecosystem including aquaculture activities.
- 5.16. The river forum and joint management agreement mechanisms will address the issues identified in clauses 5.11 to 5.15 in accordance with clauses 5.17 to 5.76.

WHAKATŌHEA KAITIAKI FORUM**Establishment of Whakatōhea Kaitiaki Forum**

- 5.17. A statutory forum will be established called the Whakatōhea Kaitiaki Forum.

Principles of the Whakatōhea Kaitiaki Forum

- 5.18. The principles that underpin the Whakatōhea Kaitiaki Forum will be:

Kia mau ki te wairua o Te Tiriti o Waitangi

Uphold the spirit of the Treaty of Waitangi.

Kia mahi tahi ki te whakatutuki ngātahi i ngā whāinga pāhekoheko, ko te āhukahuka me te tūtohu i ngā hua taupuhipuhi i te mahi tahi ki ngā rōpū

Working in a spirit of co-operation to achieve joint outcomes, recognising and acknowledging the mutual benefits that the parties gain from working together.

Kia whakatūturu i te whakapāpātanga wawe i ngā take kua āhukahukatia te whai pāngataupuhipuhi

Ensuring early engagement on issues of recognised mutual interest.

Kia whakamana i ngā mātāpono o te mana raraunga me tō Te Whakatōhea whai pānga ki te mātauranga Māori me te raraunga

Recognise and seek to uphold the principles of Māori Data Sovereignty and Whakatōhea's rights and interests in mātauranga Māori and data.

Kia tūtohu kei te hangore, kei te whanake tēnei piringa mahi

Acknowledging that the relationship is flexible and evolving.

Kia whakaute i te motuhaketanga o ngā rōpū me ō rātou mana ake, whakahaere, haepapa hoki

Respecting the independence of the parties and their individual mandates, roles and responsibilities.

Kia mōhio, kia tūtohu ka whai hua ngā rōpū i te mahitahi, me whakaae ngatahi kia whakaurua mai ētahi atu manatū, iwi rānei ki ngā kaupapa

Recognising and acknowledging that the parties benefit from working together and may include other agencies and/or iwi in work programmes by mutual agreement.

Ā, kia whakatūturu te noho haepapa ki ngā whakatau me ngā mahi kua whakaetia

Ensuring accountability for agreed decisions and actions.

Purposes of the Whakatōhea Kaitiaki Forum

5.19. The purposes of the Whakatōhea Kaitiaki Forum will be:

5.19.1. to enhance the ability of Whakatōhea to:

- (a) express and discuss their interests and views in relation to the rivers and catchments in the Whakatōhea rohe with relevant councils and government agencies; and
- (b) participate in the design and implementation of developed solutions;

5.19.2. to assist relevant councils and government agencies to better understand Whakatōhea's interests and views in relation to the rivers and catchments in the Whakatōhea rohe;

5.19.3. to support the kaitiakitanga and mana whakahaere of Whakatōhea hapū;

5.19.4. to promote te mana o te wai - the protection and enhancement of the health and well-being of the rivers and catchments in the Whakatōhea rohe;

5.19.5. to strengthen relationships between Whakatōhea and relevant councils and government agencies; and

5.19.6. such other matters that the forum considers to be relevant to the rivers and catchments in the Whakatōhea rohe and the principles set out in clause 5.18.

5.20. In clauses 5.19 to 5.76, **relevant council** means one or both of the Bay of Plenty Regional Council or the Ōpōtiki District Council, as the context requires.

Functions of the Whakatōhea Kaitiaki Forum

5.21. The principal function of the Whakatōhea Kaitiaki Forum will be to achieve its purposes.

5.22. In seeking to achieve its purposes, other functions of the Whakatōhea Kaitiaki Forum will include:

5.22.1. to promote the ability of Whakatōhea to exercise kaitiakitanga and mana whakahaere;

5: TE HAKA-Ā-TAMAU: CULTURAL REDRESS

- 5.22.2. to work with relevant councils, neighbouring iwi and other stakeholders to achieve integrated river and catchment management;
- 5.22.3. to consider and promote the outcomes sought in the Whakatōhea iwi and hapū environmental management plans;
- 5.22.4. if the forum decides to do so, to prepare and approve Te Rautaki Kaitiaki which would:
- (a) reflect Whakatōhea kaitiakitanga and mana whakahaere;
 - (b) outline a vision and aspirations for the rivers and catchments and recommend actions for achieving those aspirations;
 - (c) identify resource management issues;
 - (d) identify projects and funding sources;
 - (e) recommend actions for relevant councils to address identified issues; and
 - (f) provide a monitoring framework for identified issues; and
- 5.22.5. the oversight and monitoring of the implementation of Te Rautaki Kaitiaki and iwi and hapū environmental management plans.

- 5.23. The Whakatōhea Kaitiaki Forum will have the discretion to determine in any particular circumstances how, and to what extent, any function will be exercised.

Whakatōhea Kaitiaki Forum area

- 5.24. The purposes, functions, and powers of the Whakatōhea Kaitiaki Forum –
- 5.24.1. apply in respect of the area shown in part 8 of the attachments (**forum area**); and
 - 5.24.2. are to be pursued, carried out, or exercised with a focus on the rivers and catchments in that area, except any coastal marine area.

Capacity and powers

- 5.25. The Whakatōhea Kaitiaki Forum will have full capacity and the necessary powers to carry out its functions.

Membership of the Whakatōhea Kaitiaki Forum

- 5.26. The Whakatōhea Kaitiaki Forum will be comprised of:
- 5.26.1. 6 members appointed by the governance entity;
 - 5.26.2. 3 members appointed by Bay of Plenty Regional Council, who may be elected members, council staff members or other persons; and
 - 5.26.3. 1 member appointed by Ōpōtiki District Council, who may be an elected member, council staff member or other person,
- (each appointing entity being an **appointer**).

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TE MĀKEOTANGA – DEED OF SETTLEMENT

5: TE HAKA-Ā-TAMAU: CULTURAL REDRESS

- 5.27. The parties acknowledge that each of the 6 members appointed by the governance entity under clause 5.26.1 are intended to represent one of the 6 hapū of Whakatōhea.
- 5.28. Members of the Whakatōhea Kaitiaki Forum:
- 5.28.1. are appointed for a term of three years commencing on the 60th day after the polling day for the most recent triennial local government election, unless the member resigns or is removed by an appointer during that term;
 - 5.28.2. may be reappointed or removed by, and at the sole discretion of, the relevant appointer;
 - 5.28.3. while representing their appointing organisation, must act in a manner that promotes the purposes and effective exercise of the functions of the Whakatōhea Kaitiaki Forum; and
 - 5.28.4. are not, by virtue of that membership, members of a local authority.
- 5.29. Appointers must appoint members no later than the 60th day after the polling day for the most recent triennial local government election.
- 5.30. The initial term will:
- 5.30.1. commence within six months of the settlement date; and
 - 5.30.2. cease on the 59th day after the polling day for the next triennial local government election following the settlement date.
- 5.31. In appointing members to the Whakatōhea Kaitiaki Forum, appointers must:
- 5.31.1. be satisfied that the person has the mana, skills, knowledge or experience to:
 - (a) understand and respect the mana and tikanga of Whakatōhea;
 - (b) participate effectively in the Whakatōhea Kaitiaki Forum; and
 - (c) ensure the achievement of the purposes of the Whakatōhea Kaitiaki Forum; and
 - 5.31.2. have regard to any members already appointed, or to be appointed, to the forum to ensure that the membership reflects a balanced mix of skills, knowledge and experience so that the forum can best achieve its purposes.
- 5.32. Where there is a vacancy on the Whakatōhea Kaitiaki Forum:
- 5.32.1. the relevant appointer will, as soon as is reasonably practicable, fill that vacancy for the remainder of the relevant term; and
 - 5.32.2. any such vacancy will not prevent or constrain the Whakatōhea Kaitiaki Forum from continuing to discharge its functions.

H Amos

Chair and deputy chair

- 5.33. At the first meeting of each term of the Whakatōhea Kaitiaki Forum:
- 5.33.1. the chair for that term will be appointed by the members appointed by the governance entity; and
 - 5.33.2. the deputy chair for that term will be appointed by members appointed by the relevant councils.
- 5.34. The chair and deputy chair:
- 5.34.1. will be appointed for the same three year term as other members, unless the chair or deputy chair resigns or is removed, either as co-chair or as a member, during that term; and
 - 5.34.2. may be reappointed.

Committees and subcommittees


- 5.35. The Whakatōhea Kaitiaki Forum may appoint committees and subcommittees in relation to the exercise of one or more of its functions.

Procedures

- 5.36. At its first meeting the Whakatōhea Kaitiaki Forum will adopt a set of procedures that apply to the forum, including if it considers necessary to deal with conflicts of interest, and may amend those procedures from time to time.

Meetings and decision-making

- 5.37. The Whakatōhea Kaitiaki Forum must:
- 5.37.1. at its first meeting of each year of a term agree a schedule of meetings for that year that will allow the forum to achieve its purposes and exercise its functions; and
 - 5.37.2. review that meeting schedule on a regular basis to ensure that it provides for the forum to carry out its functions in an effective manner.
- 5.38. Meetings may be in person or by other means as determined by the Whakatōhea Kaitiaki Forum.
- 5.39. The quorum for a meeting of the Whakatōhea Kaitiaki Forum will be a majority of members appointed to the forum, including at least:
- 5.39.1. one member appointed by the governance entity; and
 - 5.39.2. one member appointed by either the Bay of Plenty Regional Council or Ōpōtiki District Council.
- 5.40. Where a member is not able to attend a meeting of the Whakatōhea Kaitiaki Forum, that member may appoint an alternate person from the same organisation to attend on that person's behalf.

