

**TE WHĀNAU A APANUI**

**and**

**THE CROWN**

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**AGREEMENT IN PRINCIPLE  
TO SETTLE  
HISTORICAL CLAIMS**

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**28 June 2019**

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### SCHEDULES

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3. VALUATION PROCESS FOR POTENTIAL COMMERCIAL REDRESS PROPERTIES
4. TE WHĀNAU A APANUI AND THE MINISTRY OF JUSTICE: RELATIONSHIP PRINCIPLES
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### ATTACHMENTS

1. AREA OF INTEREST
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6. CROWN AND TE WHĀNAU A APANUI PROCESS FOR RESOLVING OVERLAPPING CLAIMS

## 1 BACKGROUND

### **Mandate and terms of negotiation**

- 1.1 On 8 August 2017, by a hapū based process in which each hapū exercised their own methods of decision-making, Te Whānau a Apanui;
  - 1.1.1 gave Rikirangi Gage, Matanuku Mahuika and Natalie Coates (Te Whānau a Apanui Negotiation Team) a mandate to negotiate with the Crown a deed of settlement settling the historical claims of Te Whānau a Apanui; and
  - 1.1.2 resolved to create a Hapū Chairs Forum to meet regularly with Te Whānau a Apanui Negotiation Team as a means to keep all the hapū informed of progress in the negotiations, provide Te Whānau a Apanui Negotiation Team with feedback and advice about issues from a hapū perspective and to share information.
- 1.2 The Crown recognised this mandate on 16 August 2017.
- 1.3 Te Whānau a Apanui Negotiation Team and the Crown agreed the scope, objectives, and general procedures for the negotiations by terms of negotiation dated 7 September 2017.
- 1.4 These negotiations have proceeded on the following basis which is reflected in the deed of mandate:
  - 1.4.1 mana and ultimate decision-making power resides with the hapū of Te Whānau a Apanui; and
  - 1.4.2 Te Whānau a Apanui Negotiation Team is responsible for carrying out the mahi for negotiations but is at all times accountable to the hapū of Te Whānau a Apanui.

### **Nature and scope of deed of settlement agreed**

- 1.5 Te Whānau a Apanui Negotiation Team and the Crown have agreed, in principle, the nature and scope of the deed of settlement.
- 1.6 This agreement in principle records that agreement and concludes substantive negotiations of the redress contemplated in this agreement in principle, recognising that work needs to continue on the matters outlined in Part 12, Next Steps.

### **Approval and signing of this agreement in principle**

- 1.7 The hapū of Te Whānau a Apanui have –
  - 1.7.1 approved this agreement in principle; and

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- 1.7.2 agreed the chairs of the 12 hapū (or their nominees) and the mandated negotiators have the authority to sign this agreement in principle.

## **2 AGREEMENT IN PRINCIPLE**

2.1 Te Whānau a Apanui and the Crown agree –

- 2.1.1 that, in principle, the nature and scope of the deed of settlement is to be as provided in this agreement in principle; and
- 2.1.2 to work together in good faith to develop, as soon as reasonably practicable, a deed of settlement based on this agreement in principle. In particular, the parties will work together to resolve any matters in relation to clause 3.5 of this agreement in principle, and agree or determine (where applicable) those matters under clauses 3.8 and 12.2; and
- 2.1.3 the deed of settlement is to be signed by or on behalf of Te Whānau a Apanui, the governance entity, and the Crown.

### 3 SETTLEMENT

#### Settlement of historical claims

- 3.1 The deed of settlement is to provide that, on and from the settlement date, -
- 3.1.1 the historical claims of Te Whānau a Apanui are settled; and
  - 3.1.2 the Crown is released and discharged from all obligations and liabilities in respect of the historical claims; and
  - 3.1.3 the settlement is final.
- 3.2 The definitions of the historical claims, and of Te Whānau a Apanui, are to be based on the definitions of those terms in schedule 1.

#### Terms of settlement

- 3.3 The terms of the settlement provided in the deed of settlement are to be:
- 3.3.1 those in schedule 2; and
  - 3.3.2 any additional terms agreed by the parties.

#### Redress

- 3.4 The deed of settlement is to provide for redress in accordance with this agreement in principle.
- 3.5 However, the deed of settlement will include –
- 3.5.1 redress contemplated by this agreement in principle only if any overlapping claim issues in relation to that redress have been addressed to the satisfaction of the Crown; and
  - 3.5.2 a property that this agreement in principle specifies as a potential cultural redress property or a potential commercial redress property, subject to final written confirmation from the Crown that each of those properties is available. If any such potential property is not available, the Crown is under no obligation to substitute that property with another property.
- 3.6 If the Crown is unable to confirm any redress contemplated by this agreement in principle due to overlapping claims, the parties may discuss alternative redress so that the nature of the redress contemplated by this agreement in principle is maintained so far as that is possible, in the deed of settlement.
- 3.7 If any new redress is offered by the Crown in accordance with clause 3.6, Te Whānau a Apanui acknowledge that clauses 3.5.1 and 3.5.2 apply to that redress.

**Transfer or vesting of settlement properties**

3.8 The settlement documentation is to provide that the vesting or transfer of:

3.8.1 a redress property will be subject to –

- (a) any further identification and/or survey required; and
- (b) Part 4A of the Conservation Act 1987 (unless the settlement documentation provides otherwise); and
- (c) sections 10 and 11 of the Crown Minerals Act 1991; and
- (d) any relevant provisions included in the settlement documentation.

3.8.2 a redress property, will be subject to any encumbrance or right in relation to that property, that the settlement documentation either –

- (a) describes as existing at the date of the deed of settlement; or
- (b) requires to be created on or before the settlement date.

## **4 HISTORICAL ACCOUNT, ACKNOWLEDGEMENT AND APOLOGY**

### **4.1 The deed of settlement is to include –**

- 4.1.1 an agreed account of the historical relationship between Te Whānau a Apanui and the Crown based on the historical account headings in clause 4.2; and
- 4.1.2 the Crown's acknowledgement of its acts and omissions which have breached Te Tiriti o Waitangi/the Treaty of Waitangi and its principles or caused prejudice to Te Whānau a Apanui; and
- 4.1.3 a Crown apology for those breaches of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

### **4.2 The Historical Account will be based on the following headings:**

- 4.2.1 Te Whānau a Apanui and Te Tiriti o Waitangi;
- 4.2.2 The 1860s wars and Te Whānau a Apanui;
- 4.2.3 Introduction and operation of the Native Land Laws including Tunapāhore and Whakaari;
- 4.2.4 Crown's land purchasing and the inland blocks;
- 4.2.5 Public Works in the rohe of Te Whānau a Apanui;
- 4.2.6 Rivers, including the drownings in 1900, proposed hydro scheme and conservation order;
- 4.2.7 Māori Councils Acts: the Horouta Māori Council;
- 4.2.8 20th century land administration including in relation to the Māori Land Development Scheme, planning laws and the Māori Trustee;
- 4.2.9 Impact of local government, including rates;
- 4.2.10 Te Whānau a Apanui war service and veterans;
- 4.2.11 Socio-economic issues: education, te reo, health, housing and the impact of the welfare state;
- 4.2.12 Environmental issues;
- 4.2.13 Raukūmara; and
- 4.2.14 Crown regulation of the moana.



## 5 CULTURAL REDRESS

### General

- 5.1 All items of cultural redress are subject to the following being agreed, determined or resolved before a deed of settlement is signed:
- 5.1.1 the Crown confirming that any residual overlapping claim issues in relation to any item of cultural redress have been addressed to the satisfaction of the Crown; and
  - 5.1.2 any other matters specified in the cultural redress tables provided below and set out in clauses 3.5, 3.8 and 12.2 of this agreement in principle.

### Potential cultural redress properties

- 5.2 The deed of settlement is to provide that the settlement legislation will vest in the governance entity those of the properties described in Table 1 below as potential cultural redress properties that the parties agree are to be cultural redress properties.
- 5.3 If the parties agree a potential cultural redress property is to be vested as a cultural redress property, it will be vested in the governance entity on the basis provided in Table 1 below.

**Table 1** - Potential cultural redress properties

Name of area	General description/location	Conditions of vesting/Specific conditions currently known
Hawai Scenic Reserve (part)	Adjacent to the Hawai River, site to be agreed See map 1 at attachment 2	Up to 5 hectares To vest as scenic reserve
Oruaiti Beach Recreation Reserve	Oruaiti Beach See map 2 at attachment 2	To vest as recreation reserve
Tokata Scenic Reserve	Motu River mouth See map 3 at attachment 2	To vest as scenic reserve
Whangaparaoa Beach marginal strip	Coastal at Whangaparaoa Bay See map 4 at attachment 2	To vest as local purpose (esplanade) reserve

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

### Exploration of cultural redress in relation to specified Council properties

- 5.4 The Opotiki District Council has agreed in principle to the four properties listed in Table 2 below being explored as cultural redress properties.
- 5.5 Post signing of this agreement in principle the Crown will explore with the Council and Te Whānau a Apanui ownership and management arrangements in relation to the properties.
- 5.6 Any redress is subject to the agreement of the Council, resolution of overlapping interests to the Crown's satisfaction, the terms specified in clause 3.8 and ministerial and Cabinet approval.
- 5.7 This exploration may not result in a property being available as a cultural redress property.

**Table 2 – Council properties to explore for cultural redress**

Name of area	General description/location	Notes
Maraetai Bay Recreation Reserve	Te Kaha	Explore to vest as recreation reserve Inclusion as a cultural redress property in the deed of settlement is subject to agreement with Opotiki District Council
Omaio Bay Recreation Reserve	Coastal at Omaio Bay	Explore to vest as recreation reserve Inclusion as a cultural redress property in the deed of settlement is subject to agreement with Opotiki District Council
Waihau Bay Recreation Reserve	Waihau Bay	Explore to vest as recreation reserve Inclusion as a cultural redress property in the deed of settlement is subject to agreement with Opotiki District Council
Whanarua Bay Recreation Reserve	Whanarua Bay	Explore to vest as recreation reserve Inclusion as a cultural redress property in the deed of settlement is subject to agreement with Opotiki District Council

### **A chapter in the East Coast/Hawkes Bay Conservation Management Strategy**

- 5.8 It is proposed that the deed of settlement provide Te Whānau a Apanui with the ability to co-author, with Ngati Porou and the Director-General of Conservation, a single Raukūmara section in the East Coast/Hawkes Bay Conservation Management Strategy (“Raukūmara Chapter”).
- 5.9 The proposed Raukūmara Chapter will cover approximately 91,200 hectares comprised of:
- 5.9.1 approximately 32,000 hectares of the Raukumara Conservation Park and the Raukumara Conservation Area. This is the hatched area west of the area described at clause 5.9.2 and shown on the Proposed Raukūmara Chapter Area map at attachment 4; and
  - 5.9.2 approximately 56,000 hectares of the Raukumara Conservation Park currently covered by nga Whakahaere Takirua mo nga Paanga Whenua o Ngati Porou as provided for in the Ngati Porou Claims Settlement Act 2012. This is the area hatched and bordered blue on the Proposed Raukūmara Chapter Area map at attachment 4; and
  - 5.9.3 21 smaller sites (approximately 3,200 hectares) as listed in Part 7 of the documents Schedule to the Ngati Porou Deed of Settlement, currently covered by nga Whakahaere Takirua mo nga Paanga Whenua o Ngati Porou.<sup>1</sup>
- 5.10 The intent of the parties is that the preparation and approval of the Raukūmara Chapter will be completed by the end of 2025 and implemented as an “out-of-cycle” amendment to the East Coast/Hawkes Bay and Bay of Plenty Conservation Management Strategies. The Crown proposes that any necessary changes to the relevant Conservation Board and Conservation Management Strategies’ boundaries will occur post-settlement, in accordance with the processes set out in the Conservation Act 1987.
- 5.11 The proposed offer of a single Raukūmara Chapter is conditional on the agreement of Te Rūnanganui o Ngati Porou, as it will have the effect of amending the terms of nga Whakahaere Takirua as provided in the Ngati Porou Claims Settlement Act 2012.
- 5.12 The proposed Raukūmara Chapter recognises that Te Whānau a Apanui and Ngati Porou are connected by whakapapa, that both iwi consider the Raukūmara a shared taonga to which they both have obligations, and that Te Whānau a Apanui and Ngati Porou wish to work with the Department of Conservation to improve the environmental health of the Raukūmara.
- 5.13 For the avoidance of doubt, other than:
- 5.13.1 adding Te Whānau a Apanui as a party (co-author); and

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<sup>1</sup> Note part 7 of the documents Schedule to the Ngati Porou Deed of Settlement also includes the area referred to in clause 5.9.2

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- 5.13.2 adding an additional 32,000 hectares of the Raukumara Conservation Park and the Raukumara Conservation Area to the area;

the process for the preparation and approval, or review or amendment, of nga Whakahaere Takirua mo nga Paanga Whenua o Ngati Porou/the Raukūmara Chapter, or for the resolution of disputes between the parties, will be as set out in sections 23 - 36 of the Ngati Porou Claims Settlement Act 2012.

- 5.14 The proposed Raukūmara Chapter helps address the aspiration of Te Whānau a Apanui to re-set the mana dimension of their relationship with the Crown. The Crown and Te Whānau a Apanui look forward to further discussions around how the wider redress package can also address the aspiration of Te Whānau a Apanui to re-set the mahi dimension of their relationship.

### **Cultural Materials Plan**

- 5.15 The deed of settlement will include a commitment for the Department of Conservation to jointly prepare with the governance entity a cultural materials plan covering:
- 5.15.1 the customary take of flora material within public conservation land within the area of interest of Te Whānau a Apanui; and
- 5.15.2 the possession of dead wildlife matter, as defined in clause 7.12.8 that is found within the area of interest.
- 5.16 The deed of settlement will include a commitment from Te Whānau a Apanui and the Department of Conservation to jointly develop a cultural materials plan post-settlement.

### **Coastal statutory acknowledgement**

- 5.17 The deed of settlement is to provide for the settlement legislation to –
- 5.17.1 provide the Crown's acknowledgement of a statement by Te Whānau a Apanui of their particular cultural, spiritual, historical, and traditional association with the statutory area; and
- 5.17.2 require relevant consent authorities, the Environment Court, and the Heritage New Zealand Pouhere Taonga to have regard to the coastal statutory acknowledgement; and
- 5.17.3 require relevant consent authorities to forward to the governance entity summaries of resource consent applications affecting the statutory area; and
- 5.17.4 require relevant consent authorities to forward to the governance entity a copy of any resource consent application notice under section 145(10) of the Resource Management Act 1991 affecting the statutory area; and
- 5.17.5 enable the governance entity, and any member of Te Whānau a Apanui, to cite the coastal statutory acknowledgement as evidence of their association with the statutory area.

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- 5.18 The coastal statutory acknowledgement does not have the effect of granting, creating, or providing evidence of an estate or interest in, or rights relating to that area, including rights set out in the Marine and Coastal Area (Takutai Moana) Act 2011.

### **Pouwhenua**

- 5.19 Following the signing of the agreement in principle, the parties agree to explore, for inclusion in the deed of settlement, the ability to erect pouwhenua and interpretation panels in the area of interest of Te Whānau a Apanui.

### **Potential official geographic names**

- 5.20 The Crown invites Te Whānau a Apanui to submit a list of new and altered place name proposals for geographic features within the Te Whānau a Apanui area of interest to the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa to be considered through the standard Treaty names processes followed by the Board. The Crown will present the proposed names to the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa for consideration.
- 5.21 The deed of settlement is to provide for the settlement legislation to provide for the names listed in the deed of settlement to become official geographic names on the settlement date.

### **Crown to consult with the Te Whānau a Apanui regarding Whakaari/White Island**

- 5.22 The deed of settlement is to require that if the Department of Internal Affairs conducts a review of the local government administration of Whakaari/White Island, it:
- 5.22.1 will, as a part of that review, consult with, and have regard to the views of, the Te Whānau a Apanui about its concerns and interests in relation to the local government administration of Whakaari/White Island, and;
  - 5.22.2 may, as a part of that review, consult:
    - (a) other iwi with an interest in Whakaari/White Island;
    - (b) other land owners with an interest in Whakaari/White Island;
    - (c) local authorities having jurisdiction over areas which are adjacent to Whakaari/White Island;
    - (d) the Local Government Commission; and
    - (e) other parties with interests in Whakaari/White Island.

### **Relationship instruments**

- 5.23 The deed of settlement will provide for the parties listed in Table 3 below to enter into a relationship instrument with the governance entity.

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**Table 3 – Relationship instruments**

Department/agency or parties	Relationship instrument
Department of Conservation	Conservation relationship agreement
Ministry of Education	Education relationship agreement
Ministry of Justice	Justice relationship agreement
Department of Internal Affairs Te Tari Taiwhenua Ministry for Culture and Heritage Manatū Taonga Museum of New Zealand Te Papa Tongarewa Heritage New Zealand Pouhere Taonga	Whakaaetanga Tiaki Taonga
Ministry for Primary Industries	Fisheries relationship instrument

- 5.24 Following the signing of the agreement in principle, the parties agree to explore for the deed of settlement to provide for the parties listed in Table 4 to enter into a relationship instrument with the governance entity.

**Table 4 – Relationship instruments to be explored**

Department/agency or parties	Relationship instrument
Ministry of Social Development	To be explored
Oranga Tamariki	To be explored
Ministry of Health	To be explored
Ministry of Housing and Urban Development	To be explored
Statistics New Zealand	To be explored
Tertiary Education Commission	To be explored
Ministry for Business, Innovation and Employment	Crown Minerals Protocol

- 5.25 Te Whānau a Apanui aspire for relationship arrangements to have mana to mana and mahi to mahi elements, and to reflect a whole of system approach.

### CONSERVATION RELATIONSHIP AGREEMENT

- 5.26 The parties intend that the relationship agreement will enable the Department of Conservation and the governance entity to maintain a positive, collaborative and enduring relationship into the future.

- 5.27 The parties intend the relationship agreement to include the following headings:

5.27.1 Purpose;

5.27.2 Roles and Responsibilities;

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- 5.27.3 Communication;
- 5.27.4 Collaboration and Planning;
- 5.27.5 Freshwater Fisheries;
- 5.27.6 Marine Mammals;
- 5.27.7 Statutory Authorisations (e.g. concessions);
- 5.27.8 Statutory Land Management;
- 5.27.9 Cultural Materials;
- 5.27.10 Sites of Significance;
- 5.27.11 Species and Habitat Protection (including pest control);
- 5.27.12 Visitor and Public Information;
- 5.27.13 Conservation Advocacy; and
- 5.27.14 Cross-Organisational Opportunities.

