

Hon Andrew Little

Minister for Treaty of Waitangi Negotiations

Proactive release- Takutai Moana Crown Engagement Strategy

Date of issue: 09 July 2021

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Takutai Moana Crown Engagement Strategy Cabinet Paper Cabinet paper Office for Māori Crown Relations: Te Arawhiti 9 March 2021	Information in this document has been withheld in accordance with: <ul style="list-style-type: none">• Section 9(2)(f)(iv) of the OIA- to protect the confidentiality of advice tendered by Ministers of the Crown and officials.• Section 9(2)(g)(i) of the OIA- to maintain the free and frank expression of opinions between Ministers of the Crown and employees of any public service agency or organisation.
2	Cabinet Māori Crown Relations: Te Arawhiti Committee Minute of Decision Cabinet Committee Minute MCR-21-MIN-0005 Cabinet Office 16 March 2021	Information in this document has been withheld in accordance with: <ul style="list-style-type: none">• Section 9(2)(f)(iv) of the OIA- to protect the confidentiality of advice tendered by Ministers of the Crown and officials.• Section 9(2)(g)(i) of the OIA- to maintain the free and frank expression of opinions between Ministers of the Crown and employees of any public service agency or organisation.
3	Cabinet Minute of Decision Cabinet Minute CAB-21-MIN-0076 Cabinet Office 22 March 2021	This paper is to be released in its entirety.

In Confidence

Office of the Minister for Treaty of Waitangi Negotiations

Takutai Moana Crown Engagement Strategy

Proposal

1. As the Minister responsible for the Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, I seek agreement to:
 - 1.1. the Takutai Moana Crown Engagement Strategy; and
 - 1.2. the Expense Transfer and Fiscally Neutral Adjustment of an estimated underspend of \$2.262 million from 2020/21 applicant Financial Assistance Toward Determining Customary Interests in the Marine and Coastal Area to support further development of the implementation approach for the strategy with applicant groups in 2021/22.

Relation to government priorities

2. This submission will support the Government's manifesto commitment of continuing the partnership path with Māori and realising the promise of Te Tiriti.

Executive Summary

3. This paper seeks agreement to the Takutai Moana Crown Engagement Strategy (the strategy). The strategy seeks to achieve the fair, transparent and timely determination of applications for recognition of customary marine title and protected customary rights under the Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (the Takutai Moana legislation).
4. The strategy replaces the current approach to progressing applications. The current approach is; slow, creates uncertainty, breaches the principles of Te Tiriti o Waitangi (Te Tiriti), is expensive, detrimental to good Māori Crown relations and unpopular with applicant groups.
5. The strategy is centred on a 'coastline approach' so that engagement with iwi, hapū and whanau applicant groups occurs across 20 coastal areas. Te Arawhiti will work with applicants in each coastal area to better understand the connections between applicant groups, explore ways to address overlapping or shared interests, set mutually acceptable timeframes, and put in place appropriate support towards a determination. This will reduce the timeframes needed to reach determinations of all applications from approximately 95 years to between 10 and 20 years.
6. To enable engagement in the 2021/22 financial year with all applicant groups to develop a collaborative approach to implementation in each coast area, I am seeking agreement to an Expense Transfer and Fiscally Neutral Adjustment of \$2.262 million from the 2020/21 non-departmental other expenses appropriation *Financial Assistance Toward Determining Customary Interests in the Marine and Coastal Area* to the 2021/22 departmental output expenses appropriation *Treaty Negotiations and Marine and Coastal*

Area Customary Interests. Engaging with applicants now will avoid additional criticism and further breaches of the principles of Te Tiriti.