H. Amos 

5: TE HAKA-Ā-TAMAU: CULTURAL REDRESS

5.41. When making a decision:

- 5.41.1. members of the Whakatōhea Kaitiaki Forum must strive to achieve consensus on the issue;
- 5.41.2. consensus means the absence of express dissent from any member; and
- 5.41.3. if, in the opinion of the person chairing the meeting, consensus is not practicable after reasonable discussion, that person may direct that the decision be made by vote with the support of a majority of those members present and voting at a meeting.

5.42. The chair and deputy chair may vote on any matter but do not have a casting vote.

5.43. The members of the Whakatōhea Kaitiaki Forum must approach decision-making:

5.43.1. in a manner that:

- (a) is consistent with the purposes, functions and collaborative nature of Whakatōhea Kaitiaki Forum;
- (b) acknowledges the interests of the hapū of Whakatōhea in the particular area to which the decision relates; and
- (c) promotes consensus decision-making; and

5.43.2. for no other purpose.

Department of Conservation attendance

5.44. The Whakatōhea Kaitiaki Forum may invite a representative from the Department of Conservation to attend a forum meeting.

5.45. The Whakatōhea Kaitiaki Forum will specify in the invitation the matters to be discussed with the Department of Conservation.

5.46. The representative from the Department of Conservation will attend that meeting, where it is reasonably practicable to do so, where the matters to be discussed relate to:

- 5.46.1. active management of freshwater species, riparian vegetation, or in-stream habitats undertaken by the Department of Conservation; or
- 5.46.2. the relationship between rivers and their catchments in the forum area and active management activities undertaken by the Department of Conservation in the common marine and coastal area.

5.47. Where the matters to be discussed do not include the matters identified in clauses 5.46.1 or 5.46.2, the Department of Conservation may attend that meeting.

Other rights not affected

5.48. The existence of the Whakatōhea Kaitiaki Forum does not affect the rights of other iwi or hapū with interests in the forum area.

H. Amos

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Te Rautaki Kaitiaki and Ōhiwa Harbour

5.49. In relation to the Ōhiwa Harbour:

- 5.49.1. the Ōhiwa Harbour Implementation Forum, which was established in 2008, oversees and monitors the implementation of the Ōhiwa Harbour Strategy;
- 5.49.2. the Ōhiwa Harbour Strategy covers the Ōhiwa Harbour and the catchment that feeds into it, including the Nukuhou river and its catchment, and sets out a vision for the harbour, identifies issues, key community values and aspirations, and recommends actions to achieve those;
- 5.49.3. there will be an overlap between the area covered by the Whakatōhea Kaitiaki Forum and the area covered by the Ōhiwa Harbour Implementation Forum in the Nukuhou catchment (**overlap area**);
- 5.49.4. the Ōhiwa Harbour Implementation Forum will continue to set the strategy and actions to be taken in the overlap area;
- 5.49.5. the Ōhiwa Harbour Strategy will take precedence over Te Rautaki Kaitiaki in respect of the overlap area;
- 5.49.6. the Ōhiwa Harbour Implementation Forum may consider Te Rautaki Kaitiaki, as it applies to the overlap area, when overseeing the preparation and implementation of the Ōhiwa Harbour Strategy; and
- 5.49.7. the Whakatōhea Kaitiaki Forum may consider the Ōhiwa Harbour Strategy, as it applies to the overlap area, when overseeing the preparation and implementation of Te Rautaki Kaitiaki.

No liability

- 5.50. The members of the Whakatōhea Kaitiaki Forum will not be personally liable in their capacity as a member of the forum, provided they have acted lawfully, in accordance with their statutory mandate and in good faith.

Administrative and technical support

- 5.51. The administrative support for the Whakatōhea Kaitiaki Forum will be provided by:
 - 5.51.1. Bay of Plenty Regional Council for the first term of the forum; and
 - 5.51.2. the governance entity for the subsequent terms.
- 5.52. The Whakatōhea Kaitiaki Forum will review the administrative requirements on a regular basis and will agree which entity is best placed to provide administrative support.

Crown contribution to the relevant council costs

- 5.53. On the settlement date, the Crown will pay the amount of \$261,502.00 to Bay of Plenty Regional Council and \$12,544.00 to Ōpōtiki District Council as a contribution towards the costs of establishing and implementing the Whakatōhea Kaitiaki Forum.
- 5.54. The contributions referred to in clause 5.53 will be a one-off contribution and all ongoing costs of participation in the Whakatōhea Kaitiaki Forum will be met by the appointers.

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Status of Whakatōhea Kaitiaki Forum

- 5.55. The Whakatōhea Kaitiaki Forum will be a joint committee of Bay of Plenty Regional Council and Ōpōtiki District Council.
- 5.56. The Whakatōhea Kaitiaki Forum:
- 5.56.1. will be a permanent joint committee; and
 - 5.56.2. must not be discharged unless all appointers agree to that discharge.

Review of forum

- 5.57. Five years after the commencement of the Whakatōhea Kaitiaki Forum, the forum will undertake a review of the extent to which:
- 5.57.1. the purposes of the forum are being achieved;
 - 5.57.2. whether there could be improvements in the functioning of the forum; and
 - 5.57.3. whether there needs to be greater focus in any particular areas.
- 5.58. The Whakatōhea Kaitiaki Forum will provide a report to the appointers on the outcome of that review.
- 5.59. Further reviews may be undertaken from time to time with the agreement of the appointers.

JOINT MANAGEMENT AGREEMENT

- 5.60. Whakatōhea seek input into local authority processes and decision-making relating to rivers and catchments within their rohe.

Initiation of joint management agreement

- 5.61. The governance entity may give written notice to the Bay of Plenty Regional Council and/or the Ōpōtiki District Council that:
- 5.61.1. a joint management agreement under the Resource Management Act 1991 is to be entered into with the governance entity; and
 - 5.61.2. that joint management is to be entered into:
 - (a) with both of those councils together; or
 - (b) individually with one or both of those councils.
- 5.62. If that written notice is given, a joint management agreement must be in place between the governance entity and the relevant council(s) no later than 18 months after the date of the notice, or such later date as the parties may agree.

Initial steps

- 5.63. Prior to initiating a joint management agreement, the governance entity will:
- 5.63.1. engage with the Whakatōhea Kaitiaki Forum to discuss that proposal;

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- 5.63.2. engage with the relevant council to discuss that proposal; and
- 5.63.3. consider any feedback from the forum and the relevant council before making a final decision whether to initiate a joint management agreement.

Principles for development of joint management agreement

- 5.64. In working together to develop a joint management agreement, and in working together under a joint management agreement, the governance entity and the relevant council will act in a manner consistent with the following guiding principles:
 - 5.64.1. promoting the purposes of the Whakatōhea Kaitiaki Forum set out in clause 5.19;
 - 5.64.2. respecting the principles that underpin the Whakatōhea Kaitiaki Forum set out in clause 5.18;
 - 5.64.3. reflecting a shared commitment to:
 - (a) work together in good faith and a spirit of co-operation;
 - (b) open, honest and transparent communication;
 - (c) use their best endeavours to ensure that the purpose of a joint management agreement is achieved in an enduring manner; and
 - (d) recognising that a joint management agreement operates within statutory frameworks, and the importance of complying with those statutory frameworks, meeting statutory timeframes, and minimising delays and costs.

Area of joint management agreement

- 5.65. A joint management agreement will cover, in whole or in part, the rivers and catchments within the forum area.
- 5.66. A joint management agreement may, at any time, by agreement of the parties to that agreement, be extended to apply to other rivers and catchments –
 - 5.66.1. within any other part of the forum area; or
 - 5.66.2. within any other part of the coastal marine area in the Whakatōhea area of interest, if the Minister of Conservation agrees.
- 5.67. To extend the joint management agreement to include other rivers and catchments in accordance with clause 5.66, the governance entity will follow the processes provided for in clause 5.63.

Scope of joint management agreement

- 5.68. A joint management agreement must address how the governance entity and the relevant council will work together in relation to:
 - 5.68.1. planning processes under the Resource Management Act 1991;

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- 5.68.2. resource consent processes under the Resource Management Act 1991, including in relation to gravel extraction;
- 5.68.3. water quality monitoring; and
- 5.68.4. other freshwater management processes of particular importance to Whakatōhea under the Resource Management Act 1991.
- 5.69. A joint management agreement will provide for:
 - 5.69.1. details of the resourcing required for the administration of the joint management agreement; and
 - 5.69.2. the ways in which the administrative costs of the joint management agreement will be met.
- 5.70. In respect of the resourcing provided for in clause 5.69 –
 - 5.70.1. the Crown will consider one-off contributions to costs incurred by local authorities and Whakatōhea when establishing and implementing the joint management agreement, at the time that a joint management agreement has been initiated under sections 172 to 173 of the draft settlement bill, and those costs are known; and
 - 5.70.2. all ongoing costs of participation in the joint management agreement, when a joint management agreement has been initiated under sections 172 to 173 of the draft settlement bill, will be met by the parties to the joint management agreement.
- 5.71. The parties to the joint management agreement may:
 - 5.71.1. agree that a joint management agreement will address other matters under the Resource Management Act 1991;
 - 5.71.2. enter into one or more parallel agreements to cover statutory functions under other legislation such as the Local Government Act 2002; and
 - 5.71.3. agree to another party being added to the joint management agreement, in which case clauses 5.64, 5.68 and 5.69, and the terms of the joint management agreement, will apply to that other party.
- 5.72. If a party is added to the joint management agreement under clause 5.71.3, that party may cease to be a party to the agreement in accordance with the terms of the agreement.

Legal framework for joint management agreement

- 5.73. Nothing in sections 36B to 36E of the Resource Management Act 1991 applies to the joint management agreement.
- 5.74. The performance or exercise of a function, power or duty under a joint management agreement has the same legal effect as a power, function or duty performed or exercised by a local authority.



5.75. To avoid doubt:

5.75.1. Schedule 7 of the Local Government Act 2002 does not apply to a relevant council and the governance entity working together to develop, agreement or implement a joint management agreement; and

5.75.2. a local authority will not use the special consultative procedure under section 83 of the Local Government Act 2002 in relation to a joint management agreement.