### EDUCATION RELATIONSHIP AGREEMENT

- 5.28 The Ministry of Education and Te Whānau a Apanui will work together to develop a relationship agreement.
- 5.29 The relationship agreement will provide for:
  - 5.29.1 a mana to mana relationship between the Minister of Education and Te Whānau a Apanui to jointly set policy direction and priorities for education in the Te Whānau a Apanui rohe;
  - 5.29.2 an annual meeting between the Minister of Education or an Associate Minister of Education and Te Whānau a Apanui;
  - 5.29.3 a mahi to mahi relationship between Te Whānau a Apanui and the Ministry of Education to implement decisions and agree a work programme; and
  - 5.29.4 the development of terms of reference to set the kawa for the relationship.
- 5.30 The Ministry of Education and Te Whānau a Apanui will work together to develop shared objectives for educational transformation to be included in the relationship agreement.

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### JUSTICE RELATIONSHIP AGREEMENT

- 5.31 The Ministry of Justice and Te Whānau a Apanui will work together to develop a relationship agreement aimed at producing better long-term justice outcomes for Te Whānau a Apanui across the justice sector.
- 5.32 The parties intend that the relationship agreement will reflect the underlying principles co-developed by Te Whānau a Apanui and the Crown attached at schedule 4.
- 5.33 Following the signing of the agreement in principle the Ministry of Justice and the Ministry for Māori Crown Relations – Te Arawhiti will invite other justice sector departments to a wānanga to learn about the experiences of Te Whānau a Apanui with the justice system and about systems thinking with the aim of supporting a sector-wide approach.

### WHAKAAETANGA TIAKI TAONGA

- 5.34 The Whakaaetanga Tiaki Taonga will be issued to the governance entity through the deed of settlement.
- 5.35 The parties intend that the Whakaaetanga Tiaki Taonga will facilitate:
- 5.35.1 the care, management, access, use, development and revitalisation of Te Whānau a Apanui taonga; and
  - 5.35.2 the identification, protection, preservation and conservation of the historical and cultural heritage of Te Whānau a Apanui.

### **Appointment as an advisory committee to the Minister of Fisheries**

- 5.36 The Minister of Fisheries will appoint the governance entity as an advisory committee on fisheries management to the Minister of Fisheries under section 21(1) of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995 in relation to areas of special significance to Te Whānau a Apanui. These areas are to be agreed before initialling a deed of settlement.

### **Letters of introduction for the promotion of relationships with government agencies, and entities and museums, galleries and libraries**

- 5.37 The deed of settlement will provide for the chief executive of the Office for Māori Crown Relations – Te Arawhiti to write letters of introduction to:
- 5.37.1 the chief executive of Ngā Taonga Sound and Vision; and
  - 5.37.2 the Commissioner of Crown Lands.
- 5.38 The purpose of the letters is to raise the profile of Te Whānau a Apanui with these parties in relation to their work. The text of the letters will be agreed between the mandated negotiators and the Crown and issued as soon as practicable after the establishment of the governance entity and before the settlement date.



**Cultural redress non-exclusive**

- 5.39 The Crown may do anything that is consistent with the cultural redress contemplated by this agreement in principle, including entering into, and giving effect to, another settlement that provides for the same or similar cultural redress.

## 6 TE AO TŪROA

### General

- 6.1 Te Whānau a Apanui aspire to have a holistic whole of system approach to Te Ao Tūroa: natural environment framework.

### Te Ao Tūroa: natural environment framework

- 6.2 The Crown and Te Whānau a Apanui have agreed to explore a meaningful arrangement relating to the natural environment in the area of interest that:
- 6.2.1 reflects Te Whānau a Apanui values;
  - 6.2.2 applies in a broad, holistic sense and is not constrained to any particular natural features; and
  - 6.2.3 recognises and provides for the mana of Te Whānau a Apanui hapū.
- 6.3 The Crown and Te Whānau a Apanui have agreed that the natural environment arrangements will be comprised of the following four elements:
- 6.3.1 enshrining Te Whānau a Apanui values in the deed of settlement and settlement legislation;
  - 6.3.2 providing for Te Whānau a Apanui and local authorities to develop a planning document ("rohe document") to articulate Te Whānau a Apanui issues, visions, aspirations, objectives and desired outcomes for the natural environment;
  - 6.3.3 providing for the development of a relationship agreement(s) between Te Whānau a Apanui and relevant local authorities; and
  - 6.3.4 exploring options for Te Whānau a Apanui to be involved in decision-making regarding the natural environment.

### ENSHRINING TE WHĀNAU A APANUI VALUES

- 6.4 Te Whānau a Apanui will articulate their values relating to the natural environment within the area of interest.
- 6.5 Those values will be set out in the deed of settlement and the settlement legislation so as to:
- 6.5.1 recognise the mana of Te Whānau a Apanui; and
  - 6.5.2 provide a framework for improving environmental outcomes in the area of interest.

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6.6 The Crown and Te Whānau a Apanui will further explore:

6.6.1 how these values will be articulated, which could include recognition of:

- (a) Te Whānau a Apanui mana, tikanga, cultural and spiritual systems; and
- (b) Te Whānau a Apanui relationships with the natural environment within the area of interest; and

6.6.2 how these values can be recognised by decision-makers, including potentially through a form of legal weighting in relevant decision-making processes.

### TE WHĀNAU A APANUI ROHE DOCUMENT

6.7 The deed of settlement and settlement legislation will provide for:

6.7.1 Te Whānau a Apanui to develop a rohe document; and

6.7.2 the role and function of local government in supporting the development of the rohe document.

6.8 That document will identify Te Whānau a Apanui issues, visions, aspirations, objectives and desired outcomes within the area of interest, in order to:

6.8.1 promote sustainable and integrated management of the natural environment;

6.8.2 enhance the relationship of Te Whānau a Apanui with the natural environment; and

6.8.3 recognise and reflect Te Whānau a Apanui tikanga and values in the management of the natural environment.

6.9 The Crown and Te Whānau a Apanui will further explore:

6.9.1 the scope and content of the rohe document;

6.9.2 the process and timeframes for the development of the rohe document, including the role of local government in supporting the development of the document;

6.9.3 the relationship between the rohe document and any planning documents developed under the Resource Management Act 1991 and the Local Government Act 2002;

6.9.4 how the rohe document will be recognised by decision-makers, including potentially through a form of legal weighting in decision-making processes; and

6.9.5 in particular, how the rohe document will provide for Te Whānau a Apanui to participate in the management of freshwater within the area of interest.

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### RELATIONSHIP AGREEMENT BETWEEN TE WHĀNAU A APANUI AND LOCAL AUTHORITIES

- 6.10 The deed of settlement will provide a framework to formalise a relationship agreement between Te Whānau a Apanui and the Bay of Plenty Regional Council and Opotiki District Council.
- 6.11 The Crown and Te Whānau a Apanui will further explore:
- 6.11.1 the scope, content and form of the relationship agreement;
  - 6.11.2 how the agreement can provide for or support:
    - (a) Te Whānau a Apanui involvement in statutory and non-statutory decision-making and monitoring processes; and
    - (b) methods and commitments to build Te Whānau a Apanui capability and capacity; and
  - 6.11.3 in particular, how the relationship agreement will provide for Te Whānau a Apanui to participate in:
    - (a) the management of freshwater within the area of interest; and
    - (b) local authority processes to give effect to the relationship between the rohe document and any planning documents developed under the Resource Management Act 1991 and the Local Government Act 2002.

### TE WHĀNAU A APANUI INVOLVEMENT IN DECISION-MAKING

- 6.12 Te Whānau a Apanui wish to be included in decision-making that impacts on natural environmental outcomes within the area of interest.
- 6.13 The Crown and Te Whānau a Apanui will further explore:
- 6.13.1 the scope and form of Te Whānau a Apanui involvement in decision-making;
  - 6.13.2 whether Te Whānau a Apanui involvement in decision-making could potentially be provided for in the rohe document, relationship agreement or some other form;
  - 6.13.3 how Te Whānau a Apanui involvement in decision-making can be achieved in a straightforward manner that minimises complexity; and
  - 6.13.4 in particular, the scope and form of the role Te Whānau a Apanui may have in the management of freshwater within the area of interest.

**River beds**

- 6.14 The Crown acknowledges that, according to their tikanga, the hapū of Te Whānau a Apanui:
- 6.14.1 have an unbroken and enduring sacred relationship with lands, waters and other resources within their rohe;
  - 6.14.2 exist within a sacredly interconnected world in which respect for the mana, ora, mauri and tapu of all other living beings, natural resources and their habitats is paramount; and
  - 6.14.3 have kaitiaki responsibilities to protect both the physical and spiritual wellbeing of taonga within their rohe, including the waterways, for the present and future generations.
- 6.15 The Crown acknowledges that the relationship and interconnectedness between the hapū of Te Whānau a Apanui and, among other things, waterways, and the kaitiaki responsibilities exist regardless of the legal ownership of riverbeds or land adjoining rivers.
- 6.16 The Crown is committed, within the framework of the principles of Te Tiriti o Waitangi/ the Treaty of Waitangi, to better recognise the rights and interests in freshwater held by the hapū of Te Whānau a Apanui, including their kaitiakitanga and rangatiratanga in relation to waterways in their rohe.

## 7 TAKUTAI MOANA

### Background

- 7.1 Ngā hapū o Te Whānau a Apanui entered negotiations with the Crown on their takutai moana interests in 2003.
- 7.2 In 2008, the Crown signed Heads of Agreement with the hapū that recognised but for the vesting of the foreshore and seabed in the Crown by the Foreshore and Seabed Act 2004, ngā hapū o Te Whānau a Apanui would have had a claim to territorial customary rights in the takutai moana.
- 7.3 The 2008 Heads of Agreement recorded the following:
- 7.3.1 *the Crown recognises that:*
- (a) *the hapu of Te Whanau a Apanui continue to assert that they have ongoing and enduring ownership interests unbroken by the Act; and*
  - (b) *the mana of the hapu of Te Whanau a Apanui in relation to te rohe mana moana o Te Whanau a Apanui is:*
    - (i) *unbroken, inalienable and enduring; and*
    - (ii) *held and exercised by the hapu of Te Whanau a Apanui as a collective right;*
- 7.3.2 *Te Tiriti o Waitangi/the Treaty of Waitangi lays an important foundation for the conduct of the present and ongoing relationship between the parties;*
- 7.3.3 *the parties wish to ensure the continuation, recognition and legal protection of a way of life that is based on the fundamental spiritual, cultural, economic and political relationship between the hapū of Te Whanau a Apanui and te rohe mana moana o Te Whanau a Apanui, which is an integral and inalienable part of their tribal territory; inherited through whakapapa as a taonga tuku iho of the hapū of Te Whanau a Apanui;*
- 7.3.4 *the parties also wish to encourage and protect the cultural distinctiveness and social well-being of the hapū of Te Whanau a Apanui;*
- 7.3.5 *the parties wish to achieve certainty with respect to their relationships with each other, and the inter-relationship with the public at large, in respect of te rohe mana moana o Te Whanau a Apanui;*
- 7.3.6 *the parties acknowledge that resolution of their positions is best achieved through negotiation and agreement; and*
- 7.3.7 *accordingly, the parties have, in a spirit of co-operation and good faith, agreed to enter into this deed.*

7.4 The 2008 Heads of Agreement also recorded that:

7.4.1 *The following principles underlie the legal expression, protection and recognition of the mana of the hapu of Te Whanau a Apanui in relation to te rohe mana moana o Te Whanau a Apanui, as expressed in this deed:*

***Toitu te Mana Atua (principle 1)***

7.4.2 *It is acknowledged that the hapu of Te Whanau a Apanui have, in accordance with their tikanga, an unbroken, inalienable and enduring sacred relationship with their rohe moana. This relationship acknowledges the Creator is the spiritual source of life, tapu, mauri and mana. The hapū of Te Whānau a Apanui view that sacred relationship as the source of their mana.*

7.4.3 *The spiritual integrity of this relationship maintains and protects, according to tikanga and traditional matauranga, the manner in which the hapu of Te Whanau a Apanui live in balance with their rohe moana, and by which the balance between the hapū, the natural world and the spiritual realm is maintained.*

***Toitu te Ao Turoa (principle 2)***

7.4.4 *This deed recognises that the hapu of Te Whanau a Apanui have unbroken, inalienable and enduring mana in relation to their rohe moana. This mana, according to their tikanga, places the hapu of Te Whanau a Apanui within a sacredly interconnected world. This deed recognises the tikanga of the hapu of Te Whanau a Apanui which protects and maintains this interconnection by respecting the mana, oranga, mauri and tapu of all other living beings, natural resources and their habitats within the tribal territory.*

***Toitu te Mana Tangata (principle 3)***

***Toitū Te Mana o Ngā Hapū***

7.4.5 *This deed recognises the hapu of Te Whanau a Apanui as collective groups legitimately possessing their own mana and expressing their own worldview, tikanga and kawa within their respective hapu territory. This deed recognises that this mana is ongoing, enduring and inalienable.*

7.4.6 *This deed recognises that the hapu of Te Whanau a Apanui have a complex set of whakapapa based inter-relationships existing between each of the hapu and they, in turn, have collective obligations to each other to preserve the unity and the mana of the tribe, and ensure the wise management of the entire tribal territory.*

***Toitū te Oranga Whanui o Nga Whānau***

7.4.7 *This deed recognises that the hapu of Te Whanau a Apanui have the right to ensure their oranga whanui, the sustenance and livelihood of their whanau through the maintenance and continued exercise of their tikanga and customary practices.*

- 7.4.8 *This deed further recognises that the hapu of Te Whanau a Apanui have the right to exercise influence over persons carrying out activities within, or impacting upon, the rohe moana.*

### ***Toitu te Tiriti o Waitangi (principle 4)***

- 7.4.9 *This deed acknowledges that the hapu of Te Whanau a Apanui and the Crown are bound by the framework established in the sacred covenant signed between them in 1840, te Tiriti o Waitangi/the Treaty of Waitangi. It further acknowledges that, consistent with the partnership principle underlying te Tiriti o Waitangi/the Treaty of Waitangi, the hapu of Te Whanau a Apanui and the Crown have entered into this deed in good faith and as equals.*

- 7.4.10 *The parties acknowledge that, consistent with that Treaty, they are obliged to give effect to this deed (in the manner described in this deed) and to act in good faith, fairly, reasonably and honourably towards each other.*

- 7.5 In 2009, ngā hapū o Te Whānau a Apanui agreed to put takutai moana negotiations on hold while the government undertook a review of the Foreshore and Seabed Act 2004. Following the review, the Foreshore and Seabed Act 2004 was repealed and replaced by the Marine and Coastal Area (Takutai Moana) Act 2011.

- 7.6 The 2008 Heads of Agreement with ngā hapū o Te Whānau a Apanui included agreement from the Crown to, amongst other things:

- 7.6.1 provide for the participation of hapū in certain conservation processes;
- 7.6.2 propose customary fisheries regulations; and
- 7.6.3 provide a permission right in relation to resource consents over petroleum related activities to the hapū,

subject to certain conditions being met, including the High Court confirming territorial rights areas, which was a requirement under the Foreshore and Seabed Act 2004.

### **Takutai moana arrangements**

- 7.7 The parties agree that the deed of settlement and legislation will provide for the three agreements at 7.6 to the extent a broad equivalent is not possible to be provided to ngā hapū o Te Whānau a Apanui under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011. This will be provided as cultural redress in the deed of settlement and settlement legislation (where required).

- 7.8 The parties acknowledge that a separate process will occur under the Marine and Coastal Area (Takutai Moana) Act 2011 to determine areas where customary marine title or protected customary rights exist.

- 7.9 In this part and schedule 5:

- 7.9.1 **customary marine title area** means an area within the area of interest in which customary marine title has been recognised by order of the High Court or by an



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act of Parliament in accordance with section 94 of the Marine and Coastal Area (Takutai Moana) Act 2011;

7.9.2 **marine and coastal area** has the meaning given in section 9 of the Marine and Coastal Area (Takutai Moana) Act 2011;

7.9.3 **hapū** means the hapū listed at schedule 1, paragraph 1.3.2;

7.9.4 **hapū kōmiti** means the natural persons or trust or entity established in accordance with clause 7.10 below to represent a hapū.

7.10 Before legislation is introduced giving effect to clauses 7.12 - 7.25 and schedule 5 each hapū must establish a hapū kōmiti to represent the hapū to enable participation in conservation processes, customary fishing and the permission right in relation to resource consents over petroleum related activities. A Hapū kōmiti must:

7.10.1 be authorised by hapū members to exercise those rights; and

7.10.2 be confirmed in writing by the Ministers of Treaty of Waitangi Negotiations and for Māori Development prior to the introduction of settlement legislation as being authorised by hapū members to exercise those rights.

7.11 A Hapū kōmiti may be natural persons, trusts, legal entities or entities established in accordance with the tikanga of the hapū. A hapū kōmiti may be established to represent one or more hapū. In the event that a hapū does not establish a hapū kōmiti prior to settlement legislation coming into force, the governance entity will be the hapū kōmiti for that hapū until one is established.