Background

The takutai moana legislation

7. Te Takutai Moana Act 2011 repealed and replaced the Foreshore and Seabed Act 2004 (the 2004 Act) which vested the public foreshore and seabed in the Crown. Under the Takutai Moana Act, the common marine and coastal area (the CMCA) became a new category of land which has “special status”, owned neither by the Crown nor any other person.
8. The Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (the Ngāti Porou Act) gave effect to agreement reached by the Crown and ngā hapū o Ngāti Porou under the 2004 Act. Applications made by ngā hapū o Ngāti Porou under the Takutai Moana Act transfer to the Ngāti Porou Act.
9. The takutai moana legislation enables applicant groups – iwi, hapū and whānau – to apply to have their customary interests in the CMCA legally recognised. Applicants may seek recognition of their customary interests in the CMCA by way of:
 - 9.1. protected customary rights, which allow an activity, use or practice that has been carried out since 1840 in accordance with tikanga Māori to be carried out by the applicant group without the need for a resource consent; and
 - 9.2. customary marine title, which provides the applicant group with particular rights (specified in the takutai moana legislation) in relation to a specified area of the CMCA.

Legislation sets out two pathways to seek recognition

10. The takutai moana legislation sets out two pathways for recognition of customary interests:
 - 10.1. by engagement directly with the Crown (to seek a determination by the responsible Minister); or
 - 10.2. by application to the High Court.
11. The Takutai Moana Act gave prospective applicants until 3 April 2017 to file an application in one or both pathways. The Crown received 387 applications for engagement. The High Court received 203 applications. Of the total number of applications, 207 were made only to the Crown and 30 made only to the High Court. The applications collectively cover all the CMCA of New Zealand and its offshore islands. There is considerable overlap of applications in some areas and varying levels of complexity between applications.

Progress in the High Court pathway

12. The High Court has determined one application to date, *Re Tipene*, a case involving a single applicant group with no overlapping applications (customary marine title was recognised near two small islands in Foveaux Strait). In 2020, the High Court held the first substantive hearings involving application areas with shared or overlapping interests.

Judgments from the *Whakatōhea* hearing in Rotorua and the Eriha whānau (*Clarkson*) hearing in Wellington are expected to be delivered by the Court in 2021.

13. The High Court has scheduled two substantive hearings for 2021. *Ngāti Pāhauwera* commenced in Napier in February. *Ngā Pōtiki (Reeder)* will be heard in Tauranga in two stages commencing in April (stage one) and in September (stage two).
14. Te Arawhiti has a role in supporting the Attorney-General in the High Court. Primarily this role involves the provision of substantial historical research and advice on its assessment of the application and evidence provided by all interested parties.
15. High Court hearings can involve many applicants if those applications overlap with the primary application before the Court. For example, the *Whakatōhea* hearing involved 42 applicants with overlapping interests. As noted below, the High Court is expensive, for both applicants and the Crown.

Progress in the Crown engagement pathway

16. Under the Crown engagement pathway, I am responsible for determining whether statutory tests for the existence of customary interests in the CMCA have been met. That decision is then given effect through legislation or through an Order in Council.
17. Te Arawhiti, as the responsible agency, has been progressing applications in the Crown engagement pathway by giving priority to existing commitments, being primarily those applicants who began discussions with the Crown under the 2004 Act or before the April 2017 application deadline. There are eight such applications.
18. To date, the Crown has recognised 14 customary marine title areas in ngā rohe moana o ngā hapū o Ngāti Porou, which were given effect by Order in Council made in September 2020. Ngā hapū o Ngāti Porou are an existing commitment applicant.

The need for a Crown engagement strategy

19. The current approach to Crown engagement is not fit for purpose. It is slow, creates uncertainty, breaches the principles of Te Tiriti o Waitangi, does not provide a realistic alternative to expensive High Court cases, and is detrimental to good Māori Crown relations.

The current approach is slow

20. The current approach to progressing applications in the Crown engagement pathway is slow. Since 2011, the Crown has fully recognised customary marine title in the rohe moana of one group of applicants. Te Arawhiti has estimated that, on the current approach, it will take approximately 95 years to reach determinations with all applicants in the Crown engagement pathway.

The current approach creates uncertainty for applicant groups

21. There is currently no easy way for applicant groups to know when the Crown will engage with them. There is no guarantee that the Crown will engage with them at all, as there is only an obligation to consider doing so. The Waitangi Tribunal (Tribunal) has noted that those with applications in both Crown engagement and High Court pathways have “effectively lost control of their options”. For applicants waiting to engage with the Crown, or who have only applied through the Crown engagement pathway, this

uncertainty makes it hard to plan. This, in turn, will likely further delay determinations, possibly beyond the 95 years noted above.