5.76. A joint management agreement:

5.76.1. is enforceable between the parties to it; and

5.76.2. may only be terminated by agreement between the governance entity and the relevant council.

SETTLEMENT LEGISLATION

5.77. The settlement legislation will, on the terms provided by sections 160 to 178 of the draft settlement bill, provide for the matters set out in clauses 5.17 to 5.76.

CULTURAL REDRESS PROPERTIES

5.78. The settlement legislation will vest in the governance entity on the settlement date –

In fee simple

5.78.1. the fee simple estate in each of the following sites:

(a) Paerātā property:

(b) Pakihi site 1:

(c) Tāwai:

(d) Tawhitinui:

(e) Te Roto Urupā:

(f) Urupā Tawhito; and

In fee simple, subject to an easement

5.78.2. the fee simple estate in each of the following sites, subject to the governance entity granting a registrable easement on the terms and conditions set out in parts 9.1 and 9.2 (respectively) of the documents schedule:

(a) Pakihikura property:

(b) Te Papa property; and

As a scenic reserve

5.78.3. the fee simple estate in each of the following sites as a scenic reserve, with the governance entity as the administering body:

- (a) Kiwikipi and Te Tawa Flats property;
- (b) Kotāre property;
- (c) Marawaiwai;
- (d) Matekerepu;
- (e) Matepuritaka;
- (f) Mātītī;
- (g) Meremere property;
- (h) Ōhiwa property;
- (i) Pakihi site 2;
- (j) Pātaua Island property;
- (k) Toatoa property;
- (l) Tukainoke;
- (m) Tutaetoko property;
- (n) Waiaua property;
- (o) Waiōtahe property;
- (p) Waioweka property;
- (q) Whitikau property; and

As a scenic reserve, subject to an easement

5.78.4. the fee simple estate in each of the following sites as a scenic reserve, with the governance entity as the administering body, subject to the governance entity granting a registrable easement on the terms and conditions set out in parts 9.7 and 9.8 (respectively) of the documents schedule:

- (a) Oroī property;
- (b) Raetakohia property; and

As a recreation reserve

5.78.5. the fee simple estate in the Te Papa Tākaro o Ōhui property as a recreation reserve, with Ōpōtiki District Council as the administering body to administer the reserve as if it were vested in Ōpōtiki District Council under section 26 of the Reserves Act 1977; and

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5.78.6. the fee simple estate in Whenua Maumahara o Hukutaia as a recreation reserve, with Ōpōtiki District Council as the administering body as if appointed to control and manage the reserve under section 28 of the Reserves Act 1977, in respect of which the following provisions apply:

- (a) the governance entity may grant, accept or decline to grant any interest in land that affects Whenua Maumahara o Hukutaia, or may renew or vary such an interest, but must consult Ōpōtiki District Council before determining an application for such an interest; and
- (b) Ōpōtiki District Council may cease to be the administering body and the governance entity may become the administering body on the terms provided in section 84 of the draft settlement bill; and

As a recreation reserve, subject to an easement

5.78.7. the fee simple estate in the Te Ngaio property as a recreation reserve, with the joint management body referred to in clause 5.92 as the administering body, subject to the governance entity granting a registrable easement on the terms and conditions set out in part 9.9 of the documents schedule; and

5.78.8. the fee simple estate in the Te Papa Tākaro o Whītikau property as a recreation reserve, with Ōpōtiki District Council as the administering body to administer the reserve as if it were vested in Ōpōtiki District Council under section 26 of the Reserves Act 1977, subject to the governance entity granting a registrable easement on the terms and conditions set out in part 9.10 of the documents schedule.

Vesting of Tirohanga Dunes sites 1 and 2

5.79. If, on the settlement date, an unconditional agreement for sale and purchase between the Crown and the registered owners of record of title 58271 exists in respect of –

5.79.1. the area shown as E on deed plan OMCR-087-28 (subject to survey); and

5.79.2. the areas shown as B, C and D on deed plan OMCR-087-28 (subject to survey),
clause 5.80 applies.

5.80. The settlement legislation will, on the terms provided by sections 55 and 74 of the draft settlement bill, on the settlement date –

Tirohanga Dunes site 1

5.80.1. vest in the Crown as Crown land subject to the Land Act 1948, the area shown as E on deed plan OMCR-087-28 (subject to survey);

5.80.2. vest in the governance entity the fee simple estate in Tirohanga Dunes site 1 (being the areas shown as E and F on deed plan OMCR-087-28 (subject to survey) and described in part 1 of schedule 2 of the draft settlement bill);

Tirohanga Dunes site 2

5.80.3. vest in the Crown as Crown land subject to the Land Act 1948, the area shown as C on deed plan OMCR-087-28 (subject to survey);



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- 5.80.4. vest in the registered owners of record of title 58271, the fee simple estate in the areas shown as B and D on deed plan OMCR-087-28 (subject to survey); and
- 5.80.5. vest in the governance entity the fee simple estate in Tirohanga Dunes site 2 (being the areas shown as A and C on deed plan OMCR-087-28 (subject to survey) and described in part 1 of schedule 2 of the draft settlement bill), as a scenic reserve with the joint management body referred to in clause 5.92 as the administering body, subject to the governance entity granting registrable easements on the terms and conditions set out in part 9.3 and part 9.4 of the documents schedule.
- 5.81. If the unconditional agreement for sale and purchase referred to in clause 5.79 does not exist on the settlement date, the settlement legislation will, on the terms provided in sections 56 and 75 of the draft settlement bill, –
- 5.81.1. vest in the governance entity the fee simple estate in Tirohanga Dunes site 1 (being the area shown as F on deed plan OMCR-087-28 (subject to survey) and described in part 2 of schedule 2 of the draft settlement bill); and
- 5.81.2. vest in the governance entity the fee simple estate in Tirohanga Dunes site 2 (being the areas shown as A, B, and D on deed plan OMCR-087-28 (subject to survey) and described in part 2 of schedule 2 of the draft settlement bill), as a scenic reserve, with the joint management body referred to in clause 5.92 as the administering body, subject to the governance entity granting registrable easements on the terms and conditions set out in part 9.5 and part 9.6 of the documents schedule; and
- 5.81.3. provide that, despite the vesting referred to in clause 5.81.2, any improvements located on areas B and D on deed plan OMCR-087-28 (subject to survey) will not vest in the governance entity on the settlement date.

PROVISIONS IN RELATION TO CERTAIN CULTURAL REDRESS PROPERTIES

Application of the Soil Conservation and Rivers Control Act 1941 in respect of Te Papa Tākaro o Whītikau property

- 5.82. The settlement legislation will, on the terms provided by section 73 of the draft settlement bill, provide that the vesting of Te Papa Tākaro o Whītikau property does not affect the powers and responsibilities of Bay of Plenty Regional Council under the Soil Conservation and Rivers Control Act 1941 to maintain, access, repair or construct, without charge to the Council, flood protection assets on the property, or to access flood protection assets located on adjacent land.

Reserves administered by Ōpōtiki District Council

- 5.83. The settlement legislation will, on the terms provided by section 95 of the draft settlement bill, provide that –
- 5.83.1. the reserve management plan for reserves administered by Ōpōtiki District Council, that is in effect immediately before the settlement date, will continue to apply to –
- (a) Te Papa Tākaro o Ōhūi property:



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- (b) Te Papa Tākaro o Whitikau property; and
 - (c) Whenua Maumahara o Hukutaia; and
- 5.83.2. for the properties that Ōpōtiki District Council remains the administering body, on and from the next review of that management plan under section 41 of the Reserves Act 1977 a separate part in the management plan for those reserves must be –
- (a) prepared by the governance entity and Ōpōtiki District Council; and
 - (b) approved by the Minister or, if the Minister's power of approval is delegated to Ōpōtiki District Council, by the governance entity and Ōpōtiki District Council.

Improvements in relation to specific properties

- 5.84. The settlement legislation will, on the terms provided in sections 49, 55 or 56, 70, 72, 73 and 82 of the draft settlement bill, provide that improvements in or on the following properties do not vest on settlement date:
- 5.84.1. Pakihi site 1:
 - 5.84.2. Te Ngaio property:
 - 5.84.3. Te Papa Tākaro o Ōhui property:
 - 5.84.4. Te Papa Tākaro o Whitikau property:
 - 5.84.5. Tirohanga Dunes site 1; and
 - 5.84.6. Whenua Maumahara o Hukutaia.

Transfer of specific properties to a beneficial entity

- 5.85. In clause 5.86, **beneficial entity** means a legal entity that –
- 5.85.1. represents only a group of members of Whakatōhea (for example, a hapū of Whakatōhea); and
 - 5.85.2. is approved by the governance entity by unanimous resolution.
- 5.86. The settlement legislation will, on the terms provided by section 97 of the draft settlement bill, in relation to a property listed in clause 5.87 –
- 5.86.1. enable the registered owner to apply to the Minister of Conservation for consent to transfer the property to a beneficial entity;
 - 5.86.2. subject to that consent being received, provide for that transfer to occur; and



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5.86.3. if that transfer occurs, provide for the beneficial entity to be the administering body of the property, and to hold the property for the same reserve purposes as those for which it was held immediately before the transfer.