### **Hapū participation in conservation processes**

7.12 In clauses 7.13 to 7.25:

7.12.1 **concession** has the meaning given in section 2 of the Conservation Act 1987;

7.12.2 **conservation protected area** means an area that is protected, primarily for the purposes of conserving natural resources or the historical and cultural heritage of the area, under one or more of the following acts:

- (a) Conservation Act 1987;
- (b) National Parks Act 1980;
- (c) Reserves Act 1977; and
- (d) Wildlife Act 1953;

7.12.3 **Director-General** means the Director-General of Conservation;

7.12.4 **marine mammal** has the meaning given by section 2 of the Marine Mammals Protection Act 1978;

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- 7.12.5 **marine mammal matter** means the bone, teeth and/or baleen of a dead marine mammal;
- 7.12.6 **rohe moana o te hapū** means the zone of marine and coastal area (as defined in section 9 of the Marine and Coastal Area (Takutai Moana) Act 2011) of each hapū as shown on the map at attachment 5;
- 7.12.7 **wildlife** has the meaning given by section 2 of the Wildlife Act 1953 but does not include the wildlife specified in Schedules 1 (game) and 5 (wildlife not protected) of that Act; and
- 7.12.8 **wildlife matter** means any body or body part of dead wildlife.
- 7.13 The deed of settlement and settlement legislation (where required) will provide:
- 7.13.1 for hapū members to possess without authorisation from the Director-General or Minister of Conservation wildlife matter lawfully obtained within their rohe moana o te hapū; and
- 7.13.2 that the possession of wildlife matter by hapū members be facilitated through the joint development and agreement of a cultural materials plan as provided for at clauses 5.15 and 5.16.
- 7.14 The deed of settlement and settlement legislation (where required) will set out that each hapū kōmiti on behalf of a hapū (regardless of whether any customary marine title area is recognised):
- 7.14.1 may possess without authorisation marine mammal matter lawfully obtained within their rohe moana o te hapū;
- 7.14.2 has a right of first refusal over wildlife matter and marine mammal matter, possessed by the Department of Conservation found within their rohe moana o te hapū;
- 7.14.3 has a right to give or withhold consent for the Director-General to consider applications from third parties to possess wildlife matter or marine mammal matter found within their rohe moana o te hapū. Hapū consent will be deemed to be given if the application is considered by the Director-General to be essential to the conservation management of the species; and
- 7.14.4 has a right to have their views on concession applications within a conservation protected area given particular regard by the Minister of Conservation or Director-General, to the extent the application relates to their rohe moana o te hapū.
- 7.15 The deed of settlement and settlement legislation (where required) will set out:
- 7.15.1 that the governance entity must maintain a register recording which hapū members hold wildlife matter or which hapū kōmiti holds marine mammal matter, a description of the dead wildlife or marine mammal from which the matter was obtained, and where and when it was found;

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- 7.15.2 that the governance entity must allow the Director-General access to the register on request; and
- 7.15.3 that hapū members or hapū kōmiti, as appropriate will provide the Director-General, upon request, access to wildlife matter or marine mammal matter that they may hold, where such access is essential to achieve the conservation management of the species (including for the collection of data and samples).
- 7.16 The deed of settlement and settlement legislation (where required) will set out that each hapū kōmiti on behalf of a hapū has a right to give or withhold consent in their rohe moana o te hapū:
  - 7.16.1 for the Minister of Conservation or Director-General to consider concession applications within a conservation protected area in a customary marine title area, to the extent the application relates to the customary marine title area;
  - 7.16.2 for the Minister of Conservation to consider a proposal, under section 22 of the Marine Mammals Protection Act 1978, for the establishment or extension of a marine mammal sanctuary in a customary marine title area to the extent the proposal relates to the customary marine title area; and
  - 7.16.3 for the Director-General to consider applications for a permit authorising commercial operations under the Marine Mammal Protection Regulations 1992 in a customary marine title area, to the extent the application relates to the customary marine title area.

### **Permission right in relation to resource consents over petroleum related activities**

- 7.17 The deed of settlement and settlement legislation will provide for the hapū to give or decline consent for a resource consent application for any petroleum related activity within a customary marine title area within its rohe moana o te hapū (as defined in clause 7.12.6).
- 7.18 Where a resource consent application for a petroleum related activity is, in part or whole, within a customary marine title area of more than one rohe moana o te hapū, each relevant hapū may give or decline consent to the application to the extent the application relates to its rohe moana.
- 7.19 The process for hapū to give or decline consent for a resource consent application for any petroleum related activity and the scope of activities covered by the permission right will be agreed between parties in the deed of settlement.

### **Fisheries regulations**

- 7.20 In clauses 7.21 to 7.25 and schedule 5:
  - 7.20.1 **hau kāinga** means the local resident population who participate in customary non-commercial food gathering;

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- 7.20.2 **hapū fishing area** means the marine and coastal area in the area of interest at attachment 1, extended in straight lines to the outer edge of the exclusive economic zone; and
- 7.20.3 **extended rohe moana o te hapū** means the zone of marine and coastal area of each hapū as shown on the map at attachment 5 and the extension of each zone in straight lines to the outer edge of the exclusive economic zone.
- 7.21 To give better effect to the Crown's obligations to Te Whānau a Apanui under section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the deed of settlement and settlement legislation will provide that within 12 months of the settlement date of the governance entity and Fisheries New Zealand will use best endeavours to agree the content of fishing regulations to be made under both the Fisheries Act 1996 and the settlement legislation to enable ngā hapū o Te Whānau a Apanui to manage fisheries in the hapū fishing area that are subject to the Fisheries Act 1996. The regulations will support the purpose and principles of the Fisheries Act 1996.
- 7.22 The Minister of Fisheries must recommend to the Governor General the making of regulations if the governance entity and Fisheries New Zealand agree draft regulations in accordance with clause 7.21.
- 7.23 The regulations will provide:
- 7.23.1 in the hapū fishing area generally, for hapū to manage customary non-commercial food gathering and to provide for the taking of fisheries resources by hau kāinga for customary non-commercial purposes, and the special relationship between the hapū and places of customary food gathering (including tauranga ika and māhinga kai mātaimai); and
- 7.23.2 in customary marine title areas, the ability for hapū to propose bylaws restricting or prohibiting fishing in those areas to provide for utilisation while ensuring sustainability or for cultural reasons.
- 7.24 The matters the regulations must cover are set out in schedule 5.
- 7.25 The deed of settlement will require meetings every six months and consultation between the governance entity and the Fisheries Compliance Group of Fisheries New Zealand (or successor), in respect of compliance planning and operations to support the new regulatory arrangement for fisheries in the hapū fishing area. The details of this meeting will be set out in the Fisheries Relationship Instrument provided for at clause 5.23.

## 8 ROADS

### General

8.1 The Crown and Te Whānau ā Apanui have agreed that the Crown will explore:

8.1.1 whether the following land acquired for road purposes could be declared to be held as a Māori reservation as if it had been set apart under Part 17 of Te Ture Whenua Māori Act 1993:

- (a) 2.5622 hectares being Part Lot 1 Deposited Plan 3116: ID 4145449;
- (b) 28.2911 hectares being Parts Lot 1 Deposited Plan 9305: ID 4125018, 4147847, 4118526;
- (c) 62.2345 hectares being Parts Tunapahore 4B Block: ID 4108157, 4114616, 4143940; and
- (d) 0.0477 hectares being Part Houpoto Whituare Block: ID 4114614;

8.1.2 whether it would be possible to facilitate the return of the following land to the former owners or adjoining land owners:

- (a) an area of 1.4902 hectares of closed road near the Mōtū River shown on Survey Office Plan 1871 adjacent to Parts Whitianga 11 Block;
- (b) the following areas of stopped road adjoining Part Omaio 43 Section 4 Block:
  - (i) 0.2720 hectares being Section 1 Survey Office Plan 8269: ID 7464056;
  - (ii) 0.0502 hectares being Section 2 Survey Office Plan 8269: ID 7463982;
- (c) an area of unformed road at Otehirinaki adjoining Omaio 43 Section 7 Block;
- (d) an area of unformed road between State Highway 35 and the Hoani Waititi Memorial Reserve at Omaio adjoining Part Omaio 43 Section 4 Block;
- (e) an area of unformed road near the intersection of Parekura Hei Road and State Highway 35 adjoining Part Te Kaha 38B Block, Lot 2 on Deposited Plan 379491 and Te Kaha 42B2M Block;
- (f) a loop of unformed road near the mouth of the Puremutahuri Stream adjoining Part Te Kaha 39 Block, Te Kaha 39B Block, Te Kaha 45B1 Block, and Te Kaha 35C2B Block;

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- (g) a triangular protrusion of State Highway 35 located between Matakaoa Point and Kopuni Point at Te Kaha adjoining Te Kaha 14B2 Block;
  - (h) an area of unformed road at the intersection of Copenhagen Road and State Highway 35 adjoining Te Kaha 1 Block;
  - (i) an area of unformed road in the area between Motu Kaimeanui Island and Papatea Bay adjoining Te Anaputarua 2 Block;
  - (j) an area of unformed road at Papatea Bay adjoining Te Waiti 2C2 Block;
  - (k) an unused area adjacent to the coastal side of State Highway 35 opposite the deconsecrated Catholic Church at Raukōkore adjoining Part Raekahu 22D Block;
  - (l) an unused point of land adjacent to the coastal side of State Highway 35 between the Waiongatiawa Stream and the Kaiwakawa Stream at Raukōkore adjoining Raekahu 16 Block;
  - (m) an unused area adjacent to the coastal side of State Highway 35 to the east of the Anglican Christ Church at Raukōkore (opposite Tawaroa Road) adjoining Part Pohaturoa 4 Block;
  - (n) an area of unformed road at Te Rangiharu Bay between the Waitotuma Stream and Te Ahikehe Point adjoining Oruaiti 2B2 Block and Part Oruaiti 2B Block;
  - (o) an area of 0.0030 hectares of stopped road adjacent to State Highway 35 beyond Te Ahikehe Point shown on Survey Office Plan 6182 adjoining Part Oruaiti 1A2A Block; and
  - (p) an area of 0.0152 hectares of unformed road adjacent to State Highway 35 beyond Te Ahikehe Point shown on Survey Office Plan 6182 adjoining Oruaiti 2B2 Block;
- 8.1.3 whether it would be possible to facilitate the return of portions of unused, unformed legal roads within the Maraenui Blocks and the Whitianga 9B3B and 17 Blocks to the former owners or adjoining land owners of this land; and
- 8.1.4 whether the following areas of unformed road can be stopped and then returned to the former owners or adjoining land owners:
- (a) a portion of unformed road from Taungaure A10 and A11 Blocks to the Raukōkore River adjoining Taungaure 2 Balance Block; and
  - (b) unformed roads at Whangaparāoa that were part of a planned township that did not proceed adjoining Whangaparāoa 5 Block.
- 8.2 If the land referred to in clause 8.1.1 is declared to be held as a Māori reservation, the purpose of the reservation, in addition to reflecting the values attributed to this land by

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Te Whānau a Apanui, will include a provision that enables the land, or portions of it, to be held, as necessary, for the use, convenience and enjoyment of State Highway 35.

- 8.3 Any vesting arising from clauses 8.1.2 and 8.1.4 would occur through existing mechanisms under Te Ture Whenua Maori Act 1993 and the Public Works Act 1981 and not through a statutory vesting under settlement legislation.

## 9 FINANCIAL AND COMMERCIAL REDRESS

### General

- 9.1 All items of commercial redress are subject to the following being agreed, determined or resolved before a deed of settlement is signed:
- 9.1.1 the Crown confirming that any residual overlapping claim issues in relation to any item of commercial redress have been addressed to the satisfaction of the Crown; and
  - 9.1.2 any other matters specified in the commercial redress tables provided below and set out in clauses 3.5, 3.8 and 12.2 of this agreement in principle.

### Financial and commercial redress amount

- 9.2 The deed of settlement is to provide that the Crown will pay the governance entity on the settlement date the financial and commercial redress amount of \$30 million less the total transfer values (determined in accordance with the valuation process in schedule 3) of any properties that the deed of settlement provides are commercial redress properties to be transferred to the governance entity.

### Potential commercial redress properties

- 9.3 The deed of settlement is to provide that the Crown must transfer to the governance entity on the settlement date those of the properties described in Table 5 below as potential commercial redress properties that the parties agree are to be commercial redress properties.

**Table 5** – Potential commercial redress properties

<b>Landholding Agency</b>	<b>Property Name/Address</b>	<b>General description/ location</b> All Gisborne Land District	<b>Conditions of transfer/Specific conditions currently known</b>
LINZ Treaty Settlements Landbank	PF1007 6749 State Highway 35, Te Kaha	0.8355 hectares, more or less, being Lot 1 DP 8905. All record of title GS6A/832 for the fee simple estate.	
LINZ Treaty Settlements Landbank	PF2005 State Highway 35, Raukokore <i>Papatea property</i>	3.7000 hectares, more or less, being Taungaure 1 Section 2 (ML 404973). All transfer 11244924.1.	

\* The legal descriptions of the properties in this table are indicative only and subject to confirmation by the Crown



## **Right of First Refusal**

9.4 The settlement documentation is to provide that –

9.4.1 the governance entity has a right of first refusal (an **RFR**) in relation to a disposal by the Crown or Housing New Zealand Corporation of any of the land described in Table 6 below as potential RFR land that the parties agree is to be RFR land if, on the settlement date, it is owned by the Crown or Housing New Zealand Corporation; and

9.4.2 the RFR will apply for 180 years on and from the settlement date.

**Table 6** – Potential RFR land

<b>Landholding Agency</b>	<b>Property Name/Address</b>	<b>General description/location</b> All Gisborne Land District
Ministry of Education	Te Kura o Te Whānau a Apanui State Highway 35, Te Kaha	10.8933 hectares, more or less, being Sections 2, 3, and 4 Te Kaha 8 and Section 1 SO 8251.
Ministry of Education	Former Te Kura o Omaio 10 Omaio School Rd, Omaio	2.9313 hectares, more or less, being Omaio 10 and Omaio School Reserve.
Ministry of Education	Te Kura Mana Māori o Maraenui State Highway 35, Houputo	1.1705 hectares, more or less, being Part Maraenui Block.
Ministry of Education	Te Kura Mana Māori o Whangaparaoa, 11555 State Highway 35, Whangaparaoa	2.2055 hectares, more or less, being Sections 2 and 3 Block I Town of Whangaparaoa. 0.7431 hectares, more or less, being Section 3 Block II Whangaparaoa Survey District.
LINZ (for Ministry of Education)	Former Raukokore School 10104 State Highway 35, Raukokore	2.0261 hectares, more or less, being Part Te Poito No 1 and Parts Te Poito School Reserve.
New Zealand Police	Te Kaha, 6755 State Highway 35, Te Kaha	0.3780 hectares, more or less, being Lot 2 DP 8905.
Housing New Zealand Corporation	HSS0034863	0.0719 hectares, more or less, being Lot 15 DP 8549 and Lot 19 DP 381865.
Housing New Zealand Corporation	HSS0034898	0.0850 hectares, more or less, being Lot 1 DP 9423.
Housing New Zealand Corporation	HSS0034862	0.0550 hectares, more or less, being Lot 8 DP 8549.
Housing New Zealand Corporation	HSS0034899	0.0840 hectares, more or less, being Lot 2 DP 9605.
Housing New Zealand Corporation	HSS0034900	0.0843 hectares, more or less, being Lot 3 DP 9605.

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<b>Landholding Agency</b>	<b>Property Name/Address</b>	<b>General description/location</b>
		All Gisborne Land District
Housing New Zealand Corporation	HSS0034864	0.0550 hectares, more or less, being Lot 20 DP 8549.
Housing New Zealand Corporation	HSS0034897	0.0664 hectares, more or less, being Lot 17 DP 8549 and Lot 21 DP 381865.
Housing New Zealand Corporation	HSS0034865	0.0664 hectares, more or less, being Lot 18 DP 8549 and Lot 22 DP 381865.
Housing New Zealand Corporation	HSS0034901	0.0981 hectares, more or less, being Lot 4 DP 9605.

\* The legal descriptions of the properties in this table are indicative only and subject to confirmation by the Crown

### **Fisheries quota right of first refusal**

- 9.5 The deed of settlement is to provide that by or on the settlement date, the Minister of Fisheries will provide the governance entity, if it has been recognised as a mandated iwi organisation, with a right of first refusal within the area of interest of Te Whānau a Apanui over species that are managed under the Fisheries Act 1996 and which are introduced into the quota management system after settlement date. The details of the right of first refusal will be outlined in the deed of settlement.

### **Marine space for aquaculture**

- 9.6 Developing aquaculture opportunities aligns with the longstanding association that Te Whānau a Apanui has to the moana, the right that Te Whānau a Apanui has to develop traditional resources, and could assist with providing a positive path forward to addressing some of the economic, poverty and employment challenges that Te Whānau a Apanui face.
- 9.7 The Crown offers to reserve up to 5000 hectares of marine space within the Te Whānau a Apanui area of interest to provide Te Whānau a Apanui the opportunity to make appropriate resource consent applications for aquaculture.
- 9.8 The reserved space will be time bound for an agreed period, for a defined area and will take effect through settlement legislation.
- 9.9 The Crown notes Te Whānau a Apanui intend to apply for resource consents for up to 5000 hectares of marine space ahead of the settlement legislation, and if they are granted consents for 5000 hectares prior to the settlement legislation the reservation will not be required. However, if Te Whānau a Apanui are granted resource consents for less than 5000 hectares of marine space, the Crown will reserve the balance.
- 9.10 If, in the agreed time period, Te Whānau a Apanui are unsuccessful in gaining resource consent for all or part of the reserved marine space then at the end of the agreed period the reservation of the reserved marine space will lapse, with no recourse to the Crown.

## 10 OVERLAPPING CLAIMS PROCESS

### Process for resolving overlapping claims

- 10.1 The development of this agreement in principle has been informed by the overlapping claims process set out in attachment 6, which the parties agreed to implement following the signing of the terms of negotiation specified at clause 1.3.
- 10.2 The Crown is ultimately responsible and accountable for the overall overlapping claims process and it must act in accordance with its Treaty obligations. The Crown –
- 10.2.1 has a duty to act in good faith to other claimant groups (including those who have already settled with the Crown (the **settled groups**)) who have interests in Te Whānau a Apanui area of interest (refer attachment 1); and
  - 10.2.2 must ensure it actively protects the interests of other claimant groups (whether already mandated or not) and settled groups; and
  - 10.2.3 must avoid unreasonably prejudicing its ability to reach a fair settlement with other claimant groups in the future, while not unduly devaluing the settlement of other settled groups and with Te Whānau a Apanui.
- 10.3 Following the signing of this agreement in principle, parties will work together with overlapping claimant and settled groups to resolve any remaining overlapping claims matters. If after working together the overlapping claims remain unresolved, the Crown may have to make a final decision. In reaching any decisions on overlapping claims, the Crown is guided by two general principles:
- 10.3.1 the Crown's wish to reach a fair and appropriate settlement with Te Whānau a Apanui without compromising the existing settlements of settled groups; and
  - 10.3.2 the Crown's wish to maintain, as far as possible, its capability to provide appropriate redress to other claimant groups and achieve a fair settlement of their historical claims.
- 10.4 The process for resolving remaining overlapping claims matters is set out in Table 7 below.

**Table 7** – Next steps in overlapping claims process for Te Whānau a Apanui

Next steps	Timeframe
Agreement in principle uploaded to the Office for Māori Crown Relations – Te Arawhiti website.	28 June 2019
The Office for Māori Crown Relations – Te Arawhiti writes to all neighbouring groups advising of the Crown offer in the agreement in principle, seeking submissions (written confirmation of support, agreement reached with Te Whānau a Apanui or identification of issues for discussion).	Within one month of AIP signing

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

Next steps	Timeframe
Neighbouring groups to provide submissions to the Office for Māori Crown Relations – Te Arawhiti. Te Whānau a Apanui to report back on engagement with neighbouring groups and advise of any agreements reached.	Within two months of neighbouring groups receiving Crown letter
<p>The Office for Māori Crown Relations – Te Arawhiti, Te Whānau a Apanui and affected neighbouring groups (affected groups) to agree a process to resolve issues.</p> <p>The Office for Māori Crown Relations – Te Arawhiti assesses submissions and reports to the Minister for Treaty of Waitangi Negotiations:</p> <ul style="list-style-type: none"> <li>• providing update on overlapping interests; and</li> <li>• if there are any issues, advising of a process to resolve them.</li> </ul>	Within two months of receiving submissions
<p>Meetings between Te Whānau a Apanui and affected groups, Crown to attend meetings if requested.</p> <p>Groups to agree on a solution to the issues.</p> <p>If no agreement is reached, then the Office for Māori Crown Relations – Te Arawhiti will seek a preliminary decision on unresolved issues.</p>	Date to be confirmed
<p>Minister for Treaty of Waitangi Negotiations to advise Te Whānau a Apanui and affected groups of preliminary decisions on any unresolved issues.</p> <p>Officials from the Office for Māori Crown Relations – Te Arawhiti will be available to discuss the decisions.</p>	Date to be confirmed
Responses from Te Whānau a Apanui and affected groups to the Minister for Treaty of Waitangi Negotiations' preliminary decisions.	Date to be confirmed
The Office for Māori Crown Relations – Te Arawhiti reports to the Minister for Treaty of Waitangi Negotiations on final decisions on unresolved issues and overlapping interests and the Te Whānau a Apanui settlement package.	Date to be confirmed
Cabinet consideration of Te Whānau a Apanui settlement package.	Date to be confirmed
Parties aim to initial deed of settlement.	Date to be confirmed

## 11 INTEREST AND TAX

### Interest

11.1 The deed of settlement is to provide for the Crown to pay the governance entity, on the settlement date, interest on the financial and commercial redress amount specified in clause 9.2 -

11.1.1 for the period –

- (a) beginning on the date of this agreement in principle; and
- (b) ending on the day before the settlement date; and
- (c) at the rate from time to time set as the official cash rate by the Reserve Bank, calculated on a daily basis but not compounding.

11.2 The interest is to be –

11.2.1 subject to any tax payable; and

11.2.2 payable after withholding any tax required by legislation to be withheld.

### Tax

11.3 Subject to the Minister of Finance's consent, the deed of settlement is to provide that the Crown must indemnify the governance entity for any GST or income tax payable in respect of the provision of Crown redress.

11.4 The governance entity agrees that neither it, nor any other person, will claim with respect to the provision of Crown redress -

11.4.1 an input credit for GST purposes; or

11.4.2 a deduction for income tax purposes.

## 12 NEXT STEPS

### **Disclosure information**

- 12.1 The Crown will, as soon as reasonably practicable, prepare and provide to Te Whānau a Apanui disclosure information in relation to –
- 12.1.1 each potential cultural redress property; and
  - 12.1.2 each potential commercial redress property.

### **Resolution of outstanding matters**

- 12.2 The parties will work together to agree, as soon as reasonably practicable, all matters necessary to complete the deed of settlement, including agreeing on or determining as the case may be –
- 12.2.1 the terms of the –
    - (a) historical account; and
    - (b) Crown's acknowledgements and apology; and
  - 12.2.2 the status of Wai 2033 (in particular, whether it includes any contemporary claims which will remain unsettled through the Te Whānau a Apanui settlement); and
  - 12.2.3 the cultural redress properties, the commercial redress properties, and the RFR land from the potential properties or land provided in the relevant tables, and if applicable, any conditions that will apply; and
  - 12.2.4 the transfer values of the commercial redress properties (in accordance with the valuation process in schedule 3, or by another valuation process as agreed in writing between the landholding agency and Te Whānau a Apanui); and
  - 12.2.5 any official geographic names referred to in clause 5.20; and
  - 12.2.6 the terms of the following:
    - (a) the cultural redress (including those conservation-related matters referred to in clause 5.15); and
    - (b) the Te Ao Tūroa arrangements; and
    - (c) any relationship agreements in addition to those listed at 12.2.7 and including those at Table 4; and
    - (d) the permission right in relation to resource consents over petroleum related activities described in clauses 7.17 to 7.19; and

- (e) the marine space for aquaculture; and
- (f) the transfer of the commercial redress properties; and
- (g) the RFR, including the circumstances in which RFR land may be disposed of without the RFR applying; and
- (h) the tax indemnity; and

12.2.7 the following documents:

- (a) Te Whānau a Apanui statement of association for the statutory area; and
- (b) the conservation relationship agreement; and
- (c) the fisheries relationship instrument; and
- (d) the education relationship agreement; and
- (e) the justice relationship agreement; and
- (f) Whakaaetanga Tiaki Taonga; and
- (g) the settlement legislation; and

12.2.8 all other necessary matters.

**Development of governance entity and ratification process**

12.3 Te Whānau a Apanui will, as soon as reasonably practicable after the date of this agreement, and before the signing of a deed of settlement –

- 12.3.1 form a single governance entity that the Crown is satisfied meets the requirements of clause 13.1.2(a); and
- 12.3.2 develop a ratification process referred to in clause 13.1.2(b) that is approved by the Crown.

## 13 CONDITIONS

### Entry into deed of settlement conditional

13.1 The Crown's entry into the deed of settlement is subject to –

13.1.1 Cabinet agreeing to the settlement and the redress; and

13.1.2 the Crown being satisfied Te Whānau a Apanui have –

(a) established a governance entity that –

(i) is appropriate to receive the redress; and

(ii) provides, for Te Whānau a Apanui, –

(I) appropriate representation; and

(II) transparent decision-making and dispute resolution processes; and

(III) full accountability; and

(b) approved, by a ratification process approved by the Crown, –

(i) the governance entity to receive the redress; and

(ii) the settlement on the terms provided in the deed of settlement; and

(iii) signatories to sign the deed of settlement on Te Whānau a Apanui behalf.

### Settlement legislation

13.2 The deed of settlement is to provide that following the signing of the deed of settlement the Crown will propose a draft settlement bill for introduction to the House of Representatives.

13.3 This draft settlement bill will provide for all matters for which legislation is required to give effect to the deed of settlement.

13.4 The draft settlement bill must:

13.4.1 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

13.4.2 be in a form that is satisfactory to Te Whānau a Apanui and the Crown.



## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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- 13.5 The deed of settlement is to provide that Te Whānau a Apanui and the governance entity must support the passage of the draft settlement bill through Parliament.

### **Settlement conditional on settlement legislation**

- 13.6 The deed of settlement is to provide that the settlement is conditional on settlement legislation coming into force although some provisions may be binding on and from the date the deed of settlement is signed.

## 14 GENERAL

### **Nature of this agreement in principle**

14.1 This agreement in principle –

14.1.1 is entered into on a without prejudice basis; and

14.1.2 in particular, may not be used as evidence in proceedings before, or presented to, the Waitangi Tribunal, any court, or any other judicial body or tribunal; and

14.1.3 is non-binding; and

14.1.4 does not create legal relations.

### **Termination of this agreement in principle**

14.2 The Crown or the mandated negotiators, on behalf of Te Whānau a Apanui, may terminate this agreement in principle by notice to the other.

14.3 Before terminating this agreement in principle, the Crown or the mandated negotiators, as the case may be, must give the other at least 20 business days notice of an intention to terminate.

14.4 This agreement in principle remains without prejudice even if it is terminated.

### **Definitions**

14.5 In this agreement in principle –

14.5.1 the terms defined in the definitions schedule have the meanings given to them by that schedule; and

14.5.2 all parts of speech, and grammatical forms, of a defined term have a corresponding meaning.

### **Interpretation**

14.6 In this agreement in principle –

14.6.1 headings are not to affect its interpretation; and

14.6.2 the singular includes the plural and vice versa.

14.7 Provisions in –

14.7.1 the schedules to this agreement in principle are referred to as paragraphs; and

14.7.2 other parts of this agreement are referred to as clauses.

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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**SIGNED** on                      day of                      20

**SIGNED** for and on behalf of **THE CROWN** by -

The Minister for Treaty of Waitangi  
Negotiations in the presence of -

\_\_\_\_\_  
Hon Andrew James Little

in the presence of -

### WITNESS

\_\_\_\_\_

Name:

Occupation:

Address:

**SIGNED** for and on behalf of the constituent hapū of Te Whānau a Apanui:

\_\_\_\_\_  
Te Whānau a Haraawaka

\_\_\_\_\_  
Te Whānau a Hikarukutai

\_\_\_\_\_  
Te Whānau a Tutawake/Tuahiawa

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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Te Whānau a Nuku

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Te Whānau a Rutaia

---

Te Whānau a Hinetekahu

---

Te Whānau a Te Ehutu

---

Te Whānau a Kaiaio

---

Te Whānau a Kahurautao and Te Whānau a Te Rangi-i-runga

---

Te Whānau a Maruhaeremuri

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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Te Whānau a Pararaki

---

Te Whānau a Kauaetangohia

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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**SIGNED** for and on behalf of Te Whānau a Apanui Negotiation Team:

---

Rikirangi Gage

---

Matanuku Mahuika

---

Natalie Coates

in the presence of -

### **WITNESS**

---

Name:

Occupation:

Address:

**TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE**

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**MEMBERS OF TE WHĀNAU A APANUI AND OTHER WITNESSES**



**TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE**

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**MEMBERS OF TE WHĀNAU A APANUI AND OTHER WITNESSES**

**TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE**

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**MEMBERS OF TE WHĀNAU A APANUI AND OTHER WITNESSES**

**TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE**

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**MEMBERS OF TE WHĀNAU A APANUI AND OTHER WITNESSES**

**TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE**

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**MEMBERS OF TE WHĀNAU A APANUI AND OTHER WITNESSES**

## **SCHEDULES**

## 1 DEFINITIONS

### Historical claims

1.1 The deed of settlement will provide that **historical claims** –

1.1.1 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 Te Whānau a Apanui, 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

1.1.2 includes every claim to the Waitangi Tribunal to which paragraph 1.1.1 applies that relates exclusively to Te Whānau a Apanui or a representative entity, including the following claims:

(a) Wai 70 – Puketauhinu No.1, Raukumara State Forest claim;

(b) Wai 213 – Whangaparaoa Land claim;

(c) Wai 224 – Maraehako Block claim;

(d) Wai 225 – Te Puia-I-Whakaari (White Island) claim;

(e) Wai 232 – Whānau-A-Kauaetangohia Fisheries claim;

(f) Wai 281 – Kaiaio Papakainga/Te Kaha claim;

(g) Wai 309 – Fisheries of Te Whānau Apanui claim;

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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- (h) Wai 422 – Waikura Block claim;
- (i) Wai 434 – Te Kaha B3 Block claim;
- (j) Wai 463 – Rating and Valuation of Māori Land claim;
- (k) Wai 780 – Te Kaha blocks and other Eastern Bay of Plenty lands claim;
- (l) Wai 813 – Motuaruhe 2 Block claim;
- (m) Wai 930 – Te Moana Waihau Bay claim;
- (n) Wai 1121 – Whanarua Bay Land Blocks Alienation claim;
- (o) Wai 1198 – Te Runanga O Te Whānau land and resources claim;
- (p) Wai 1552 – Descendants of Pohueroro Lands claim;
- (q) Wai 1553 – Descendants of Romio Wi Repa and Mary Gundry Wi Repa claim;
- (r) Wai 1773 – Te Whānau-a-Apanui Social, Cultural and Economic Loss claim;
- (s) Wai 1778 – Te Whānau-a-Apanui (Edward Matchitt) claim;
- (t) Wai 1779 – Te Whānau-a-Apanui Public Works (Matchitt) claim;
- (u) Wai 1783 – Returned Māori Soldiers (Poananga) claim;
- (v) Wai 1784 – Te Whānau-a-Apanui (Pohatu) claim;
- (w) Wai 1789 – Descendants of Hineato Savage claim;
- (x) Wai 1797 – Te Whānau-a-Ehutu claim;
- (y) Wai 1808 – Waikawa 2B and 3 Land Blocks claim;
- (z) Wai 1814 – Te Aitanga-a-Apanui claim;
- (aa) Wai 1822 – Te Whānau a Kahurautao claim;
- (bb) Wai 1828 – Te Whānau-a-Apanui Rating claim;
- (cc) Wai 1829 – Te Whānau-a-Apanui Mana Tane claim;
- (dd) Wai 1830 – Te Whānau a Maruhaeremuri claim;
- (ee) Wai 1892 – Children of Honahautonga and Okeroa Taitua claim;

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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- (ff) Wai 1964 – Te Whānau-a-Apanui (Tohiariki) claim;
  - (gg) Wai 2002 – Whangaparaoa 2k2 Trust claim;
  - (hh) Wai 2033 – Te Whānau-a-Apanui Vietnam Veterans (Kahaki) claim;
  - (ii) Wai 2043 – Te Whānau-a-Apanui Crown Treaty Settlement Process claim;
  - (jj) Wai 2186 – Tohiariki Whānau Lands and Other Issues claim;
  - (kk) Wai 2212 – Te Whānau a Apanui and Te Whānau a Hikorukutai Resources (Takitimu) claim;
  - (ll) Wai 2257 – Te Whānau Apanui Mana Wahine (Stirling) claim;
  - (mm) Wai 2290 – Te Whānau-a-Nuku (Kerei) claim;
  - (nn) Wai 2404 – The Waikare Whānau Trust (Insley) claim; and
- 1.1.3 includes every other claim to the Waitangi Tribunal to which paragraph 1.1.1 applies, so far as it relates to Te Whānau a Apanui or a representative entity, including the following claims:
- (a) Wai 287 – School History Syllabus claim;
  - (b) Wai 1780 – Te Whānau-a-Apanui (Ngamoki) claim;
  - (c) Wai 1788 – State Highway 35 Land (Joe Rua) claim;
  - (d) Wai 1962 – Te Kaha Hapū (Thompson and Wi Repa) claim;
  - (e) Wai 2229 – Descendants of Eru Monita and others claim.
- 1.1.4 However, **historical claims** does not include the following claims –
- (a) a claim that a member of Te Whānau a Apanui, or a whānau, hapū, or group referred to in paragraph 1.3.2, 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 paragraph 1.3.1; or
  - (b) a claim that a representative entity may have to the extent the claim is, or is founded, on a claim referred to in paragraph 1.1.4(a).
- 1.2 The deed of settlement will, to avoid doubt, provide paragraph 1.1.1 is not limited by paragraphs 1.1.2 or 1.1.3.
- Te Whānau a Apanui**
- 1.3 The deed of settlement will provide Te Whānau a Apanui or the settling group means -



## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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- 1.3.1 the collective group composed of individuals who descend from a Te Whānau a Apanui ancestor; and
- 1.3.2 every whānau, hapū, or group to the extent that it is composed of individuals referred to in paragraph 1.3.1, including:
- (a) Te Whānau a Haraawaka;
  - (b) Te Whānau a Hikarukutai (also known as Ngāti Horomoana);
  - (c) Te Whānau a Tutawake (also known as Ngāti Paeakau and Te Whānau a Tuahiawa);
  - (d) Te Whānau a Nuku (also known as Ngāti Horowai);
  - (e) Te Whānau a Rutaia (also known as Ngāti Terewai) and Te Whānau a Rongomai;
  - (f) Te Whānau a Hinetekahu (also known as Te Whānau a Toihau);
  - (g) Te Whānau a Te Ehutu;
  - (h) Te Whānau a Kaiaio;
  - (i) Te Whānau a Kahurautao (including Te Whānau a Te Rangi-i-runga);
  - (j) Te Whānau a Pararaki;
  - (k) Te Whānau a Maruhaeremuri;
  - (l) Te Whānau a Kauaetangohia; and
- 1.3.3 every individual referred to in paragraph 1.3.1.
- 1.4 The deed of settlement will provide, for the purposes of paragraph 1.3.1 -
- 1.4.1 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 Te Whānau a Apanui tikanga (customary values and practices); and
- 1.4.2 a **Te Whānau a Apanui ancestor** means an individual who:
- (a) exercised customary rights by virtue of being descended from:

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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- (i) Apanui Ringamutu; or
    - (ii) a recognised ancestor of any of the descent groups of Te Whānau a Apanui/the groups listed in paragraph 1.3.2;
  - (b) exercised the customary rights in paragraph 1.4.2(a) predominantly in relation to the area of interest after 6 February 1840.
- 1.4.3 **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 of land or other natural or physical resources.