5.87. The properties referred to in clause 5.86 are:

5.87.1. Kiwikipi and Te Tawa Flats property:

5.87.2. Kōtare property:

5.87.3. Marawaiwai:

5.87.4. Matekerepu:

5.87.5. Matepuritaka:

5.87.6. Mātītī:

5.87.7. Meremere property:

5.87.8. Ōhiwa property:

5.87.9. Pakihi site 2:

5.87.10. Pātaua Island property:

5.87.11. Raetakohia property:

5.87.12. Te Papa Tākaro o Ōhui property:

5.87.13. Te Papa Tākaro o Whitiākau property:

5.87.14. Toatoa property:

5.87.15. Tukainoke:

5.87.16. Tutaetoko property:

5.87.17. Waiaua property:

5.87.18. Waiōtahe property:

5.87.19. Waioweka property:

5.87.20. Whenua Maumahara o Hukutaia; and

5.87.21. Whitiākau property.



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Preparation of management plans for Kōtare property, Matekerepu and Pātaua Island property

- 5.88. In clause 5.89, **Tūhoe Te Uru Taumatua** has the meaning given in section 12 of the Tūhoe Claims Settlement Act 2014.
- 5.89. The settlement legislation will, on the terms provided by section 95(8) of the draft settlement bill, provide that the administering body must, –
- 5.89.1. when preparing or reviewing a management plan under section 41 of the Reserves Act 1977 in respect of one or more of Kōtare property, Matekerepu and the Pātaua Island property, seek and have regard to the views of Tūhoe Te Uru Taumatua or their nominee; and
- 5.89.2. where a management plan for Kōtare property, Matekerepu and/or the Pātaua Island property requires approval of the Minister in accordance with section 41 of the Reserves Act 1977, provide to the Minister a summary of steps taken to seek and have regard to the views of Tūhoe Te Uru Taumatua or their nominee.

GENERAL PROVISIONS IN RELATION TO ALL CULTURAL REDRESS PROPERTIES

- 5.90. Each cultural redress property is to be –
- 5.90.1. as described in schedule 2 of the draft settlement bill; and
- 5.90.2. vested on the terms provided by –
- (a) sections 47 to 102 of the draft settlement bill; and
- (b) part 2 of the property redress schedule; and
- 5.90.3. subject to any encumbrances, or other documentation, in relation to that property –
- (a) required by either clause 5.80 or 5.81, as applicable, to be provided by the governance entity; or
- (b) required by the settlement legislation; and
- (c) in particular, referred to by schedule 2 of the draft settlement bill.

JOINT MANAGEMENT BODY

- 5.91. In clause 5.92, –
- 5.91.1. **Hukuwai Recreation Reserve** means the land comprising 5.4632 hectares, more or less, being Section 1 Block III Opotiki Survey District. All *Gazette* notice 139859.1; and
- 5.91.2. **Local Purpose (Esplanade) Reserve** means the land comprising 4.3678 hectares, more or less, being Sections 1, 2, 3, 4, 5, 6 and 7 SO 461791. All record of title 650718 for the fee simple estate.



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5.92. The settlement legislation will, on the terms provided by sections 103 to 108 of the draft settlement bill, provide that –

5.92.1. a joint management body will be established as the administering body for the following reserves, the members of which will be appointed by the governance entity and the Ōpōtiki District Council:

- (a) Hukuwai Recreation Reserve:
- (b) Local Purpose (Esplanade) Reserve:
- (c) Te Ngaio property:
- (d) Tirohanga Dunes site 2; and

5.92.2. the reserve management plan for reserves administered by the Ōpōtiki District Council, that is in effect immediately before the settlement date, will continue to apply to:

- (a) Hukuwai Recreation Reserve:
- (b) Te Ngaio property; and

5.92.3. on and from the next review of that management plan under section 41 of the Reserves Act 1977 a separate part in the management plan for the reserves listed in clause 5.92.2 must be –

- (a) prepared by the joint management body; and
- (b) approved by the Minister or, if the Minister's power of approval is delegated to the Ōpōtiki District Council, by the joint management body.

AGREEMENTS TO LEASE WITH THIRD PARTIES

5.93. The parties acknowledge that:

5.93.1. prior to the settlement date, the governance entity intends to enter into an agreement to lease with:

- (a) the trustees of the Stewart Everitt Trust in respect of Pakihi site 1; and
- (b) Munro Family Holdings Limited in respect of Tirohanga Dunes site 1; and

5.93.2. the form of each agreement to lease (including the lease) is set out in parts 11.1, 11.2, 11.3 and 11.4 (respectively) of the documents schedule.

ON-TRANSFER OF OROI PROPERTY

5.94. In clauses 5.95 and 5.96:

5.94.1. **governance entity for Ngāi Tai Iwi** means an entity that (if such an entity is established in the future):



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- (a) is established by that iwi to receive redress for the settlement of the historical claims of Ngāi Tai Iwi; and
- (b) is approved by the Crown, and ratified by the members of Ngāi Tai Iwi for that purpose; and

5.94.2. **Ngāi Tai Iwi** means the iwi called Ngāi Tai that are resident in the eastern Bay of Plenty.

5.95. The governance entity acknowledges the interests of Ngāi Tai Iwi in the Oroī property to be vested as a scenic reserve in accordance with clause 5.78.4(a) ("**reserve land**").

5.96. The settlement legislation will, on the terms provided by sections 98 and 99 of the draft settlement bill, –

5.96.1. enable the governance entity to apply to the Minister of Conservation for consent to transfer an undivided half share in the fee simple estate in the reserve land to the governance entity for Ngāi Tai Iwi as tenants in common;

5.96.2. subject to that consent being received, provide for that transfer to occur; and

5.96.3. if that transfer occurs, provide for a joint management body to be established as administering body for the reserve land with members appointed by the governance entity and the governance entity for Ngāi Tai Iwi.

RELATIONSHIP AGREEMENTS

5.97. By the settlement date, the governance entity will enter into relationship agreements with –

5.97.1. the Department of Conservation:

5.97.2. Te Hīringa Hauora/Health Promotion Agency:

5.97.3. the Ministry of Business, Innovation and Employment:

5.97.4. the Ministry of Education:

5.97.5. the Ministry for the Environment:

5.97.6. the Ministry of Health and Bay of Plenty District Health Board:

5.97.7. the Ministry of Justice, Department of Corrections – Ara Poutama Aotearoa and New Zealand Police (**justice sector relationship agreement**):

5.97.8. the Ministry of Social Development:

5.97.9. Oranga Tamariki – Ministry for Children:

5.97.10. Statistics New Zealand; and

5.97.11. the Tertiary Education Commission.

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- 5.98. Each relationship agreement will be in the form set out in part 4 of the documents schedule.
- 5.99. A failure by the Crown to comply with a relationship agreement is not a breach of this deed.

WHAKAAETANGA TIAKI TAONGA

- 5.100. The Culture and Heritage Parties and the governance entity must, by or on the settlement date, sign the Whakaaetanga Tiaki Taonga.
- 5.101. The Whakaaetanga Tiaki Taonga:
- 5.101.1. sets out how the Culture and Heritage Parties will interact with the governance entity with regard to the matters specified in it; and
 - 5.101.2. will be in the form in part 5 of the documents schedule.
- 5.102. Appendix B of the Whakaaetanga Tiaki Taonga:
- 5.102.1. sets out how the Manatū Taonga Ministry for Culture and Heritage will interact with the governance entity with regard to matters relating to taonga tūturu; and
 - 5.102.2. is issued pursuant to the terms provided by sections 22 to 25 and 28 of the draft settlement bill.
- 5.103. A failure by the Crown to comply with the Whakaaetanga Tiaki Taonga is not a breach of this deed.

LETTERS OF COMMITMENT

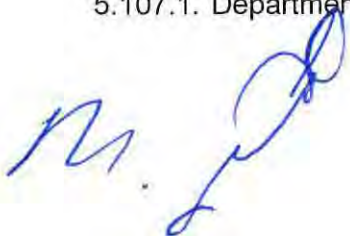
- 5.104. By the settlement date, the governance entity and the following Ministries and departments intend to enter into a letter of commitment:
- 5.104.1. Te Arawhiti – the Office for Māori Crown Relations; and
 - 5.104.2. Te Puni Kōkiri – the Ministry for Māori Development.
- 5.105. The letter of commitment with Te Arawhiti sets out Te Arawhiti's commitment to convene a one-off forum between Whakatōhea and the relevant agencies as part of the Crown's response to the Wai 1750 North-Eastern Bay of Plenty District inquiry.
- 5.106. The letters will be in the form set out in part 6 of the documents schedule.

LETTERS OF INTRODUCTION

- 5.107. By the settlement date, the chief executive of the Office for Māori Crown Relations – Te Arawhiti will write letters, in the form set out in part 7 of the documents schedule, to the chief executives of each of the following Ministries and departments, and other entities, to introduce Whakatōhea and the governance entity:

Ministries and departments

- 5.107.1. Department of Internal Affairs:



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5.107.2. Ministry of Housing and Urban Development:

5.107.3. Ministry for Primary Industries; and

Crown entities

5.107.4. New Zealand Trade and Enterprise – Te Taurapa Tūhono:

5.107.5. Waka Kotahi New Zealand Transport Agency; and

Museums

5.107.6. Auckland War Memorial Museum.

APPOINTMENT AS AN ADVISORY COMMITTEE TO THE MINISTER OF FISHERIES

5.108. Clause 5.109 applies if, after the settlement date, the governance entity identifies areas of special significance to Whakatōhea and the Minister for Primary Industries agrees that they are areas of special significance (**areas of special significance**). To avoid doubt, clause 5.109 shall apply only once.

5.109. As soon as reasonably practicable after clause 5.108 applies, the Minister for Primary Industries must appoint the governance entity as an advisory committee to the Minister for Primary Industries under section 21(1) of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995 for the purpose of advising the Minister on changes to the management regime for the areas of special significance.

CULTURAL MATERIALS PLAN

5.110. The settlement legislation will, on the terms provided by sections 113 to 117 of the draft settlement bill, provide for the Minister of Conservation (or delegate) and the governance entity to develop a cultural materials plan, within five years of the settlement date, setting out how the governance entity will provide a member of Whakatōhea with written authorisations to collect the following cultural materials:

5.110.1. flora material from public conservation land within the area of interest; and

5.110.2. protected wildlife found dead within the area of interest.

CONCESSIONS DECISION-MAKING FRAMEWORK

Definitions

5.111. In clauses 5.112 to 5.126, **concession** or **concession document** means a lease, licence, permit, or an easement granted under Part 3B of the Conservation Act 1987 or section 59A of the Reserves Act 1977 and includes any activity authorised by the concession document.