### Other definitions

1.5 In this agreement in principle –

**arbitration commencement date**, in relation to the determination of the market value of a valuation property means:

- (a) in relation to a referral under paragraph 3.12.2 the date of that referral; and,
- (b) in relation to an appointment under paragraph 3.12.3 or 3.12.4, a date specified by the valuation arbitrator; and

**arbitration meeting**, in relation to the determination of the market value of a valuation property, means the meeting notified by the valuation arbitrator under paragraph 3.13.1; and

**area of interest** means the area identified as the area of interest in attachment 1; and

**business day** means a day that is not –

- (a) a Saturday or Sunday; or
- (b) Waitangi Day, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, or Labour day; or
- (c) if Waitangi Day or ANZAC Day falls on a Saturday or Sunday, the following Monday; or
- (d) a day in the period commencing with 25 December in any year and ending with 15 January in the following year; or
- (e) a day that is observed as the anniversary of the province of –
  - (i) Wellington; or

- (ii) Auckland; and

**coastal statutory acknowledgement** means the acknowledgement to be made by the Crown in the settlement legislation referred to in clauses 5.17 and 5.18 on the terms to be provided by the settlement legislation; and

**commercial redress property** means each property described as a commercial redress property in the deed of settlement; and

**Crown** has the meaning given to it by section 2(1) of the Public Finance Act 1989; and

**Crown redress –**

- (a) means redress –
  - (i) provided by the Crown to the governance entity; or
  - (ii) vested by the settlement legislation in the governance entity that was, immediately prior to the vesting, owned by or vested in the Crown; and
- (b) includes any right of the governance entity under the settlement documentation to a right of first refusal in relation to RFR land; but
- (c) does not include
  - (i) an obligation of the Crown under the settlement documentation to transfer RFR land; or
  - (ii) RFR land; or
  - (iii) any on-account payment made before the date of the deed or to entities other than the governance entity; and

**cultural redress** means the redress to be provided under the settlement documentation referred to in part 5; and

**cultural redress property** means each property described as a cultural redress property in the deed of settlement; and

**deed of settlement** means the deed of settlement to be developed under clause 2.1.2; and

**disclosure information**, in relation to a redress property, means the information provided by the Crown to the governance entity under clause 12.1; and

**encumbrance**, in relation to a property, means a lease, tenancy, licence, easement, covenant, or other right or obligation affecting that property; and

**financial and commercial redress** means the redress to be provided under the settlement documentation referred to in part 9; and

**financial and commercial redress amount** means the amount referred to as the financial and commercial redress amount in clause 9.2; and

**governance entity** means the governance entity to be formed by the settling group under clause 12.3.1; and

**land holding agency**, in relation to a potential commercial redress property, or potential RFR land, means the department specified opposite that property in Tables 5 and 6, as the case may be; and

**mandated negotiators** means –

(a) the following individuals:

- (i) Rikirangi Gage, of Omaio, Chief Executive;
- (ii) Matanuku Mahuika, of Gisborne, lawyer;
- (iii) Natalie Coates, of Whakatane, lawyer;

(b) if one or more individuals named in paragraph (a) dies, or becomes incapacitated, the remaining individuals; and

**market value**, in relation to a valuation property, has the meaning provided in the valuation instructions in appendix 1 to schedule 3; and

**Ngati Porou Deed of Settlement** means the deed of settlement dated 22 December 2010 and entered into by Ngati Porou and the Crown; and

**party** means each of the settling group and the Crown; and

**potential commercial redress property** means each property described as a potential commercial redress property in Table 5; and

**potential cultural redress property** means each property described as a potential cultural redress property in Table 1; and

**potential RFR land** means the land described as potential RFR land in Table 6; and

**redress** means the following to be provided under the settlement documentation –

- (a) the Crown's acknowledgment and apology referred to in clause 4.1; and
- (b) the financial and commercial redress; and
- (c) the cultural redress; and

**redress property** means -

- (a) each cultural redress property; and
- (b) each commercial redress property; and

**registered valuer** means any valuer for the time being registered under the Valuers Act 1948; and

**representative entity** means a person or persons acting for or on behalf of the settling group; and

**resumptive memorial** means a memorial entered on a record of title under any of the following sections:

- (a) 27A of the State-Owned Enterprises Act 1986; or
- (b) 211 of the Education Act 1989; or
- (c) 38 of the New Zealand Railways Corporation Restructuring Act 1990; and

**RFR** means the right of first refusal referred to in clause 9.4; and

**RFR land** means the land referred to as RFR land in the deed of settlement; and

**settlement** means the settlement of the historical claims under the settlement documentation; and

**settlement date** means the date that will be defined in the deed of settlement and settlement legislation; and

**settlement document** means a document to be entered into by the Crown to give effect to the deed of settlement; and

**settlement documentation** means the deed of settlement and the settlement legislation; and

**settlement legislation** means the legislation giving effect to the deed of settlement; and

**statutory area** means the area shown shaded green on the map at attachment 3; and

**tax indemnity** means the indemnity to be provided in the deed of settlement under clauses 11.3 and 11.4; and

**Te Tiriti o Waitangi/Treaty of Waitangi** means the Treaty of Waitangi as set out in Schedule 1 to the Treaty of Waitangi Act 1975; and

**transfer value**, in relation to a potential commercial redress property, means the amount payable by the governance entity for the transfer of the property determined or agreed in accordance with schedule 3; and

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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**valuation arbitrator**, in relation to a valuation property means the person appointed under paragraphs 3.3.2 or 3.4, in relation to the determination of its market value, and if applicable its market rental; and

**valuation date**, in relation to a valuation property, means the notification date in relation to the property; and

**valuation property** means each potential commercial redress property that is to be valued in accordance with schedule 3.

## 2 TERMS OF SETTLEMENT

### **Rights unaffected**

- 2.1 The deed of settlement is to provide that, except as provided in the settlement documentation, the rights and obligations of the parties will remain unaffected.

### **Acknowledgments**

- 2.2 Each party to the deed of settlement is to acknowledge in the deed of settlement that –
- 2.2.1 the other party has acted honourably and reasonably in relation to the settlement; but
  - 2.2.2 full compensation of the settling group is not possible; and
  - 2.2.3 the settling group intends their foregoing of full compensation to contribute to New Zealand's development; and
  - 2.2.4 the settlement is intended to enhance the ongoing relationship between the settling group and the Crown (in terms of Te Tiriti of Waitangi/the Treaty of Waitangi, its principles, and otherwise).
- 2.3 The settling group is to acknowledge in the deed of settlement that –
- 2.3.1 taking all matters into consideration (some of which are specified in paragraph 2.2), the settlement is fair in the circumstances; and
  - 2.3.2 the redress –
    - (a) is intended to benefit the settling group collectively; but
    - (b) may benefit particular members, or particular groups of members, of the settling group if the governance entity so determines in accordance with the governance entity's procedures.

### **Implementation**

- 2.4 The deed of settlement is to provide the settlement legislation will, on terms agreed by the parties (based on the terms in recent settlement legislation), –
- 2.4.1 settle the historical claims; and
  - 2.4.2 exclude the jurisdiction of any court, tribunal, or other judicial body in relation to the historical claims and the settlement; and
  - 2.4.3 provide that certain enactments do not apply –
    - (a) to a redress property, or any RFR land; or

- (b) for the benefit of the settling group or a representative entity; and
- 2.4.4 require any resumptive memorials to be removed from the records of title for, a redress property, or any RFR land; and
- 2.4.5 provide that the rule against perpetuities and the Perpetuities Act 1964 does not apply –
  - (a) where relevant, to any entity that is a common law trust; and
  - (b) to any settlement documentation; and
- 2.4.6 require the chief executive of the Office for Māori Crown Relations – Te Arawhiti, to make copies of the deed of settlement publicly available.
- 2.5 The deed of settlement is to provide –
  - 2.5.1 the governance entity must use its best endeavours to ensure every historical claim is discontinued by the settlement date or as soon as practicable afterwards; and
  - 2.5.2 the Crown may:
    - (a) cease any landbank arrangement in relation to the settling group, the governance entity, or any representative entity, except to the extent necessary to comply with its obligations under the deed;
    - (b) after the settlement date, advise the Waitangi Tribunal (or any other tribunal, court, or judicial body) of the settlement.



### 3 VALUATION PROCESS FOR POTENTIAL COMMERCIAL REDRESS PROPERTIES

*Note: Unless otherwise agreed in writing between the relevant landholding agency and Te Whānau a Apanui, the parties will enter into the following valuation process for potential commercial redress properties*

#### SUBPART A DETERMINING THE TRANSFER VALUE AND INITIAL ANNUAL RENT OF A PROPERTY

##### APPLICATION OF THIS SUBPART

- 3.1 This subpart provides how the following are to be determined in relation to a valuation property:
- 3.1.1 its transfer value; and
  - 3.1.2 if it is a leaseback property that is not a school site, its initial annual rent.
- 3.2 The transfer value, and if applicable the initial annual rent, are to be determined as at a date agreed upon in writing by the parties (the **notification date**).

##### APPOINTMENT OF VALUERS AND VALUATION ARBITRATOR

- 3.3 The parties, in relation to a property, not later than [10] business days after the notification date:
- 3.3.1 must each:
    - (a) instruct a valuer using the form of instructions in appendix 1; and
    - (b) give written notice to the other of the valuer instructed; and
  - 3.3.2 may agree and jointly appoint the person to act as the valuation arbitrator in respect of the property.
- 3.4 If the parties do not agree and do not jointly appoint a person to act as a valuation arbitrator within 15 business days after the notification date, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable.
- 3.5 The parties must ensure the terms of appointment of their respective registered valuers require the valuers to participate in the valuation process.

##### QUALIFICATION OF VALUERS AND VALUATION ARBITRATOR

- 3.6 Each valuer must be a registered valuer.
- 3.7 The valuation arbitrator –

## **TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE**

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- 3.7.1 must be suitably qualified and experienced in determining disputes about –
- (a) the market value of similar properties; and
  - (b) if applicable, the market rental of similar properties; and
- 3.7.2 is appointed when he or she confirms his or her willingness to act.

### **VALUATION REPORTS FOR A PROPERTY**

- 3.8 Each party must, in relation to a valuation, not later than:
- 3.8.1 [50] business days after the notification date, provide a copy of its final valuation report to the other party; and
  - 3.8.2 [60] business days after the notification date, provide its valuer's written analysis report to the other party.
- 3.9 Valuation reports must comply with the International Valuation Standards [2017], or explain where they are at variance with those standards.

### **EFFECT OF DELIVERY OF ONE VALUATION REPORT FOR A PROPERTY**

- 3.10 If only one valuation report for a property that is not a school site is delivered by the required date, the transfer value of the property, and if applicable its initial annual rent, is the market value and the market rental, as assessed in the report.
- 3.11 If only one valuation report for a property that is a school site is delivered by the required date, the transfer value of the property is the market value as assessed in the report, (based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%),

### **NEGOTIATIONS TO AGREE A TRANSFER VALUE AND INITIAL ANNUAL RENT FOR A PROPERTY**

- 3.12 If both valuation reports for a property are delivered by the required date:
- 3.12.1 the parties must endeavour to agree in writing:
    - (a) the transfer value of a property that is not a school site; or
    - (b) if the property is a school site, the transfer value (being the agreed market value based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%); and
    - (c) if the property is a leaseback property that is not a school site, its initial annual rent;
  - 3.12.2 either party may, if the transfer value of the property, or if applicable, its initial annual rent, is not agreed in writing within [70] business days after the notification date and if a valuation arbitrator has been appointed under

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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paragraph 3.3.2 or paragraph 3.4, refer that matter to the determination of the valuation arbitrator; or

- 3.12.3 if that agreement has not been reached within the [70] business day period but the valuation arbitrator has not been appointed under paragraph 3.3.2 or paragraph 3.4, the parties must attempt to agree and appoint a person to act as the valuation arbitrator within a further [5] business days; and
- 3.12.4 if paragraph 3.12.3 applies, but the parties do not jointly appoint a person to act as a valuation arbitrator within the further [5] business days, either party may request that the Arbitrators' and Mediators' Institute of New Zealand appoint the valuation arbitrator as soon as is reasonably practicable; and
- 3.12.5 the valuation arbitrator, must promptly on his or her appointment, specify to the parties the arbitration commencement date.

### VALUATION ARBITRATION

- 3.13 The valuation arbitrator must, not later than [10] business days after the arbitration commencement date, –
  - 3.13.1 give notice to the parties of the arbitration meeting, which must be held –
    - (a) at a date, time, and venue determined by the valuation arbitrator after consulting with the parties; but
    - (b) not later than [30] business days after the arbitration commencement date; and
  - 3.13.2 establish the procedure for the arbitration meeting, including providing each party with the right to examine and re-examine, or cross-examine, as applicable, –
    - (a) each valuer; and
    - (b) any other person giving evidence.
- 3.14 Each party must –
  - 3.14.1 not later than 5pm on the day that is [5] business days before the arbitration meeting, give to the valuation arbitrator, the other party, and the other party's valuer –
    - (a) its valuation report; and
    - (b) its submission; and
    - (c) any sales, rental, or expert evidence that it will present at the meeting; and
  - 3.14.2 attend the arbitration meeting with its valuer.

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3.15 The valuation arbitrator must –

- 3.15.1 have regard to the requirements of natural justice at the arbitration meeting; and
- 3.15.2 no later than [50] business days after the arbitration commencement date, give his or her determination –
  - (a) of the market value of the property (which in respect of a school site is to be the market value based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%); and
  - (b) if applicable, of its market rental; and
  - (c) being no higher than the higher, and no lower than the lower, assessment of market value and/or market rental, as the case may be, contained in the parties' valuation reports.

3.16 An arbitration under this subpart is an arbitration for the purposes of the Arbitration Act 1996.

### **TRANSFER VALUE AND INITIAL ANNUAL RENT FOR ALL PROPERTIES**

3.17 The transfer value of the property, and if applicable its initial annual rent, is:

- 3.17.1 determined under paragraph 3.10 or 3.11, (as the case may be); or
- 3.17.2 agreed under paragraph 3.12.1; or
- 3.17.3 the market value and, if applicable, market rental determined by the valuation arbitrator under paragraph 3.15.2, if the determination is in respect of a property that is not a school site; or
- 3.17.4 if the property is a school site, the market value determined by the valuation arbitrator under paragraph 3.15.2, (based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%).

## **SUBPART B GENERAL PROVISIONS**

### **TIME LIMITS**

3.18 In relation to the time limits each party must use reasonable endeavours to ensure -

- 3.18.1 those time limits are met and delays are minimised; and
- 3.18.2 in particular, if a valuer or a valuation arbitrator appointed under this part is unable to act, a replacement is appointed as soon as is reasonably practicable.

### **DETERMINATION FINAL AND BINDING**

3.19 The valuation arbitrator's determination under subpart A is final and binding.

**COSTS**

- 3.20 In relation to the determination of the transfer value, and initial annual rent, of a property, each party must pay –
- 3.20.1 its costs; and
  - 3.20.2 half the costs of a valuation arbitration; or
  - 3.20.3 such other proportion of the costs of a valuation arbitration awarded by the valuation arbitrator as the result of a party's unreasonable conduct.

APPENDIX 1

**PLEASE NOTE**

*If these instructions apply to-*

- *a non-leaseback property, references connected with a leaseback (including references to assessing the property's market rental) must be deleted; or*
- *a leaseback property -*
  - *that is to be leased back to the Ministry of Education, references to assessing the property's market rental must be deleted; or*
  - *that is not to be leased back to the Ministry of Education, references to a lease to the Ministry of Education and to the market value of a school site must be deleted.*

*These instructions may be modified to apply to more than one property.*

[Valuer's name]

[Address]

**Valuation instructions**

**INTRODUCTION**

Te Whānau a Apanui and the Crown have entered into an agreement in principle to settle the Te Whānau a Apanui's historical claims dated [date] (the **agreement in principle**).

**PROPERTY TO BE VALUED**

Te Whānau a Apanui have given the land holding agency an expression of interest in purchasing -

*[describe the property including its legal description]*

**[PROPERTY TO BE LEASED BACK**

If [Te Whānau a Apanui] purchases the property from the Crown as a commercial redress property under its deed of settlement, the governance entity will lease the property back to the Crown on the terms provided by the attached lease in (the **agreed lease**).

As the agreed lease is a ground lease, the ownership of the improvements on the property (the **Lessee's improvements**), remains unaffected by the transfer.]

**AGREEMENT IN PRINCIPLE**

A copy of the agreement in principle is enclosed.

Your attention is drawn to –

- (a) schedule 3; and
- (b) the attached agreed lease of the property].

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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All references in this letter to subparts or paragraphs are to subparts or paragraphs of schedule 3.

A term defined in the agreement in principle has the same meaning when used in these instructions.

The property is a property for the purposes of part 9. Subpart A of schedule 3 applies to the valuation of properties.

### ASSESSMENT OF MARKET VALUE REQUIRED

You are required to undertake a valuation to assess the market value of the property [that is a school site in accordance with the methodology below] as at [date] (the **valuation date**).

[As the Lessee's improvements will not transfer, the market value of the property is to be the market value of its land (i.e. not including any Lessee's improvements).]

The [land holding agency][Te Whānau a Apanui][**delete one**] will require another registered valuer to assess the market value of the property [,and its market rental,] as at the valuation date.

The two valuations are to enable the market value of the property, [,and its market rental,] to be determined either:

- (a) by agreement between the parties; or
- (b) by arbitration.

The market value of the property so determined will be the basis of establishing the "transfer value" at which Te Whānau a Apanui may elect to purchase the property as a commercial redress property under part 9, plus GST (if any).

### [MARKET VALUE OF A SCHOOL SITE

For the purposes of these instructions the intention of the parties in respect of a school site is to determine a transfer value to reflect the designation and use of the land for education purposes.

The market value of a school site is to be calculated as the market value of the property, exclusive of improvements, based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%.

A two step process is required:

- 1) firstly, the assessment of the unencumbered market value (based on highest and best use) by;
  - a) disregarding the designation and the Crown leaseback; and
  - b) considering the zoning in force at the valuation date and
  - c) excluding any improvements on the land; and;

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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- 2) secondly the application of a 20% discount to the unencumbered market value to determine the market value as a school site (transfer value).]

[If, in the relevant district or unitary plan, the zoning for the school site is Specialised (as defined below), the zoning for the school site for the purposes of step 1(b) of the two-step process above will be deemed to be the Alternative Zoning (as defined below).

For the purposes of these instructions:

- "Specialised" means specialised for a school site or otherwise specialised to a public or community use or public work (including education purposes).
- "Alternative Zoning" means the most appropriate probable zoning which provides for the highest and best use of the school site as if the school (or any other public or community use or public work, including education purposes) was hypothetically not present. The Alternative Zoning will be determined with reference to (in no particular order):
  - (a) the underlying zoning for the school site (if any);
  - (b) the zoning for the school site immediately prior to its Specialised zoning;
  - (c) the zoning of land adjacent to or in the immediate vicinity of the school site (or both) if there is a uniform neighbouring zone;
  - (d) if the school site is within the area governed by Auckland Council, the underlying zoning applied to the school site in the Draft Auckland Unitary Plan publicly notified 15 March 2013, namely *[insert the zoning from the Draft Auckland Unitary Plan publicly notified 15 March 2013]*; and
  - (e) any other relevant consideration in the reasonable opinion of a registered valuer that would support the most probable zoning which provides for the highest and best use of the school site.

The transfer value is used to determine the initial annual rent based on an agreed rental percentage of the agreed transfer value, determined in accordance with the Crown leaseback (plus GST, if any, on the amount so determined).]

### **[ASSESSMENT OF MARKET RENTAL REQUIRED**

You are also required to assess the market rental (exclusive of GST) for the property, as at the valuation date, being the rental payable from the commencement of the agreed lease.

The market rental for the property is to be the market rental payable under the agreed lease, being a ground lease. So it will be the rent payable for its land (i.e. excluding any Lessee's improvements).]