Preamble to the decision-making framework

5.112. The Minister of Conservation (or delegate) is responsible for making decisions on applications for new concessions for certain public conservation land.

5.113. Whakatōhea has customary and cultural interests throughout its area of interest, including in the lands, fauna and flora that are within the public conservation estate and in any concessions that would apply.



5: TE HAKA-Ā-TAMAU: CULTURAL REDRESS

- 5.114. Whakatōhea aspires to be more involved in decision-making by the Minister of Conservation (or delegate) regarding applications for new concessions (including new applications for expiring concessions). The decision-making framework set out in clauses 5.119 to 5.126 acknowledges this aspiration by ensuring that the Minister of Conservation (or delegate) shall have regard to Whakatōhea views and interests in such decisions.
- 5.115. Whakatōhea consider that the decision-making framework represents a set of minimum standards that the Minister of Conservation (or delegate) must adhere to.
- 5.116. The Minister of Conservation (or delegate) has a responsibility under section 4 of the Conservation Act 1987 to interpret and administer the conservation legislation so as to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi.
- 5.117. When considering any applications for new concessions the Minister of Conservation (or delegate) must apply the relevant statutory and other legal considerations in a way that gives effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi. This involves applying the relevant Treaty principles to the facts of the particular case.
- 5.118. This decision-making framework is intended to:
- 5.118.1. be complementary to the Minister's obligations under section 4; and
 - 5.118.2. not derogate from the Crown's obligations generally under the Conservation Act 1987.

Content of the decision-making framework

Scope of the decision-making framework

- 5.119. The decision-making framework will apply, from the settlement date, to decisions made by the Minister of Conservation (or delegate) on applications by parties other than the governance entity on or after the settlement date for new concessions (including new applications for expiring concessions), for activities on public conservation land held under the Conservation Act 1987 or the Reserves Act 1977 within the area of interest.
- 5.120. No later than 12 months after the settlement date, the governance entity and the Minister of Conservation (or delegate) may discuss and agree a schedule that identifies any decisions that do not require the application of the decision-making framework.
- 5.121. Agreements made under clause 5.120 must recognise the need to achieve a balance between –
- 5.121.1. providing for the interests of Whakatōhea in decision-making on applications for new concessions; and
 - 5.121.2. allowing the Minister of Conservation (or delegate) to –
 - (a) carry out their statutory functions; and
 - (b) make decisions in an efficient and timely manner.
- 5.122. To avoid doubt, until any schedule is agreed under clauses 5.120 and 5.121, the decision-making framework will apply to all relevant decisions outlined in clause 5.119.
- 5.123. The governance entity and the Minister of Conservation (or delegate) may, from time to time, agree to review any schedule agreed under clauses 5.120 and 5.121.



5: TE HAKA-Ā-TAMAUURU: CULTURAL REDRESS

- 5.124. The governance entity may, from time to time, by notice to the Minister of Conservation (or delegate), waive any and all rights under the decision-making framework, and in doing so will state the extent and duration of that waiver.
- 5.125. The governance entity may, by notice to the Minister of Conservation (or delegate), terminate the decision-making framework.

Stages of the decision-making framework

- 5.125.1. **Stage One:** the Minister of Conservation (or delegate) must notify the governance entity in writing:
- (a) that a complete application for a new concession has been received and accepted for processing;
 - (b) when it is proposed that a decision will be made on the concession; and
 - (c) provide the governance entity with a reasonable time period within which to respond to the application;
- 5.125.2. **Stage Two:** the governance entity must, within the timeframe for a response, notify the Minister of Conservation (or delegate) in writing of –
- (a) the nature and degree of the Whakatōhea interest in the relevant decision; and
 - (b) the views of Whakatōhea in relation to the relevant decision including without limitation, whether the proposed concession is consistent, or conflicts, with the Whakatōhea interests;
- 5.125.3. **Stage Three:** the Minister of Conservation (or delegate) must respond in writing to the governance entity confirming –
- (a) the Minister of Conservation's (or delegates) understanding of the matters expressed by the governance entity under clause 5.125.2; and
 - (b) how the Minister of Conservation (or delegate) will have regard to those matters in the decision-making process; and
 - (c) any issues that arise from those matters; and
 - (d) when any further response from the governance entity must be received; and
- 5.125.4. **Stage Four:** the Minister of Conservation (or delegate) must –
- (a) consider his or her response to the governance entity under clause 5.125.3 and have regard to any further response from the governance entity to the Minister of Conservation (or delegate) under clause 5.125.3(d);
 - (b) consider whether it is possible, in making the particular decision, to reconcile any differences between the interests and views of Whakatōhea and the meeting of other statutory and non-statutory objectives; and
 - (c) make the decision in accordance with the relevant legislation;

5: TE HAKA-Ā-TAMAU: CULTURAL REDRESS

5.125.5. **Stage Five:** the Minister of Conservation (or delegate) must record in writing –

- (a) the nature and degree of the Whakatōhea interest in the relevant decision and the views of Whakatōhea notified to the Minister of Conservation (or delegate) under clause 5.125.3; and
- (b) how, in making that decision, the Minister of Conservation (or delegate) has attempted to reconcile any differences between the interests and views of Whakatōhea referred to under clause 5.125.5(a) and the meeting of other statutory and non-statutory objectives; and

5.125.6. **Stage Six:** the Minister of Conservation (or delegate) must forward the particular decision to the governance entity including the matters recorded under clause 5.125.5.

Review of the decision-making framework

5.126. The governance entity and the Minister of Conservation (or delegate) must –

- 5.126.1. maintain open communication as to the effectiveness of the decision-making framework set out in clauses 5.119 to 5.125; and
- 5.126.2. no later than 2 years after settlement date, jointly commence a review of the effectiveness of the process set out in clauses 5.119 to 5.125 and taking into account the outcomes of any concession policy and process reviews undertaken by the Department.

WHAKATŌHEA PLACE IN THE BAY OF PLENTY CONSERVATION MANAGEMENT STRATEGY

5.127. In clauses 5.128 to 5.129 –

- 5.127.1. **Bay of Plenty conservation management strategy** means any conservation management strategy prepared and approved under section 17F of the Conservation Act 1987 and is in effect in an area that includes all or part of the Whakatōhea place;
- 5.127.2. **Conservation General Policy** means the general policy of that name approved by the Minister of Conservation under section 17B of the Conservation Act 1987;
- 5.127.3. **national and regional objectives, policies, and milestones** means the national and regional objectives, policies and milestones that implement the Department of Conservation's general legislative and policy requirements;
- 5.127.4. **Whakatōhea chapter** means a chapter –
 - (a) of the Bay of Plenty conservation management strategy; and
 - (b) comprising outcomes, policies and milestones that apply exclusively to the Whakatōhea place; and
- 5.127.5. **Whakatōhea place** means the area identified for the purposes of integrated conservation management as shown at part 3 of the attachments.



5: TE HAKA-Ā-TAMAUURU: CULTURAL REDRESS

5.128. The settlement legislation will, on the terms provided by sections 109 to 112 of the draft settlement bill, provide that –

- 5.128.1. within three years of settlement date, the Director-General of Conservation will notify the governance entity that he or she intends to initiate a review of part of the Bay of Plenty conservation management strategy under section 17H of the Conservation Act 1987 for the purpose of including the Whakatōhea chapter; and
- 5.128.2. from the date of giving notice under 5.128.1, and for all subsequent reviews or amendments of the Bay of Plenty conservation management strategy under section 17H or 17I of the Conservation Act 1987:
 - (a) the governance entity and the Director-General of Conservation are, despite sections 17D and 17F of the Conservation Act 1987, jointly responsible for preparing, amending, or reviewing the Whakatōhea chapter; and
 - (b) the Director-General of Conservation must notify the governance entity in writing if he or she intends to prepare, amend, or review the Bay of Plenty conservation management strategy to the extent that it applies to the Whakatōhea chapter; and
 - (c) the governance entity and the Minister of Conservation are jointly responsible for carrying out the Minister of Conservation's functions under 17F(j)(ii), (l)(ii), (n), (o) and (p)(ii) of the Conservation Act 1987 in respect of the Whakatōhea chapter.

5.129. To avoid doubt, clause 5.128 –

5.129.1. does not alter the role, under the Conservation Act 1987, of –

- (a) the New Zealand Conservation Authority in approving the Bay of Plenty conservation management strategy; or
- (b) the relevant Conservation Board in recommending the Bay of Plenty conservation management strategy to the New Zealand Conservation Authority for approval; or
- (c) the Director-General of Conservation in determining the boundaries of any conservation management strategy; and

5.129.2. only applies to the Whakatōhea chapter and does not apply to anything else in the Bay of Plenty conservation management strategy, particularly the national and regional objectives, policies and milestones;

5.129.3. does not prevent the Crown from vesting, or providing non-exclusive redress over, public conservation land within the Whakatōhea place to iwi who have not settled their historical claims.

OFFICIAL GEOGRAPHIC NAMES

5.130. The settlement legislation will, on the settlement date, provide for each of the names listed in the second column to be the official geographic name for the features set out in columns 3 and 4.



TE MĀKEOTANGA – DEED OF SETTLEMENT

5: TE HAKA-Ā-TAMAUURU: CULTURAL REDRESS

Existing Name	Official geographic name	Location (NZTopo50 and grid references)	Geographic feature type
Waioeka River (local use name Ōpōtiki Harbour)	Pakihikura Harbour	BE41 758855 to BE41 742866	Harbour
Waioeka River	Waioweka River	BF41 745415 to BE41 758853	River
Waioeka	Waioweka	BE41 764795	Locality

- 5.131. The settlement legislation will provide for the official geographic names on the terms provided by sections 43 to 46 of the draft settlement bill.

CROWN PROTECTED AREA NAME

- 5.132. The settlement legislation will, on the terms provided in section 44 of the draft settlement bill, change the name of Waioeka Gorge Scenic Reserve to Waioweka Gorge Scenic Reserve.

CULTURAL FUNDS

- 5.133. On the settlement date, in addition to the financial and commercial redress amount, the Crown will pay the governance entity –
- 5.133.1. \$5,000,000 for the purpose of a cultural revitalisation fund;
 - 5.133.2. \$1,000,000 for the purpose of a Te Reo revitalisation fund; and
 - 5.133.3. \$2,000,000 for the purpose of an education endowment fund in acknowledgement of the grievances of the uri of all Whakatōhea ancestors who died as a result of military engagement with the Crown.

CULTURAL REDRESS NON-EXCLUSIVE

- 5.134. The Crown may do anything that is consistent with the cultural redress, including entering into, and giving effect to, another settlement that provides for the same or similar cultural redress.
- 5.135. However, the Crown must not enter into another settlement that provides for the same redress as set out in clauses 5.78, 5.79, and 5.80 or 5.81, as applicable.



6 PĀKIHUKURA: FINANCIAL AND COMMERCIAL REDRESS

Pākihikura ko te pūwaha tonu o te awa. Ko te rite o Pakihi he mahi moni, he haumako, ko te tikanga o kura, he tāonga. Ko Pakihikura te waka tawhito, kua tahuri hei waka arumoni, waka pūtea e kawē nei i te iwi ki mua.

Pākihikura is the mouth of the river. "Pakihi" means "business". "Pakihi" means "fertile". "Kura" means "a treasure". Pākihikura is the ancestral waka - this waka is now Whakatōhea's financial and commercial vehicle to carry the iwi into the future.

FINANCIAL REDRESS

- 6.1. The Crown must pay the governance entity on the settlement date \$79,375,000, being the financial and commercial redress amount of \$85,000,000 less \$5,625,000, being the total transfer values of the commercial redress properties.

RESERVE LAND DEVELOPMENT FUND

- 6.2. On the settlement date, in addition to the financial and commercial redress amount, the Crown will pay the governance entity \$5,000,000 for the purpose of a reserve land development fund.

COMMERCIAL REDRESS PROPERTIES

- 6.3. Each commercial redress property is to be –
 - 6.3.1. transferred by the Crown to the governance entity on the settlement date –
 - (a) as part of the redress to settle the historical claims, and without any other consideration to be paid or provided by the governance entity or any other person; and
 - (b) on the terms of transfer in part 6 of the property redress schedule; and
 - 6.3.2. as described, and is to have the transfer value provided, in part 3 of the property redress schedule.
- 6.4. The transfer of each commercial redress property will be –
 - 6.4.1. subject to, and where applicable with the benefit of, the encumbrances provided in part 3 of the property redress schedule in relation to that property; and
 - 6.4.2. in the case of Pakihi Stream Conservation Area, subject to the governance entity providing to the Crown by or on the settlement date a registrable easement in the form set out in part 9.11 of the documents schedule.

Acknowledgement in relation to Hukutaia Conservation Area

- 6.5. The parties acknowledge that the commercial redress property known as Hukutaia Conservation Area has no legal means of access. Despite this, the governance entity –
 - 6.5.1. agrees to accept transfer of Hukutaia Conservation Area; and

WHAKATŌHEA DEED OF SETTLEMENT

6: PĀKIHĪKURA: FINANCIAL AND COMMERCIAL REDRESS

- 6.5.2. agrees that the Crown has no obligation at any time to provide access to Hukutaia Conservation Area.

DEFERRED SELECTION PROPERTIES

- 6.6. The governance entity may during the deferred selection period for each deferred selection property, give the Crown a written notice of interest in accordance with paragraph 5.1 of the property redress schedule.
- 6.7. Part 5 of the property redress schedule provides for the effect of the notice and sets out a process where the property is valued and may be acquired by the governance entity.
- 6.8. Each of the following deferred selection properties are to be leased back to the Crown, immediately after its purchase by the governance entity, on the terms and conditions provided by the lease for that property in part 10 of the documents schedule (being a registrable ground lease for the property, ownership of the improvements remaining unaffected by the purchase):
- 6.8.1. 10 Elliott Street, Ōpōtiki (land only):
 - 6.8.2. 18 Potts Avenue, Ōpōtiki (land only):
 - 6.8.3. Ōpōtiki College (land only):
 - 6.8.4. Ōpōtiki District Court (land only):
 - 6.8.5. Ōpōtiki Police Station (land only):
 - 6.8.6. Ōpōtiki School (land only):
 - 6.8.7. Woodlands School (land only).
- 6.9. Clause 6.10 applies in respect of a DSP school house site if, before the settlement date, the board of trustees of the related school site relinquishes the beneficial interest it has in the DSP school house site.
- 6.10. If this clause applies to a DSP school house site –
- 6.10.1. the Crown must, within 10 business days of this clause applying, give notice to the governance entity that the beneficial interest in the DSP school house site has been relinquished by the board of trustees; and
 - 6.10.2. the deferred selection property that is the related school site will include the DSP school house site; and
 - 6.10.3. all references in this deed to a deferred selection property that is the related school site are to be read as if the deferred selection property were the related school site and the DSP school house site together.
- 6.11. In the event that a property referred to in clause 6.8 becomes surplus to the land holding agency's requirements, then the Crown may, at any time before the governance entity has given a notice of interest in respect of that property, give written notice to the governance entity advising it that the property is no longer available for selection by the governance entity in accordance with clause 6.6. The right under clause 6.6 ceases in respect of that property on the date of receipt of the notice by the governance entity under



WHAKATŌHEA DEED OF SETTLEMENT

6: PĀKIHĪKURA: FINANCIAL AND COMMERCIAL REDRESS

this clause. To avoid doubt, the governance entity will continue to have a right of first refusal in relation to that property in accordance with clause 6.27.

SETTLEMENT LEGISLATION

- 6.12. The settlement legislation will, on the terms provided by sections 118 to 126 of the draft settlement bill, enable the transfer of the commercial redress properties and the deferred selection properties.

MARINE SPACE FOR AQUACULTURE

- 6.13. Whakatōhea consider aquaculture development to be a key to the economic future of the iwi and the eastern Bay of Plenty and has aspirations for aquaculture development.
- 6.14. The Crown has agreed that the deed will provide the governance entity with an exclusive right to apply for a coastal permit in relation to aquaculture activities within an area of reserved space on the terms set out in clauses 6.15 to 6.16 below.

Reservation of aquaculture space

- 6.15. The settlement legislation will, on the terms provided by sections 156, 157 and 159 of the draft settlement bill, provide –
- 6.15.1. for the reservation of 5000 hectares of space in total (**reservation of space**) in three areas of the coastal marine area marked A1 to A4, B1 to B4 and C1 to C4 on the plan in part 4 of the attachments (**reserved space**);
 - 6.15.2. for the reservation of space to continue for a period of 20 years following the date on which the settlement legislation comes into force (**reservation term**);
 - 6.15.3. that at the end of the reservation term, the reservation of space will be deemed to have lapsed;
 - 6.15.4. that the Bay of Plenty Regional Council will, as soon as is reasonably practicable after the settlement date, identify the reserved space in its regional coastal plan, without using the process under Schedule 1 of the Resource Management Act 1991;
 - 6.15.5. that the Minister of Conservation will not be required to approve the amended regional coastal plan under Schedule 1 of the Resource Management Act 1991;
 - 6.15.6. that only the governance entity or a nominee of the governance entity may apply for a coastal permit in relation to aquaculture activities within the reserved space during the reservation term (**exclusive right**);
 - 6.15.7. that, to avoid doubt, the exclusive right will continue to the end of the reservation term, regardless of whether the governance entity has applied for or obtained a coastal permit in relation to aquaculture activities within the reserved space either before or during the reservation term;
 - 6.15.8. that, during the reservation term, the Bay of Plenty Regional Council may grant a coastal permit authorising any other activity, apart from aquaculture activities, in the reserved space, but only –
 - (a) to the extent that that activity is compatible with aquaculture activities;



WHAKATŌHEA DEED OF SETTLEMENT

6: PĀKIHĪKURA: FINANCIAL AND COMMERCIAL REDRESS

- (b) after consultation with the governance entity; and
- (c) in a manner that reflects sections 6(e), 7(a) and 8 of the Resource Management Act 1991.

6.16. The parties acknowledge that –

- 6.16.1. the exclusive right does not mean that a coastal permit will necessarily be granted;
- 6.16.2. the Crown has no further obligations beyond those set out in clause 6.15; and
- 6.16.3. there is no recourse to the Crown in any circumstances, including if a coastal permit is not:
 - (a) applied for within the reservation term; or
 - (b) granted.

Change to reserved space

6.17. The Minister for Oceans and Fisheries may, on the terms provided by section 158 of the draft settlement bill, by notice in the *Gazette*, declare that the reserved space comprising of areas C1 to C4 on the plan in part 4 of the attachments is replaced by an area that –

- 6.17.1. is coastal marine area in the area of interest, even if it includes any part of areas C1 to C4;
- 6.17.2. is no more than 1000 hectares; and
- 6.17.3. is described in the notice (**replacement area**).

6.18. The Minister for Oceans and Fisheries must not make the notice under clause 6.17 unless –

- 6.18.1. the governance entity applies in writing to the Minister with:
 - (a) a request for the notice to be made; and
 - (b) a full description of the proposed replacement area;
- 6.18.2. the Minister consults with the Minister for Treaty of Waitangi Negotiations and the Minister of Conservation about the proposed replacement area;
- 6.18.3. the Minister is satisfied that any other affected iwi have been consulted about the proposed replacement area and that their views have been considered (as iwi is defined in the Maori Fisheries Act 2004); and
- 6.18.4. the notice is published within 3 years after the start of the 20-year period (being a period of 20 years starting on the commencement of the settlement legislation).



6: PĀKIHĪKURA: FINANCIAL AND COMMERCIAL REDRESS

MARINE AND HARBOUR DEVELOPMENT FUND

- 6.19. On the settlement date, in addition to the financial and commercial redress amount, the Crown will pay the governance entity up to \$2,000,000 for marine and harbour development.
- 6.20. The governance entity may use up to \$1,000,000 of the total sum in clause 6.19 for costs associated with applying for aquaculture resource consents.
- 6.21. If at any time the governance entity decides it does not wish to apply all or part of the payment referred to in clause 6.19 for marine and harbour development purposes, the governance entity may use that payment, in whole or in part, for any other purpose that is consistent with its trust deed.