### **VALUATION OF PROPERTY**

You must, in relation to a property:

- (a) before inspecting the property, determine with the other valuer:



## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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- (i) the valuation method or methods applicable to the property; and
  - (ii) the comparable sales[, and comparable market rentals if the property is not a school site,] to be used in determining the market value of the property [and its market rental if the property is not a school site]; and
- (b) inspect the property, where practical, together with the valuer appointed by the other party; and
- (c) attempt to resolve any matters or issues arising from your inspections and input assumptions; and
- (d) by not later than [30] business days after the valuation date prepare, and deliver to us, a draft valuation report; and
- (e) by not later than [45] business days after the valuation date:
  - (i) review your draft valuation report, after taking into account any comments made by us or a peer review of the report obtained by us; and
  - (ii) deliver a copy of your final valuation report to us; and
- (f) by not later than [55] business days after the valuation date, prepare and deliver to us a written analysis of both valuation reports to assist in the determination of the market value of the property [and its market rental if the property is not a school site]; and
- (g) by not later than [65] business days after the valuation date, meet with the other valuer and discuss your respective valuation reports and written analysis reports with a view to reaching consensus on the market value [and its market rental if the property is not a school site]; and
- (h) if a consensus on market value [and its market rental if the property is not a school site] is reached, record it in writing signed by you and the other valuer and deliver it to both parties; and
- (i) participate in any meetings, including any peer review process, as required by us and the other party to agree the market value of the property [and its market rental if the property is not a school site]; and
- (j) if a review valuer has been appointed by parties, you must within [5] business days of receipt of the review valuer's report, review your market valuation report, taking into account the findings of the review valuer, and provide us with a written report of your assessment of the market value of the property; and
- (k) participate in any arbitration process required under subpart A to determine the market value of the property [and its market rental if the property is not a school site].

### REQUIREMENTS OF YOUR VALUATION

Our requirements for your valuation are as follows.

You are to assume that –

## **TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE**

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- (a) the property is a current asset and was available for immediate sale as at the valuation date; and
- (b) all legislative processes that the Crown must meet before disposing of the property have been met.

Your valuation is –

- (a) to assess market value on the basis of market value as defined in the current edition of the Australia and New Zealand Valuation and Property Standards [2014] and International Valuation Standards [2017]; and
- (b) to take into account –
  - (i) any encumbrances, interests, or other matters affecting or benefiting the property that were noted on its title on the valuation date; and
  - (ii) the terms of the agreed lease; and
  - (iii) the attached disclosure information about the property that has been given by the land holding agency to the settling group, including the disclosed encumbrances; and
  - (iv) the attached terms of transfer (that will apply to a purchase of the property by the governance entity); but
- (c) not to take into account a claim in relation to the property by or on behalf of the settling group; and
- (d) in relation to the market rental for the property, to be on the basis of a willing lessor and a willing lessee, in an arm's length transaction, the parties having acted knowledgeably, prudently, and without compulsion].

### **REQUIREMENTS FOR YOUR VALUATION REPORT**

We require a full valuation report in accordance with the current edition of the Australia and New Zealand Valuation and Property Standards [2014] and International Valuation Standards [2017], including -

- (a) an executive summary, containing a summary of –
  - (i) the valuation; and
  - (ii) [the market rental; and]
  - (iii) the key valuation parameters; and
  - (iv) the key variables affecting value; and
- (b) a detailed description, and a clear statement, of the land value; and

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- (c) a clear statement as to any impact of –
  - (i) the disclosed encumbrances[; and
  - (ii) the agreed lease]; and
- (d) details of your assessment of the highest and best use of the property; and
- (e) comment on the rationale of likely purchasers[, and tenants,] of the property; and
- (f) a clear identification of the key variables which have a material impact on the valuation; and
- (g) full details of the valuation method or methods; and
- (h) appendices setting out –
  - (i) a statement of the valuation methodology and policies; and
  - (ii) relevant market and sales information.

Your report must comply with the minimum requirements set out in section 5 of the International Valuation Standard 1 Market Value Basis of Valuation, and other relevant standards, insofar as they are consistent with subpart A.

You may, with our prior consent, obtain specialist advice, such as engineering or planning advice.

### ACCEPTANCE OF THESE INSTRUCTIONS

By accepting these instructions, you agree to comply with these instructions and, in particular, not later than:

- (a) [30] business days after the valuation date, to prepare and deliver to us a draft valuation report; and
- (b) [45] business days after the valuation date, to:
  - (i) review your draft valuation report after taking into account any comments made by us or a peer review of the report obtained by us; and
  - (ii) deliver a copy of your final valuation report to us; and
- (c) [55] business days after the valuation date, to prepare and deliver to us a written analysis of both valuation reports; and
- (d) [65] business days after the valuation date, to meet with the other valuer to discuss your respective valuation reports and written analysis reports.

## **ACCESS**

[You should not enter on to the property without first arranging access through the [landholding agency] [give contact details].]

[Where the property is a school site, you should not enter on to [insert name(s) of school site(s)] without first arranging access through the Ministry of Education [give contact details] and should not contact the school(s) directly.]

## **OPEN AND TRANSPARENT VALUATION**

The parties intend this valuation to be undertaken in an open and transparent manner, and for all dealings and discussions to be undertaken in good faith.

In particular, you must:

- (a) copy any questions you have or receive with regard to the valuation, together with the responses, to the settling group, the land holding agency, and the other valuer: and
- (b) make all reasonable attempts throughout this valuation process to resolve differences between you and the other valuer before delivering a copy of your final valuation report to us.

Yours faithfully

**[Name of signatory]**

**[Position]**

**[Te Whānau a Apanui/Land holding agency][delete one]**

## 4 TE WHĀNAU A APANUI AND THE MINISTRY OF JUSTICE: RELATIONSHIP PRINCIPLES

- 4.1 This document sets out principles to assist Te Whānau a Apanui and the Ministry of Justice to work together on mutually-agreed projects to promote the wellbeing of Te Whānau a Apanui.
- 4.2 We hope this relationship will enable us to work together to bring about systemic improvements for the people of Te Whānau a Apanui. We also hope this relationship and way of working will be an example of how things can be, and can be expanded to other agencies in the justice sector and other parts of the government system in the future.

### **The story of Apanui Ringamutu is a metaphor for our relationship**

- 4.3 Apanui Ringamutu is the eponymous ancestor of Te Whānau a Apanui.<sup>2</sup> He fought several times against Hikawera of Ngāti Porou, with Hikawera coming out as victor. Frustrated by his defeats, Apanui called out to Hikawera's tohunga from inside the pā and asked how he might defeat Hikawera.
- 4.4 The response he got was "haere ki te tōnga o te rā, ki a Kinomoerua – go to the setting of the sun to Kinomoerua". Apanui took the advice and headed to Tauranga.
- 4.5 Upon reaching Kinomoerua, he was taken to the mouth of the Tauranga harbour, where Kinomoerua pointed to the rock Tirikawa and instructed him to observe it. "You see that rock, no matter how big the waves that crash over it, it always emerges – ka ngaro, ka ngaro, ka ea, ka ea te toka o Tirikawa".
- 4.6 Apanui was then taken to the sand bank to observe a flock of karoro (seagulls). As the waves rolled over the sand bank, the birds would quickly lift off, only to alight again when the waves had passed by.
- 4.7 Lastly, Apanui was taken to observe the kawau (the shag). On leaving its perch, the kawau flew in a straight line high above the water so it could see everything below it. Once it had singled out its prey, it would commit itself completely into a dive, and would always surface with a fish in its beak.

### **What will make our relationship as resilient as Tirikawa?**

Mā te rongo ka mōhio  
Mā te mōhio ka mārama  
Mā te mārama ka mātau  
Mā te mātau ka ora

*Through perception comes awareness  
Through awareness comes understanding  
Through understanding comes knowledge  
Through knowledge comes wellbeing*

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<sup>2</sup> As referenced in Te Whānau a Apanui PowerPoint titled 'Whānau Ora' shared on 23 February 2019.

- 4.8 The essence of Apanui Ringamutu's story is that he needed help to gain a new perspective on matters, so he could think differently. This relationship offers the Ministry of Justice the same opportunity. We can work together to build a shared understanding of what the justice system is, in terms of the lived experience of the people of Te Whānau a Apanui, and what it could be in terms of Te Whānau a Apanui's long-term aspirations of their enduring mana being recognised and respected within the modern New Zealand state.
- 4.9 To create a resilient relationship that will withstand the waves that crash over us with the rising tide, we commit to the following principles:
- 4.9.1 we will work together in a manner that recognises mana to mana and mahi to mahi – working at the right level on the right issues;
  - 4.9.2 Manaaki – we will maintain personal relationships and ongoing contact between our respective rangatira as well as ongoing relationships between the people working on projects. We value working kanohi ki te kanohi (in person);
  - 4.9.3 Te ōrite – we are in this together. We will build a two-way understanding of what each other is trying to achieve, and about our constraints. We will work together to find creative solutions that work for both parties - *Nau te raurau, naku te raurau, ka ora te iwi*;
  - 4.9.4 we will listen and then respond, always seeking knowledge and understanding;
  - 4.9.5 we are committed to an 'outside in' approach – understanding what matters for the people living in the rohe, experiencing the justice system and using Te Whānau a Apanui's services; and
  - 4.9.6 we are committed to co-design – pokepoke parāoa. We will agree on projects that we can work on together, and we will design and deliver the projects together (including designing performance measures together).

### **What will make us as flexible as the karoro?**

- 4.10 We are working within an adaptive system that will respond to stimulus. Everything we do within the system has the potential to change it. To respond to our changing environment, and to stimulate positive change within the system, we commit to the following principles:
- 4.10.1 flexibility goes hand-in-hand with stability – we need a Tirikawa as our foundation before we can try to do things differently. Our Tirikawa includes stable relationships and funding sources, and a shared understanding of the system we are working to change together;
  - 4.10.2 we will use Cynefin and other systems methodologies to help us understand the system and the opportunities to make it work better for the people of Te Whānau a Apanui and the Crown;
  - 4.10.3 we will create space to design together; and

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- 4.10.4 we recognise that flexibility of purpose and flexibility of method frees us in designing and delivering services.
- 4.11 Our decisions about services will be based on:
  - 4.11.1 pulling value from communities and redesigning services to deliver value to communities by delivering the services that communities want and need; and
  - 4.11.2 recognising the value of frontline workers in understanding the system they work in and empowering them to make decisions that improve the system's operation.

### **What will make us as strategic as the kawau?**

- 4.12 What matters most changes over time, so we cannot 'set and forget'. The kawau needs to feed regularly and must review its environment to locate its prey. Therefore, we will:
  - 4.12.1 wananga together to build a shared view of the system together to inform any interventions and projects we want to undertake. This shared view will include shared understanding of key concepts, e.g. wellness;
  - 4.12.2 leverage systems thinkers and 'systems doers' (people who work in systems) to help us;
  - 4.12.3 be informed by developments in systems science and constantly seek to improve how we understand and intervene in the systems in which we're working together;
  - 4.12.4 whakamātautau – monitor and evaluate our projects and operations, including by seeking feedback from our respective communities. We will use data and feedback to generate insights to help us constantly assess and reassess our focus. We will share data and insights, while appropriately protecting the privacy and data sovereignty of Te Whānau a Apanui;
  - 4.12.5 over the long term, seek to align organisational and funding silos around defined objectives. We acknowledge this alignment will be easier for the Ministry of Justice to achieve in relation to matters that are directly within its control; and
  - 4.12.6 look to create an example to the wider government system of how things could be. We will start by focusing within the justice system, as the part of the government system that the Ministry of Justice can most directly influence. We will seek to grow success here into other sectors by using mana to mana from this process to bring other partners into the relationship.

## 5 FISHERIES REGULATIONS

- 5.1 The fisheries regulations will broadly provide for the matters set out below.

### FISHERIES MANAGEMENT PLAN

- 5.2 Each hapū kōmiti will be required to develop and approve, in consultation with hapū members and the governance entity, a fisheries management plan for its hapū in its extended rohe moana o te hapū.
- 5.3 Hapū kōmiti may jointly prepare a single fisheries management plan on behalf of one or more hapū.
- 5.4 Hapū kōmiti may delegate the task of preparing a fisheries management plan to any person or entity, including the governance entity.
- 5.5 The governance entity will be required to maintain a consolidated fisheries management plan that comprises each hapū fisheries management plan.
- 5.6 The purpose of fisheries management plans is to:
- 5.6.1 provide for utilisation of fisheries resources while ensuring sustainability;
  - 5.6.2 recognise and provide for customary food gathering under the management of the hapū within the hapū fisheries area; and
  - 5.6.3 recognise and provide for the special relationship between the hapū and places of importance for customary food gathering.
- 5.7 Fisheries management plans will be required to include:
- 5.7.1 the management objectives for fisheries resources within the hapū fisheries area, including the balance between the interests of the hapū in customary, commercial and recreational fishing;
  - 5.7.2 a framework for the taking and utilisation of fisheries resources for customary food gathering purposes;
  - 5.7.3 how it will provide for the taking of fisheries resources under the hau kāinga take, including how the governance entity will notify the details of the permissible hau kāinga take to the hapū, each hapū kōmiti, and the Minister of Fisheries;
  - 5.7.4 any limitations that may be applied to the allowing of customary non-commercial food gathering; and
  - 5.7.5 any limitations that may be applied in customary marine title areas by using bylaws provided for in the regulations.



**AUTHORISATION OF CUSTOMARY FISHING**

- 5.8 Members of each hapū kōmiti will be able to allow the taking of fisheries resources, in accordance with their fisheries management plan, from or within the hapū fisheries area for customary non-commercial food gathering purposes, including for the purpose of sustaining the functions of a marae within that area.
- 5.9 Where the taking of fisheries resources does not fall under the hau kāinga take, the members will be able to allow the taking of fisheries resources for non-commercial customary food gathering purposes by using a written authorisation system or an oral authorisation system.
- 5.10 Where members of the hapū kōmiti use a written authorisation system to allow the taking of fisheries resources, the authorisation will be required to include:
- 5.10.1 the dates on which the fisheries resources may be taken; and
  - 5.10.2 the persons who are allowed to take the fisheries resources; and
  - 5.10.3 the species that may be taken; and
  - 5.10.4 the quantities of each species that may be taken; and
  - 5.10.5 the methods by which each species may be taken; and
  - 5.10.6 the areas in which each species may be taken; and
  - 5.10.7 the purposes for which each species may be taken; and
  - 5.10.8 the venue or venues at which the catch may be held and/or used; and
  - 5.10.9 any other matter considered relevant by the hapū kōmiti member who is allowing the taking of fisheries resources.
- 5.11 Where members of the hapū kōmiti use an oral authorisation system to allow the taking of fisheries resources, the hapū kōmiti will be required to maintain, and keep up to date, a register that records those matters listed in paragraph 5.10 in respect of:
- 5.11.1 each person allowed to take fisheries resources; and
  - 5.11.2 each circumstance where a person is allowed to take fisheries resources.
- 5.12 Members of the hapū kōmiti will be required to provide copies of each authorisation issued in writing, as described in paragraph 5.10, or details of each authorisation issued orally, as described in paragraph 5.11 (as the case may be), to a fisheries officer on request.
- 5.13 Authorisation holders will be required to provide copies of written authorisations issued to them, as described in paragraph 5.10, or evidence of oral authorisations issued, as described in paragraph 5.11 (as the case may be), to a fisheries officer on request.

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- 5.14 Each hapū kōmiti will be required to:
- 5.14.1 keep records of the quantities of fisheries resources taken in accordance with the fisheries management plan; and
  - 5.14.2 annually, provide to the governance entity and the hapū copies of the records described in paragraph 5.14.1 and information on customary fisheries management and activity generally in the hapū fisheries area, including the implementation of the fisheries management plan; and
  - 5.14.3 each year hold a meeting with the governance entity to generally report on those matters described in paragraph 5.14.1.
- 5.15 Each hapū kōmiti will be required to provide to Fisheries NZ:
- 5.15.1 a copy of its approved fisheries management plan, in its original form and as that plan is amended from time to time; and
  - 5.15.2 annually, a report on those matters described in paragraph 5.14.1 for the period since the fisheries regulations came into force or since the last report (whichever is the later).

### HAU KĀINGA TAKE

- 5.16 Hau kāinga in the hapū fisheries area will be able to take fisheries resources from within the hapū fisheries area for customary non-commercial food gathering purposes in accordance with tikanga without using the written or oral authorisation system described in paragraphs 5.8 to 5.15 (the hau kāinga take).
- 5.17 In accordance with hapū fisheries management plans, the governance entity will be required to notify:
- 5.17.1 each hapū kōmiti on behalf of the hapū; and
  - 5.17.2 all persons authorised by the hapū of Te Whānau a Apanui to take fisheries resources from or within the hapū fishing area for customary non-commercial food gathering purposes, as described in paragraph 5.16; and
  - 5.17.3 the Minister of Fisheries,
- of the hau kāinga take (including any limit on the size and quantity of fisheries resources and the method and area for taking those resources) and of any amendment made to the hau kāinga take from time to time.
- 5.18 When setting limits on the hau kāinga take, the governance entity will be required to take into account any limitations on the allowing of customary non-commercial food gathering that is set out in the hapū fisheries management plan.
- 5.19 The fisheries resources under hau kāinga take will be required to be taken, possessed and consumed:

## **TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE**

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- 5.19.1 in accordance with the notified limits set by the governance entity, as described in paragraphs 5.17 and 5.18; and
- 5.19.2 within the hapū fisheries area.
- 5.20 To avoid doubt, all persons authorised to take and consume fisheries resources under the hau kāinga take provisions, as described in paragraph 5.18, will be able to take those resources from all or any part of the hapū fisheries area.
- 5.21 Persons taking fisheries resources under hau kāinga take will be required to provide proof of identity and residence to a fisheries officer on request.
- 5.22 The governance entity will be required to:
  - 5.22.1 maintain and keep up to date a list of all persons who may take fisheries resources within a hapū fisheries area under the hau kāinga take; and
  - 5.22.2 provide to the Minister of Fisheries a copy of the list described in paragraph 5.22.1, in its original form and as that list is updated from time to time; and
  - 5.22.3 keep records of the quantities of fisheries resources taken under hau kāinga take; and
  - 5.22.4 on a quarterly basis, provide to the Minister of Fisheries copies of the records described in paragraph 5.22.3.