RIGHT OF FIRST REFUSAL OVER QUOTA

- 6.22. The Crown agrees to grant to the governance entity a right of first refusal to purchase certain quota as set out in the RFR deed over quota provided for under clauses 6.23 to 6.26 (**RFR deed over quota**).

Delivery by the Crown of a RFR deed over quota

- 6.23. The Crown must, by or on the settlement date, provide the governance entity with two copies of the RFR deed over quota on the terms and conditions set out in part 8 of the documents schedule and signed by the Crown.

Signing and returning of RFR deed over quota by the governance entity

- 6.24. The governance entity must sign both copies of the RFR deed over quota and return one signed copy to the Crown by no later than 10 business days after the settlement date.

Terms of RFR deed over quota

- 6.25. The RFR deed over quota will:
- 6.25.1. relate to the RFR area;
 - 6.25.2. be in force for a period of 50 years from the settlement date; and
 - 6.25.3. have effect from the settlement date as if it had been validly signed by the Crown and the governance entity on that date.

Crown has no obligation to introduce or sell quota

- 6.26. The Crown and the governance entity acknowledge that:
- 6.26.1. nothing in this deed, or the RFR deed over quota, requires the Crown to:
 - (a) purchase any provisional catch history, or other catch rights, under section 37 of the Fisheries Act 1996;
 - (b) introduce any applicable species (being the species referred to in Schedule 1 of the RFR deed over quota) into the quota management system (as defined in the RFR deed over quota); or



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6: PĀKIHĪKURA: FINANCIAL AND COMMERCIAL REDRESS

- (c) offer for sale any applicable quota (as defined in the RFR deed over quota) held by the Crown; and

6.26.2. the inclusion of any applicable species (being the species referred to in Schedule 1 of the RFR deed over quota) in the quota management system may not result in any, or any significant, holdings by the Crown of applicable quota.

RFR FROM THE CROWN

6.27. The governance entity is to have a right of first refusal in relation to a disposal of RFR land, being –

6.27.1. land listed in part 7 of the attachments that, on the settlement date, –

- (a) is vested in the Crown; or
- (b) the fee simple for which is held by the Crown; and

6.27.2. land in the RFR area that is not a commercial redress property and that, on the settlement date, –

- (a) is vested in the Crown; or
- (b) the fee simple for which is held by the Crown; or
- (c) is a reserve vested in an administering body that derived title to the reserve from the Crown and that would, on the application of section 25 or 27 of the Reserves Act 1977, revert in the Crown.

6.28. The right of first refusal is –

6.28.1. to be on the terms provided by sections 127 to 155 of the draft settlement bill; and

6.28.2. in particular, to apply –

- (a) for a term of 181 years from the settlement date; but
- (b) only if the RFR land is not being disposed of in the circumstances provided by sections 135 to 144, or under a matter referred to in section 145(1), of the draft settlement bill.



7 TAIHARURU: SETTLEMENT LEGISLATION, CONDITIONS, AND TERMINATION

Taiharuru he matapari ana kei Ōpape e matapae ana i te huarere mā te oro mai o te hau e uru ana ki roto i ngā ana.

Taiharuru is the name of the caves at Ōpape. They tell the weather conditions by the sounds the prevailing winds make when entering the caves.

SETTLEMENT LEGISLATION

- 7.1. The Crown must propose the draft settlement bill for introduction to the House of Representatives.
- 7.2. The settlement legislation will provide for all matters for which legislation is required to give effect to this deed of settlement.
- 7.3. The settlement legislation will, on the terms provided by section 21 of the draft settlement bill, provide that Te Tāwharau o Whakatōhea is not to be treated as a trust constituted in respect of any General land owned by Māori for the purpose of section 236(1)(c) of Te Ture Whenua Maori Act 1993.
- 7.4. The draft settlement bill proposed for introduction to the House of Representatives –
 - 7.4.1. must comply with the drafting standards and conventions of the Parliamentary Counsel Office for Government Bills, as well as the requirements of the Legislature under Standing Orders, Speakers' Rulings, and conventions; and
 - 7.4.2. must be in a form that is satisfactory to Whakatōhea and the Crown.
- 7.5. Whakatōhea and the governance entity must support the passage of the draft settlement bill through Parliament.

SETTLEMENT CONDITIONAL

- 7.6. This deed, and the settlement, are conditional on the settlement legislation coming into force.
- 7.7. However, the following provisions of this deed are binding on its signing:
 - 7.7.1. clauses 7.5 to 7.14;
 - 7.7.2. paragraph 1.3, and parts 4 to 7 of the general matters schedule.

DISSOLUTION OF WHAKATŌHEA MĀORI TRUST BOARD

- 7.8. The settlement legislation will, on the terms provided in sections 180 to 183 and 187 to 209 of the draft settlement bill, –
 - 7.8.1. dissolve the Whakatōhea Māori Trust Board;
 - 7.8.2. dissolve the Whakatōhea Fisheries Trust;



7: TAIHARURU: SETTLEMENT LEGISLATION, CONDITIONS AND TERMINATION

- 7.8.3. vest the assets and liabilities of the Whakatōhea Māori Trust Board and the Whakatōhea Fisheries Trust in the governance entity;
- 7.8.4. provide, to the extent that any assets and liabilities of Whakatōhea Māori Trust Board and the Whakatōhea Fisheries Trust are held subject to any charitable trusts, that those assets and liabilities vest in and become the assets and liabilities of the governance entity, freed of all charitable trusts, but subject to trusts expressed in the governance entity trust deed;
- 7.8.5. provide that upon the vesting of the shares in the Whakatōhea Fisheries Asset Holding Company Limited of the Whakatōhea Māori Trust Board to the governance entity, to the extent that any asset or liability of the relevant subsidiary is owned or held subject to any charitable purposes:
- (a) the asset or liability is freed of those charitable purposes;
 - (b) the company's constitution is deemed to have been amended to the extent necessary to give effect to clause 7.8.5(a); and
 - (c) if that company is a tax charity for the purposes of the Inland Revenue Acts, the company ceases to be a tax charity; and
- 7.8.6. provide for various transitional arrangements in respect of the Whakatōhea Māori Trust Board, Whakatōhea Fisheries Trust and relevant subsidiaries, including transitional taxation arrangements; and
- 7.8.7. provide that –
- (a) the governance entity will prepare a final report to show the financial results of the operations of the Whakatōhea Māori Trust Board for the period –
 - (i) beginning on the day after the last day covered by the previous annual report; and
 - (ii) ending on the day before the commencement of the settlement legislation; and
 - (b) the final report will be provided by the governance entity to the Minister for Māori Development, who must present it to the House of Representatives.

RECOGNITION OF NEW MANDATED ORGANISATION AND VESTING OF FISHERIES AND AQUACULTURE ASSETS

- 7.9. In clause 7.10, **mandated organisation** means –
- 7.9.1. for the purposes of the Maori Fisheries Act 2004, a mandated iwi organisation; and
- 7.9.2. for the purposes of the Maori Commercial Aquaculture Claims Settlement Act 2004, an iwi aquaculture organisation.



TE MĀKEOTANGA – DEED OF SETTLEMENT

7: TAIHARURU: SETTLEMENT LEGISLATION, CONDITIONS AND TERMINATION

- 7.10. The Crown agrees that the settlement legislation will, on the terms provided in sections 184 to 186 of the draft settlement bill, –
- 7.10.1. recognise that the governance entity is, and is recognised by Te Ohu Kai Moana Trustee Limited as, the new mandated organisation for Whakatōhea in place of the Whakatōhea Māori Trust Board;
 - 7.10.2. confirm that Whakatōhea Fisheries Asset Holding Company Limited is the asset holding company of the governance entity under the Māori Fisheries Act 2004 and the Māori Commercial Aquaculture Claims Settlement Act 2004;
 - 7.10.3. provide that the governance entity's trust deed is approved as if it were approved under section 17 of the Māori Fisheries Act 2004 and section 33 of the Māori Commercial Aquaculture Claims Settlement Act 2004;
 - 7.10.4. provide that Te Ohu Kai Moana Trustee Limited is not liable, and no action may be brought against it, for any act described in this deed of settlement that it does or omits to do, in so far as the act or omission is done or omitted in good faith, and with reasonable cause; and
 - 7.10.5. include other provisions to give better effect to the fact that the governance entity is the new mandated organisation.

EFFECT OF THIS DEED

- 7.11. This deed –
- 7.11.1. is "without prejudice" until it becomes unconditional; and
 - 7.11.2. may not be used as evidence in proceedings before, or presented to, the Waitangi Tribunal, any court, or any other judicial body or tribunal.
- 7.12. Clause 7.11.2 does not exclude the jurisdiction of a court, tribunal, or other judicial body in respect of the interpretation or enforcement of this deed.

TERMINATION

- 7.13. The Crown or the governance entity may terminate this deed, by notice to the other, if –
- 7.13.1. the settlement legislation has not come into force within 30 months after the date of this deed; and
 - 7.13.2. the terminating party has given the other party at least 40 business days' notice of an intention to terminate.
- 7.14. If this deed is terminated in accordance with its provisions –
- 7.14.1. this deed (and the settlement) are at an end; and
 - 7.14.2. subject to this clause, this deed does not give rise to any rights or obligations; and
 - 7.14.3. this deed remains without prejudice.



8 TĒRĀ WHĀNUI, NGĀ WHAKAMĀRAMA: GENERAL, DEFINITIONS, AND INTERPRETATION

He pātere tawhito a 'Tērā Whānui' no Te Whakatōhea. Ko te whakamārama o Whānui i roto i te pātere ko te whetū ara, ko Whānui. Kua whakamahia nei kia whai tikanga nei i roto i te kupu tukipū.