### **ACTIONS WHERE THERE ARE CONCERNS ABOUT MANAGEMENT OF HAPŪ FISHERIES AREAS**

- 5.23 If the Minister of Fisheries, after consulting the hapū members in any extended rohe moana o te hapū and the hapū kōmiti, considers an extended rohe moana o te hapū is not, or may not, be being managed in a manner that ensures sustainability while providing for utilisation of fisheries resources (sustainable utilisation concerns), Fisheries New Zealand will provide such advice and assistance to the hapū kōmiti as Fisheries New Zealand considers necessary to enable the hapū kōmiti to remedy the sustainable utilisation concerns.
- 5.24 Where hapū members in that extended rohe moana o te hapū and Fisheries New Zealand consider that some or all of the members of the hapū kōmiti are unwilling or unable to implement the advice and assistance described in paragraph 5.23, the hapū, the hapū kōmiti and Fisheries New Zealand will be required to develop a management strategy to address the sustainable utilisation concerns.
- 5.25 Where the hapū kōmiti do not observe the management strategy, described in paragraph 5.24, without limiting their general rights of revocation:
  - 5.25.1 the hapū will be able to:
    - (a) revoke the appointment of some or all of the members of the hapū kōmiti, or

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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- (b) restrict the ability of those members to allow the taking of fisheries resources; and

5.25.2 the Minister of Fisheries will be able to request that the hapū:

- (a) revoke the appointment of some or all of the members of the hapū kōmiti, or
- (b) restrict the ability of those members to allow the taking of fisheries resources.

### OFFENCES

5.26 An offences and penalties regime applying where a person commits an offence against the regulations, including the taking or possessing of fisheries resources from an area covered by a fisheries management plan:

- 5.26.1 without a valid authorisation, as described in paragraphs 5.10 and 5.11; or
- 5.26.2 in a manner that is inconsistent with a valid authorisation; or
- 5.26.3 in contravention of a fisheries bylaw, as described in paragraph 5.29; or
- 5.26.4 in a manner inconsistent with the provisions for the hau kāinga take.

### DEFENCES

5.27 Defences in proceedings for offences described in paragraph 5.26, including where:

- 5.27.1 the person taking the fisheries resources had reasonable grounds for believing their activity was authorised by a member of the hapū kōmiti; and
- 5.27.2 the taking of those fisheries resources was consistent with the purpose, objectives and rules in the fisheries management plan for the area where the taking occurred; and
- 5.27.3 there was an error or omission by the relevant member of the hapū kōmiti in the issuing or the recording of the authorisation.

### FORMS

5.28 The forms that the hapū kōmiti will be required to use for the record keeping described in paragraphs 5.12 to 5.15.

### BYLAWS

5.29 In the hapū fishing area where customary marine title is brought into effect, the governance entity on behalf of a hapū kōmiti is able to propose bylaws restricting or prohibiting fishing in those areas to provide for utilisation while ensuring sustainability or cultural reasons (fisheries bylaws).

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- 5.30 The fisheries regulations will enable the making of fisheries bylaws in respect of customary marine title areas that are covered by a fisheries management plan.
- 5.31 Fisheries bylaws will be able to be made for one or more of the following purposes where the fisheries management plan provides for that purpose:
- 5.31.1 to ensure sustainable utilisation of fisheries resources;
  - 5.31.2 to provide for customary non-commercial food gathering in accordance with the tikanga of the hapū in the customary marine title area;
  - 5.31.3 for cultural reasons, including as a result of:
    - (a) a human death in the customary marine title area,
    - (b) traditional management practices,
    - (c) the need to increase the availability of traditional species in a particular area, or
    - (d) the special status of traditional species in the marine environment.
- 5.32 In order to achieve the purposes described in paragraph 5.31.2, fisheries bylaws will be able to restrict or prohibit the taking of fisheries resources, by commercial, recreational and customary non-commercial fishers, from or within the relevant customary marine title area. These restrictions or prohibitions may relate to:
- 5.32.1 the species of fish, aquatic life, and seaweed that may be taken;
  - 5.32.2 the quantities of each species that may be taken;
  - 5.32.3 size limits for each species that may be taken;
  - 5.32.4 the areas from which each species may or may not be taken;
  - 5.32.5 the methods by which each species may be taken; and
  - 5.32.6 any other matter that the hapū consider necessary to:
    - (a) provide for the sustainable utilisation of fisheries resources, and
    - (b) recognise and provide for their customary food gathering, and
    - (c) recognise and provide for the special relationship between the customary marine title hapū and their places of importance for customary food gathering, and
    - (d) achieve any other purpose set out in a fisheries management plan.

5.33 The fisheries regulations will:

- 5.33.1 provide that a fisheries bylaw may specify the duration of the bylaw where the governance entity on behalf of a hapū kōmiti propose that it apply for a fixed period of time; and
- 5.33.2 require that a fisheries bylaw apply equally to all persons fishing in the relevant customary marine title area; but
- 5.33.3 provide that the requirement described in paragraph 5.33.2 will not apply to a fisher that is allowed to take fisheries resources, as described in paragraph 5.8 for the purpose of sustaining the functions of a marae within the hapū fisheries area.

5.34 The fisheries regulations will provide for, where a proposed fisheries bylaw is to come into force on the happening of a particular event (as described in paragraph 5.35.2(b)), limits to be imposed on the cumulative effect of the proposed fisheries bylaw to ensure that the proposed bylaw will not affect or prevent those matters described in paragraph 5.40.3 (for example, what percentage of an extended rohe moana o te hapū that may be the subject of the bylaw at any given time).

### PROPOSING AND SUBMITTING A FISHERIES BYLAW

5.35 The governance entity on behalf of a hapū kōmiti will be able to propose a fisheries bylaw by written notice to the Minister of Fisheries. The governance entity will be required to include with that notice:

- 5.35.1 a copy of the proposed fisheries bylaw; and
- 5.35.2 a statement setting out:
  - (a) its reasons why the restriction or prohibition set out in the proposed fisheries bylaw will achieve one or more of the purposes described in paragraph 5.31, and
  - (b) where the proposed bylaw is to come into force on the happening of a particular event, the specific circumstances in which that proposed bylaw would come into force, and evidence and information required to confirm that event. These circumstances may include evidence of and information on:
    - (i) a decline in the sustainability of fisheries resources in the customary marine title area,
    - (ii) a decline in species which means that the availability of the species is insufficient to meet the non-commercial customary needs of the relevant recognised customary marine title hapū in their customary marine title area,
    - (iii) a human death in the customary marine title area,
    - (iv) a risk to the continued presence of traditional species in the customary marine title area, and

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

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- 5.35.3 confirmation that the proposed fisheries bylaw is consistent with those matters described in paragraphs 5.40.1 and 5.40.2 and will not affect or prevent (as the case may be) those matters described in paragraph 5.40.3.
- 5.36 After receiving a proposed fisheries bylaw, the Minister of Fisheries will be required to call for submissions to be made on whether the bylaw will affect or prevent (as the case may be) any of those matters listed in paragraph 5.40.3.
- 5.37 The Minister of Fisheries will be required to conduct the submission process, as follows:
- 5.37.1 the Minister of Fisheries will be required to deposit a copy of the proposed fisheries bylaw:
- (a) in the office of the Ministry for Primary Industries nearest the relevant customary marine title area, and
  - (b) at a place designated by the Head of Fisheries New Zealand;
- 5.37.2 the places where the proposed fisheries bylaw will be deposited will be required to be open:
- (a) during normal office hours, and
  - (b) for not less than 15 working days immediately before the closing date for submissions,
- to enable:
- (c) the proposed fisheries bylaw to be inspected by members of the public, and
  - (d) the Minister of Fisheries to receive submissions on the proposed fisheries bylaw from members of the public,
- 5.37.3 the Head of Fisheries New Zealand will be required to notify in a newspaper circulating in the locality of the relevant customary marine title area;
- 5.37.4 the fact that a proposed fisheries bylaw has been deposited; and
- 5.37.5 the places where that proposed bylaw may be inspected.
- 5.38 The Minister of Fisheries, with the assistance of the relevant hapū kōmiti and governance entity, will be required to consult with the local community on the proposed fisheries bylaw at a meeting convened for this purpose before the closing date for submissions.
- 5.39 Any written submissions made by the public in respect of a proposed fisheries bylaw will be required to be sent to the hapū kōmiti and the governance entity by the Minister of Fisheries and the governance entity on behalf of the hapū kōmiti will be entitled to provide comment on those submissions.

**PROCEEDING WITH A PROPOSED FISHERIES BYLAW**

- 5.40 The Minister of Fisheries will be required to publish a proposed fisheries bylaw in the *Gazette*, where the Minister of Fisheries considers that the proposed bylaw:
- 5.40.1 will achieve one or more of the purposes described in paragraph 5.31; and
  - 5.40.2 is consistent with the relevant hapū fisheries management plan; and
  - 5.40.3 will not:
    - (a) unreasonably affect the ability of the local community to take fisheries resources for non-commercial purposes, or
    - (b) unreasonably prevent persons taking fisheries resources for non-commercial purposes within the fisheries management area where the proposed fisheries bylaw would apply, or
    - (c) prevent other hapū from exercising their non-commercial customary fishing rights of traditional use and management of fisheries resources, or
    - (d) prevent commercial fishers from taking a total allowable commercial catch for stock in the quota management area for that stock, or
    - (e) unreasonably prevent persons with a commercial fishing permit from taking non-quota management system species within the area for which the permit has been issued.
- 5.41 In exercising his or her discretion under paragraph 5.40, the Minister of Fisheries will be required to:
- 5.41.1 act reasonably; and
  - 5.41.2 have particular regard to the ongoing mana of the recognised customary marine title hapū, as expressed, protected and recognised through the deed and the recognition legislation, and the priority afforded to non-commercial customary fishing under the Fisheries Act 1996; and
  - 5.41.3 have regard to any submission received under the process described in paragraph 5.37 and any comment provided by the relevant recognised customary marine title hapū in relation to that submission.
- 5.42 Where the Minister of Fisheries:
- 5.42.1 does not consider that the proposed fisheries bylaw is consistent with those matters described in paragraph 5.40.1 and 5.40.2; and/or
  - 5.42.2 considers that the proposed fisheries bylaw will, or is likely to, affect or prevent (as the case may be) those matters described in paragraph 5.40.3,



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he or she will be required to:

- 5.42.3 notify the hapū kōmiti and governance entity in writing of this, including setting out the reasons for his or her view; and
- 5.42.4 where practicable, agree with the governance entity on behalf of the hapū kōmiti amendments to the proposed fisheries bylaw to enable it to:
  - (a) be consistent with those matters described in paragraphs 5.40.1 and 5.40.2, and/or
  - (b) not affect or prevent (as the case may be) those matters described in paragraph 5.40.3.
- 5.43 Where the governance entity on behalf of the hapū kōmiti agree to proposed amendments the Minister of Fisheries will be required to approve the bylaw and publish, as soon as practicable after the governance entity on behalf of the hapū kōmiti confirm in writing their agreement, the amended fisheries bylaw in the *Gazette*.
- 5.44 Where the Minister of Fisheries and the governance entity on behalf of the hapū kōmiti are unable to reach agreement on amendments, the Minister will:
  - 5.44.1 not have the power to publish the fisheries bylaw in the *Gazette*; and
  - 5.44.2 be required to give, to the hapū kōmiti, written notice confirming that the parties have been unable to reach agreement on the bylaw and setting out the reasons why the parties were unable to reach agreement.
- 5.45 To avoid doubt, where the Minister of Fisheries amends a proposed fisheries bylaw, as described in paragraph 5.42.4 he or she will not be required to follow the process described in paragraph 5.37 in respect of the amended proposed fisheries bylaw.
- 5.46 A fisheries bylaw published in the *Gazette* under paragraph 5.40 will take effect from the date specified in the *Gazette*.

### REVOKING A FISHERIES BYLAW

- 5.47 At the governance entity's direction on behalf of the hapū kōmiti, by written notice, the Minister of Fisheries will be required to revoke a fisheries bylaw by publishing a notice of revocation in the *Gazette*.

### PĀTAKA

- 5.48 The establishment and management of pātaka which will enable the governance entity or a hapū kōmiti to place customary fishing authorisations on commercial fishing vessels, and to use its processing facilities to process, store and distribute fisheries resources for customary non-commercial purposes.
- 5.49 These provisions in the regulations will be consistent with section 192(7) of the Fisheries Act 1996.

**SETTLEMENT LEGISLATION**

5.50 In addition to providing for the making of the fisheries regulations, the settlement legislation will provide for the matters set out below:

5.50.1 that a person, when performing a function or exercising a power under the Fisheries Act 1996, must recognise and provide for a fisheries management plans made under the fisheries regulations if the function to be performed or power to be exercised affects the hapū fishing area;

5.50.2 that the fisheries regulations will:

- (a) prevail over non-customary fishing regulations but only to the extent of any inconsistency, and
- (b) prevail over the Fisheries (Kaimoana Customary Fishing) Regulations 1998 (the 1998 regulations) but only to the extent that the 1998 regulations relate to fisheries resources within the hapū fisheries area and existing rights in the hapū fisheries area have not been recognised and provided for under the 1998 regulations, and

5.50.3 that applications or gazetted processes in the hapū fishing area for the following matters are saved under the 1998 regulations but the persons who have those provided for under the 1998 regulations may agree with the Minister of Fisheries to transition those existing rights into the regime to be established under the fisheries regulations:

- (i) definition of a customary food gathering area/rohe moana;
- (ii) confirmation of the tangata whenua of an area/rohe moana;
- (iii) declaration of a mātaihai reserve;
- (iv) appointment of a Tangata Kaitiaki/Tiaki;
- (v) authorisation to take fisheries resources;
- (vi) preparation of a management plan or strategy for an area/rohe moana; and
- (vii) bylaws restricting or prohibiting the taking of fisheries resources from within a mātaihai reserve.

## **ATTACHMENTS**

- 1. AREA OF INTEREST**
- 2. POTENTIAL CULTURAL REDRESS PROPERTY MAPS**
- 3. COASTAL STATUTORY ACKNOWLEDGEMENT AREA**
- 4. PROPOSED RAUKŪMARA CHAPTER AREA**
- 5. NGĀ ROHE MOANA O NGĀ HAPŪ**
- 6. CROWN AND TE WHĀNAU A APANUI PROCESS FOR RESOLVING OVERLAPPING CLAIMS**