Tērā Whānui is an ancient pātere of Te Whakatōhea. The meaning of Whānui in the pātere is the name of the star Vega. "Whānui" is used in the context of "general".

GENERAL

- 8.1. The general matters schedule includes provisions in relation to –
- 8.1.1. the implementation of the settlement; and
 - 8.1.2. the Crown's –
 - (a) payment of interest in relation to the settlement; and
 - (b) tax indemnities in relation to redress; and
 - 8.1.3. giving notice under this deed or a settlement document; and
 - 8.1.4. amending this deed.

HISTORICAL CLAIMS

- 8.2. In this deed, **historical claims** –
- 8.2.1. means every claim (whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date) that Whakatōhea, or a representative entity, had at, or at any time before, the settlement date, or may have at any time after the settlement date, and that –
 - (a) is, or is founded on, a right arising –
 - (i) from te Tiriti o Waitangi/the Treaty of Waitangi or its principles; or
 - (ii) under legislation; or
 - (iii) at common law, including aboriginal title or customary law; or
 - (iv) from fiduciary duty; or
 - (v) otherwise; and
 - (b) arises from, or relates to, acts or omissions before 21 September 1992 –
 - (i) by, or on behalf of, the Crown; or
 - (ii) by or under legislation; and



8: TĒRĀ WHĀNUI, NGĀ WHAKAMĀRAMA: GENERAL, DEFINITIONS, AND INTERPRETATION

8.2.2. includes every claim to the Waitangi Tribunal to which clause 8.2.1 applies that relates exclusively to Whakatōhea or a representative entity, including the following claims:

- (a) Wai 87 – Whakatōhea Raupatu claim:
- (b) Wai 203 – Mekomoko whānau claim:
- (c) Wai 339 – Hiwarau block claim:
- (d) Wai 864 – Moutohora quarry claim:
- (e) Wai 1092 – Upokorehe claim:
- (f) Wai 1433 – Nepia Whānau Trust claim:
- (g) Wai 1758 – Roimata marae, Upokorehe hapū, Ngāti Raumoa Roimata Marae Trust claim:
- (h) Wai 1775 – Ngāti Patu claim:
- (i) Wai 1781 – Ngāi Tamahaua claim:
- (j) Wai 1782 – Ngāti Rua claim:
- (k) Wai 1787 – Rongopopoia ki Upokorehe claim:
- (l) Wai 1794 – Turangapikitoi hapū claim:
- (m) Wai 1795 – Ngāti Rua claim:
- (n) Wai 1827 – the Descendants of Rangiharepō claim:
- (o) Wai 1884 – Ngāti Ngāhere claim:
- (p) Wai 2006 – Upokorehe and Whakatōhea claim:
- (q) Wai 2008 – Pākowhai claim:
- (r) Wai 2055 – Ngāi Tama of Opape claim:
- (s) Wai 2066 – Ngāti Ruatakenga claim:
- (t) Wai 2107 – Ngāti Ngāhere/Ngāti Ira claim:
- (u) Wai 2160 – Whakatōhea/Ngāti Muriwai claim; and

8.2.3. includes every other claim to the Waitangi Tribunal to which clause 8.2.1 applies, so far as it relates to Whakatōhea or a representative entity, including the following claims:

- (a) Wai 287 – School history claim:
- (b) Wai 558 – Ngāti Ira o Waioweka Rohe claim:
- (c) Wai 1511 – Ngāi Tamatea claim:



8: TĒRĀ WHĀNUI, NGĀ WHAKAMĀRAMA: GENERAL, DEFINITIONS, AND INTERPRETATION

(d) Wai 2510 – Te Kahika claim.

8.3. However, **historical claims** does not include the following claims:

8.3.1. a claim that a member of Whakatōhea, or a whānau, hapū, or group referred to in clause 8.8.2, may have that is, or is founded on, a right arising as a result of being descended from an ancestor who is not referred to in clause 8.8.1:

8.3.2. a claim that a representative entity may have to the extent the claim is, or is founded, on a claim referred to in clause 8.3.1.

8.4. To avoid doubt, clause 8.2.1 is not limited by clauses 8.2.2 or 8.2.3.

8.5. To avoid doubt, nothing in this deed or the settlement legislation will –

8.5.1. extinguish or limit any aboriginal title or customary right that Whakatōhea may have; or

8.5.2. constitute or imply an acknowledgement by the Crown that any aboriginal title or customary right exists; and

8.5.3. except as provided in this deed or the settlement legislation –

(a) affect a right that Whakatōhea may have, including a right arising –

(i) from te Tiriti o Waitangi/the Treaty of Waitangi or its principles; or

(ii) under legislation; or

(iii) at common law (including in relation to aboriginal title or customary law); or

(iv) from a fiduciary duty; or

(v) otherwise; or

(b) be intended to affect any action or decision under the deed of settlement between Māori and the Crown dated 23 September 1992 in relation to Māori fishing claims; or

(c) affect any action or decision under any legislation and, in particular, under the following legislation giving effect to the deed of settlement referred to in clause 8.5.3(b) –

(i) Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or

(ii) Fisheries Act 1996; or

(iii) Māori Fisheries Act 2004; or

(iv) Māori Commercial Aquaculture Claims Settlement Act 2004.

8.6. To avoid doubt, this settlement does not affect applications made by iwi, hapū or whānau of Whakatōhea under the Marine and Coastal Area (Takutai Moana) Act 2011.



8: TĒRĀ WHĀNUI, NGĀ WHAKAMĀRAMA: GENERAL, DEFINITIONS, AND INTERPRETATION

- 8.7. The parties acknowledge that on 4 June 2019 the Waitangi Tribunal commenced the North-Eastern Bay of Plenty District Inquiry, which is inquiring into certain claims of Whakatōhea. The Waitangi Tribunal will continue this inquiry after the settlement date. To avoid doubt, the parties confirm and acknowledge that any contemporary aspects of the claims listed in clauses 8.2.2 and 8.2.3 (being aspects those claims that arise from, or relate to, acts or omissions that occurred on or after 21 September 1992) will not be settled by this deed.

WHAKATŌHEA

- 8.8. In this deed, **Whakatōhea** means –

- 8.8.1. the collective group composed of individuals who descend from one or more Whakatōhea ancestor; and
- 8.8.2. every whānau, hapū, or group to the extent that it is composed of individuals referred to in clause 8.8.1, including the following groups:
- (a) Ngāti Rua:
 - (b) Ngāi Tamahaua:
 - (c) Ngāti Patumoana:
 - (d) Ngāti Ngāhere:
 - (e) Ngāti Ira:
 - (f) Te Upokorehe; and:
- 8.8.3. every individual referred to in clause 8.8.1.

- 8.9. For the purposes of clause 8.8.1 –

- 8.9.1. a person is descended from another person if the first person is descended from the other by –
- (a) birth; or
 - (b) legal adoption; or
 - (c) Māori customary adoption in accordance with tikanga Whakatōhea (customary values and practices); and
- 8.9.2. **Whakatōhea ancestor** means an individual who:
- (a) exercised customary rights by virtue of being descended from:
 - (i) Muriwai; and/or
 - (ii) Tūtāmure; or
 - (iii) a recognised ancestor of any of the groups listed in clause 8.8.2; and



8: TĒRĀ WHĀNUI, NGĀ WHAKAMĀRAMA: GENERAL, DEFINITIONS, AND INTERPRETATION

- (b) exercised customary rights predominantly in relation to the Whakatōhea area of interest after 6 February 1840.

8.9.3. **customary rights** means rights according to tikanga Māori (Māori customary values and practices), including –

- (a) rights to occupy land; and
- (b) rights in relation to the use and/or regulation of land or other natural or physical resources.

MANDATED NEGOTIATORS AND SIGNATORIES

8.10. In this deed –

8.10.1. **mandated negotiators** means the following individuals:

- (a) Jason Pou, Ngā Puhi, Rotorua, Lawyer;
- (b) Maui Hudson, Whakatōhea, Hamilton, Researcher; and

8.10.2. **mandated signatories** means the following individuals:

- (a) *[name, town or city of residence, occupation]*;
- (b) *[name, town or city of residence, occupation]*.

8.11. The parties acknowledge the late Josephine Mortensen. Hinehou Josie Mortensen was approved as a mandated signatory for Whakatōhea and an establishment trustee for Te Tāwharau o Te Whakatōhea. Hinehou was the first woman to be appointed to the Whakatōhea Māori Trust Board and it is fitting that she was to be an establishment trustee on Te Tāwharau o Te Whakatōhea to take its place. Unfortunately, Ms Mortensen passed away just prior to the initialling of the deed of settlement and the establishment of Te Tāwharau o Te Whakatōhea. Her name is recorded in this deed for the legacy that she left for Whakatōhea.

ADDITIONAL DEFINITIONS

8.12. The definitions in part 6 of the general matters schedule apply to this deed.

INTERPRETATION

8.13. Part 7 of the general matters schedule applies to the interpretation of this deed.



TE MĀKEOTANGA – DEED OF SETTLEMENT

SIGNED as a deed on [date]

SIGNED for and on behalf of
WHAKATŌHEA by [the mandated
signatories], in the presence of:

)
)
)

[name]

Signature of Witness

[name]

Witness Name

Occupation

[name]

Address

SIGNED by the trustees of
TE TĀWHARAU O TE WHAKATŌHEA, in
the presence of:

)
)
)

[name]

Signature of Witness

[name]

Witness Name

Occupation

[name]

Address



TE MĀKEOTANGA – DEED OF SETTLEMENT

SIGNED for and on behalf of the **CROWN**
by the Minister for Treaty of Waitangi
Negotiations, in the presence of:

)
)
)

Hon Andrew James Little

Signature of Witness

Witness Name

Occupation

Address

by the Minister of Finance (only in relation to
the tax indemnities), in the presence of:

)
)

Hon Grant Murray Robertson

Signature of Witness

Witness Name

Occupation

Address