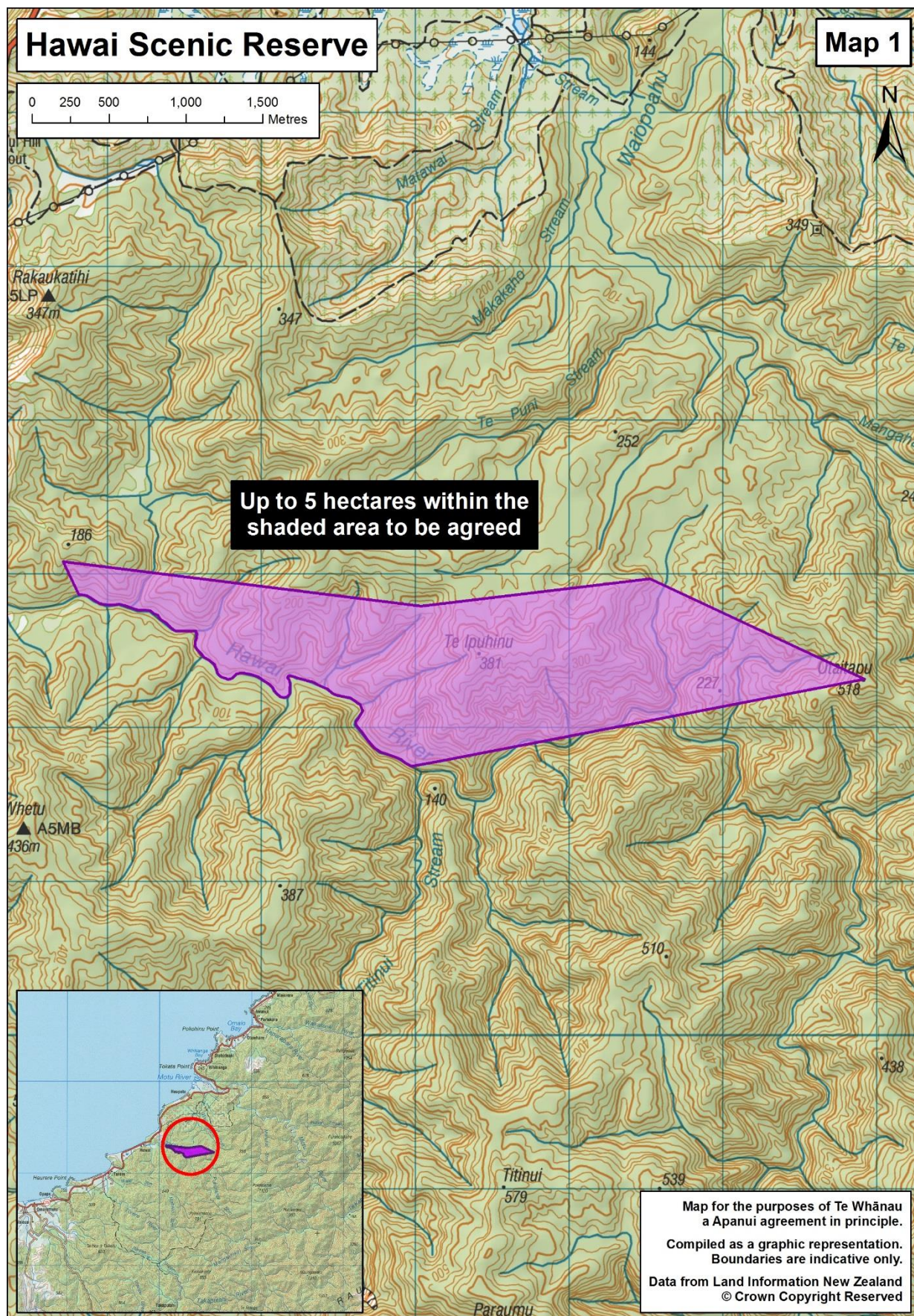
## **1 AREA OF INTEREST**

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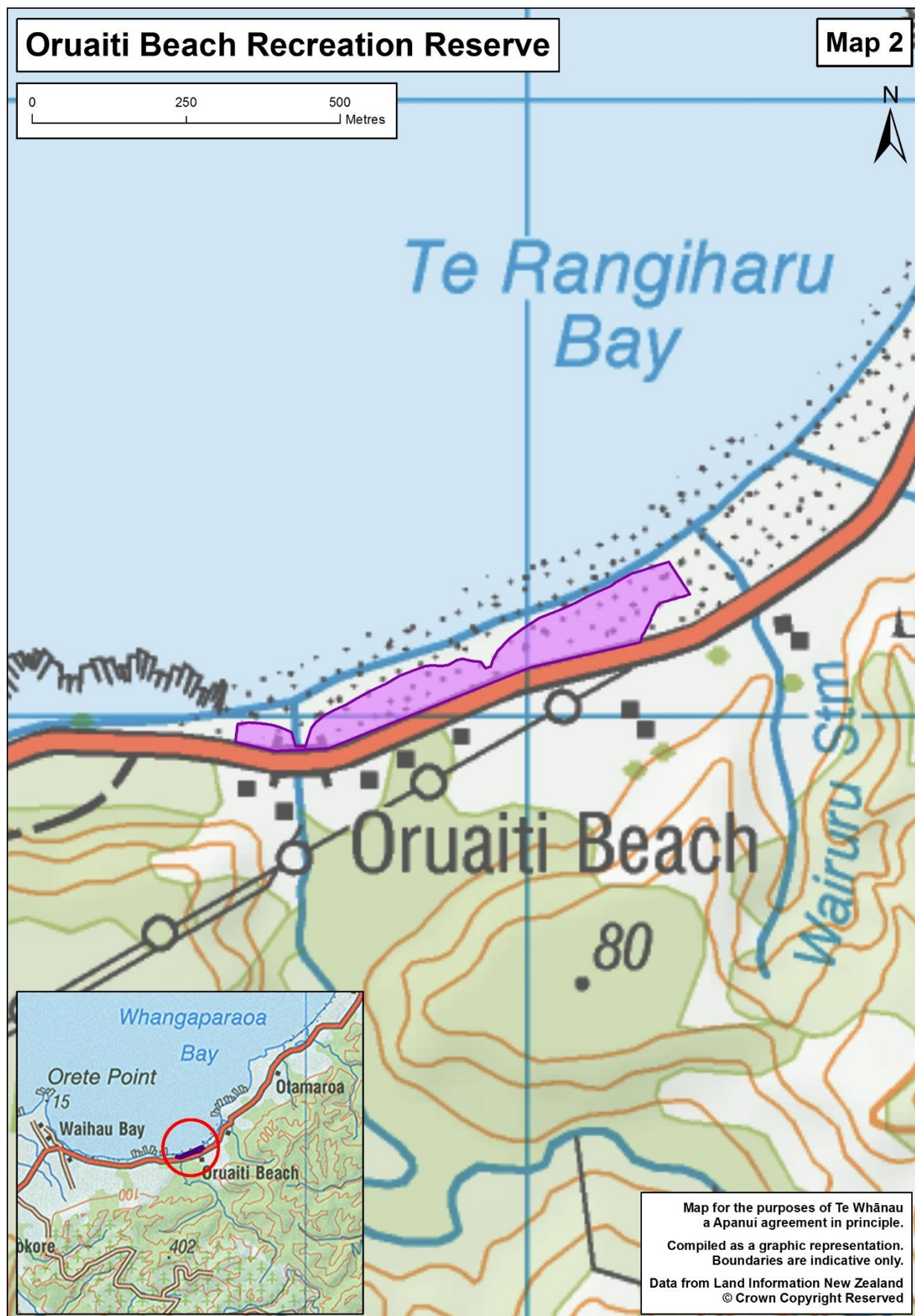
## **2      POTENTIAL CULTURAL REDRESS PROPERTY MAPS**



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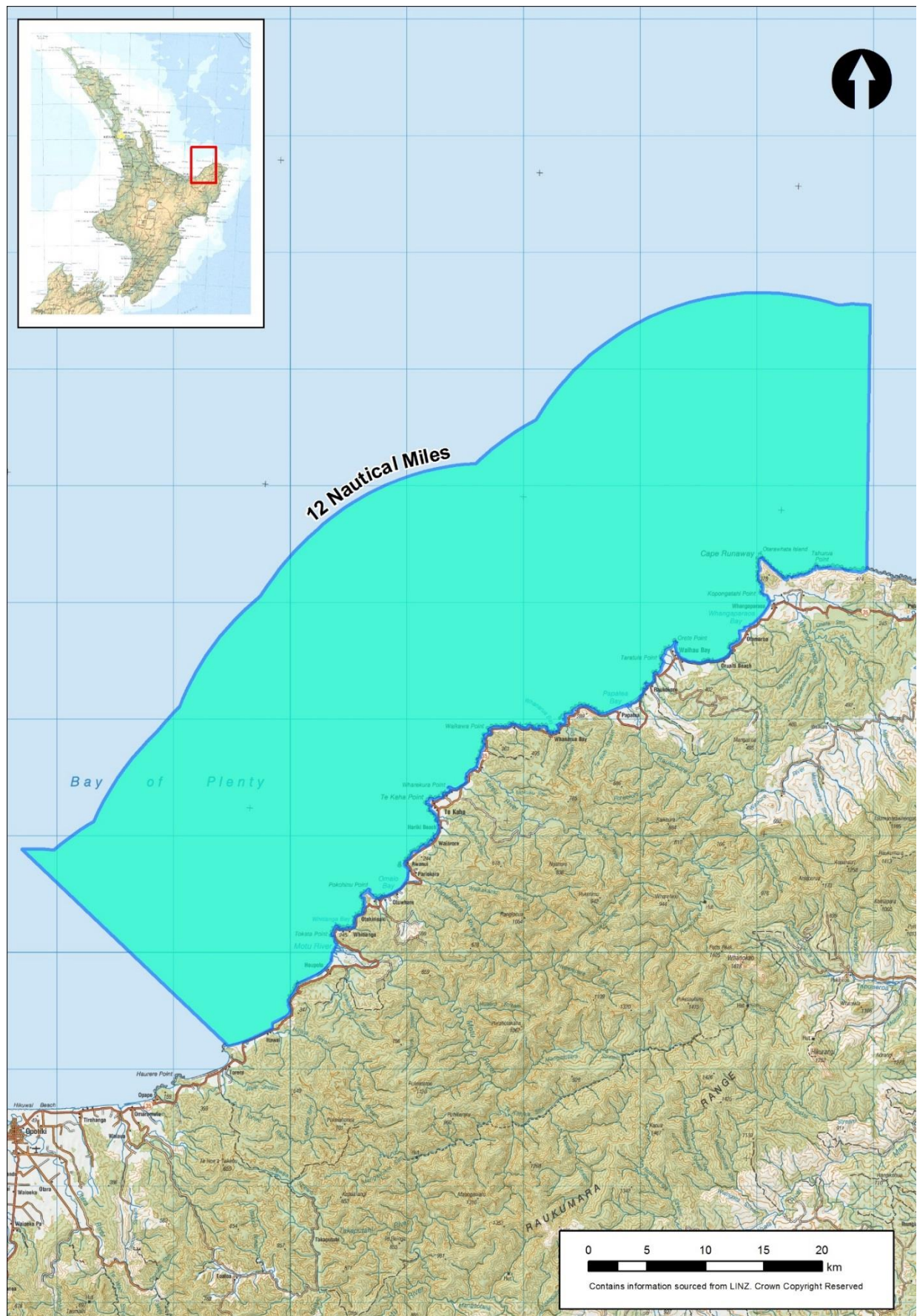




### **3 COASTAL STATUTORY ACKNOWLEDGEMENT AREA**



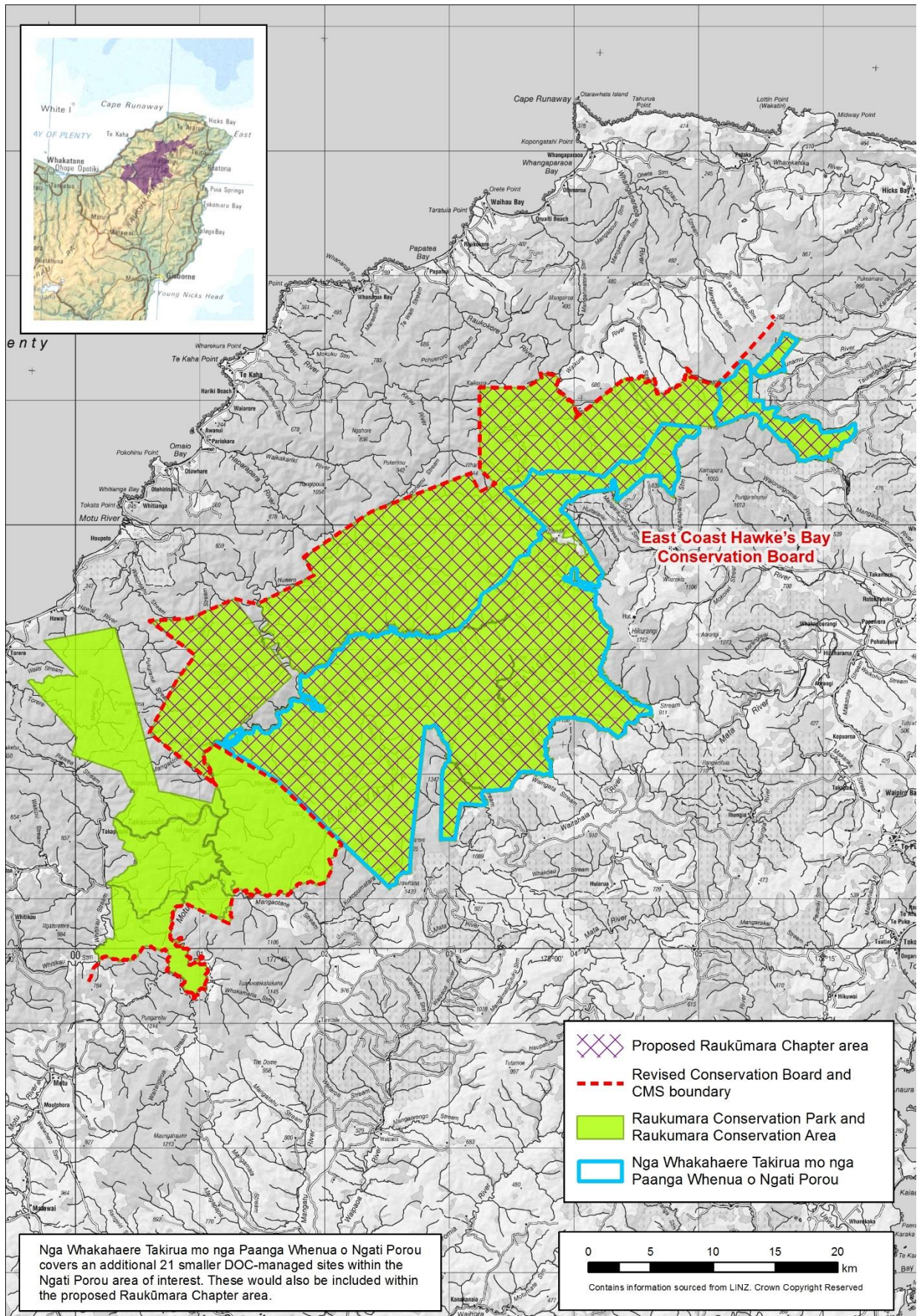
## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE



## **4 PROPOSED RAUKŪMARA CHAPTER AREA**



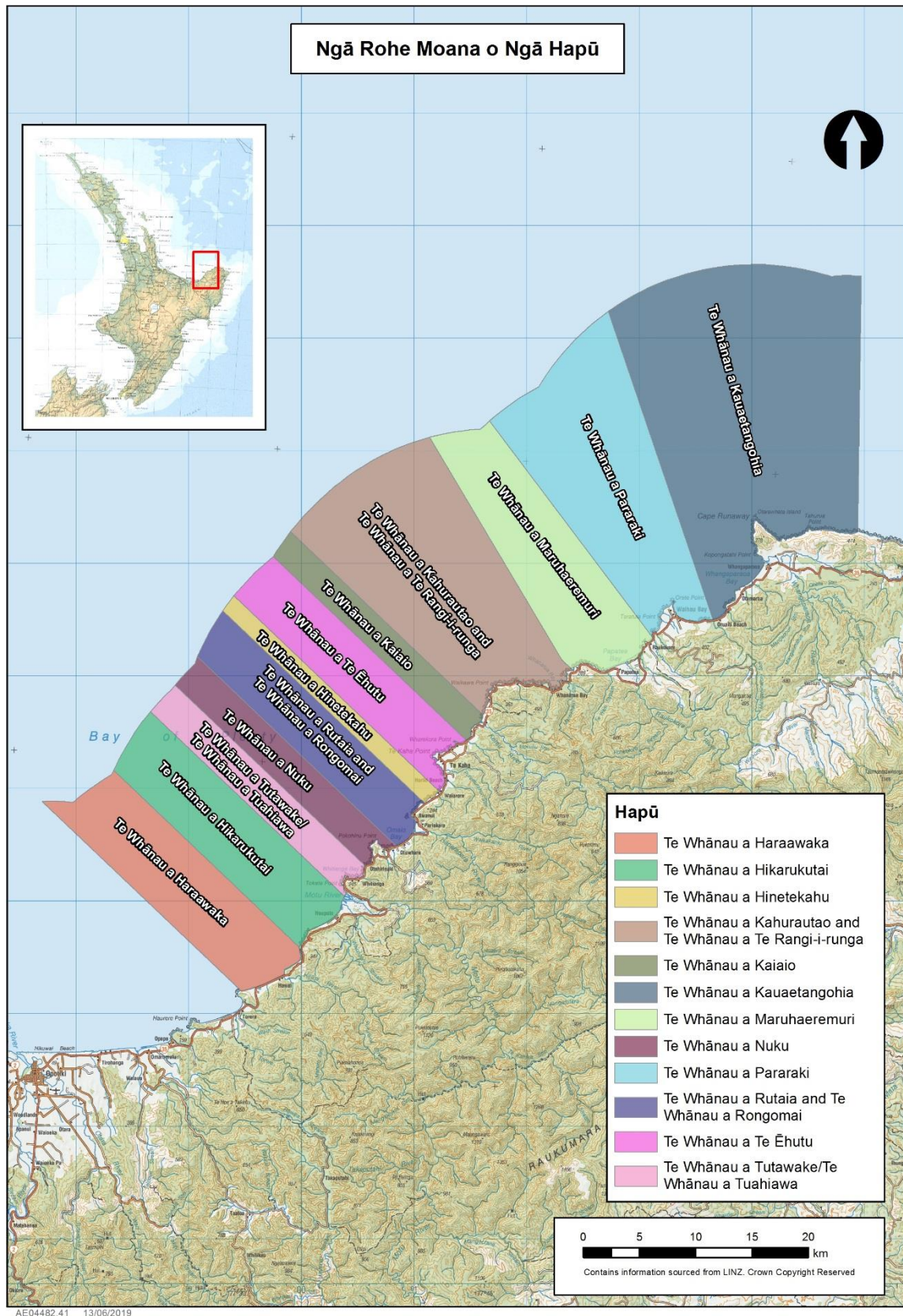
## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE



## **5      NGĀ ROHE MOANA O NGĀ HAPŪ**



## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE





## 6 CROWN AND TE WHĀNAU A APANUI PROCESS FOR RESOLVING OVERLAPPING CLAIMS

The following groups have been identified as having interests in the Te Whānau a Apanui's area of interest:

- Ngati Porou
- Ngāitai ki Torere
- Te Aitanga ā Māhaki
- Te Whānau a Kai
- Ngā Ariki Kaiputahi
- Whakatōhea
- Ngāti Awa
- Ngāi Tūhoe

**Table 8** - Process for resolving overlapping claims within the area of interest of Te Whānau a Apanui

Process Timeframe	Activities
<b>Sign terms of negotiation</b>	<p>Crown wrote to neighbouring groups (March – July 2018). The letters outlined:</p> <ul style="list-style-type: none"> <li>• negotiations status;</li> <li>• process towards agreement in principle;</li> <li>• Crown contact details;</li> <li>• request for information on groups with shared interests;</li> <li>• invitation to discuss shared interests; and</li> <li>• Te Whānau a Apanui area of interest.</li> </ul>
<b>During negotiations towards agreement in principle</b> <ul style="list-style-type: none"> <li>• <i>Prior to Crown offer – interest discussions</i></li> </ul>	<ul style="list-style-type: none"> <li>• Crown and Te Whānau a Apanui discussed engagement with, and interests of, neighbouring groups.</li> <li>• Crown and Te Whānau a Apanui met with and wrote to Ngati Porou regarding negotiations over Raukumara Conservation Park (engagement between October 2018 and May 2019).</li> <li>• Crown wrote to groups with shared interests in June 2019. The letters outlined: <ul style="list-style-type: none"> <li>○ timeframes to agreement in principle; and</li> <li>○ overlapping interests process.</li> </ul> </li> <li>• Crown met with Ngāitai ki Torere in June 2019 to discuss potential redress in which Ngāitai ki Torere may have an interest.</li> </ul>
<ul style="list-style-type: none"> <li>• <i>After Crown offer – proposed redress discussions</i></li> </ul>	<ul style="list-style-type: none"> <li>• Initial Crown offer made to Te Whānau a Apanui subject to resolution of overlapping interests.</li> <li>• In June 2019, the Crown wrote to groups with shared interests setting out: <ul style="list-style-type: none"> <li>○ redress offered in which affected groups may have an interest;</li> <li>○ timeframes to signing agreement in principle; and</li> </ul> </li> </ul>

## TE WHĀNAU A APANUI AGREEMENT IN PRINCIPLE

Process Timeframe	Activities
	<ul style="list-style-type: none"> <li>○ an invitation to provide any initial comments prior to agreement in principle signing.</li> <li>• Report to the Minister for Treaty of Waitangi Negotiations on engagement with groups with shared interests (June 2019).</li> </ul>
<b>Sign agreement in principle</b>	<ul style="list-style-type: none"> <li>• Agreement in principle signed on 28 June 2019.</li> <li>• Agreement in principle made available online on 28 June 2019.</li> </ul>
<b>Following signing of agreement in principle</b>	<ul style="list-style-type: none"> <li>• Crown to write to groups with overlapping interests. Content to include:               <ul style="list-style-type: none"> <li>○ advise that the agreement in principle has been signed;</li> <li>○ redress in the agreement in principle in which affected groups may have an interest;</li> <li>○ Crown policy on overlapping interest resolution;</li> <li>○ key timeframes;</li> <li>○ proposed engagement towards deed of settlement (including offer to meet and/or facilitate meetings between Te Whānau a Apanui and neighbouring groups); and</li> <li>○ Crown contact details and where to send submissions.</li> </ul> </li> <li>• Resolve issues (if any).</li> <li>• Indication of support from affected groups.</li> <li>• Report to the Minister for Treaty of Waitangi Negotiations on engagement with neighbouring groups (forward a copy to the Minister for Māori Development).</li> </ul>