The current approach is detrimental to good Māori Crown relations and breaches the principles of Te Tiriti

22. The current approach is detrimental to Māori Crown relations. It is leading to inequalities between those applicant groups being progressed and those who must wait. Applicants have expressed frustration regarding the lack of progress.
23. In its *Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry, Stage 1 Report* (Stage 1 Report), the Tribunal found that the Crown's administration of the Act breaches the principles of Te Tiriti o Waitangi in a number of ways. The Crown's failure to provide adequate and timely information about the Crown engagement pathway and a lack of support for applicants to address overlapping interests constitute breaches of the principle of active protection.

24. The Tribunal is currently hearing evidence relevant to the second part of its inquiry, whether the Takutai Moana Act 2011 itself breaches the principles of Te Tiriti. [REDACTED]

s9(2)(f)(iv)
s9(2)(g)(i)

The current approach does not provide a realistic alternative to expensive High Court hearings

25. The *Whakatōhea* hearing, which was held over nine weeks in 2020 and involved 42 overlapping applications, has cost the Crown over \$6.5m to date. It is anticipated that the Court will make a single determination covering the *Whakatōhea* application area, a 100km stretch of coastline (including the Ōhiwa harbour) and takutai moana around Whaakari/White Island. This means many of the overlapping applicants will continue to appear in other hearings and will require a substantive determination of the balance of their application areas not heard in the *Whakatōhea* hearing, either by the Crown or the High Court.
26. Conservatively, we estimate the future annual costs of High Court hearings to total over \$13m per year. This includes applicant, Crown Law, Ministry of Justice, and High Court costs.
27. However, ongoing delay and uncertainty in the Crown engagement pathway are likely to lead applicants with a preference for Crown engagement to instead pursue their applications in the High Court, if they can. This is likely to prove more costly to the Crown and applicants. It is important to incentivise applicants to work together to manage their applications over an agreed stretch of coastline regardless of their choice of pathway. For this to occur there needs to be a feasible Crown engagement pathway, based on a clear strategy.

Applicant views on what a strategy should achieve

Te Arawhiti developed a draft strategy for consultation with applicant groups in 2020

28. I have previously informed Cabinet of the issues associated with the current approach to administering the takutai moana legislation, and that work was underway on a draft Crown engagement strategy (draft strategy) to address these matters [MCR-19-MIN-0032].
29. The draft strategy proposed to address the issues arising from the current approach by adopting a coastline engagement approach and regional coastline areas which would be progressed sequentially, with some coastlines prioritised before others. It set timeframes and proposed four tiers of engagement.
30. Areas were not initially sequenced in the draft strategy if they overlapped with areas in which the High Court had scheduled hearings or if they were areas with high third-party use and occupation.
31. I sought input from iwi, hapū, and whānau applicant groups. In 2020 all applicants were invited to comment on the draft strategy. This has enabled me to refine it and develop the final strategy outlined in this paper.
32. Te Arawhiti has spoken with more than 170 groups directly and contacted all applicants by email. In total I received 37 formal submissions on the draft engagement strategy. I have also considered feedback relevant to the strategy as expressed by applicants during Tribunal hearings, in High Court hearings, and the annual round of Case Management Conferences held by the High Court.

A strategy should allow for timely engagement

33. I heard from applicants that any strategy must allow for timely engagement with the Crown. Where possible applications should be progressed simultaneously and it is not acceptable for the Crown to engage with some applicants, and not others.

A strategy should cover all applicant groups

34. I also heard that it is important that any strategy should ensure all applicants are included. It is not acceptable for a strategy to be silent on when, or if, the Crown will engage with some applicants as this creates uncertainty for those applicants.

A strategy should promote cohesion between the Crown engagement and High Court pathways

35. Applicants were clear that any strategy should promote cohesion between the Crown engagement and High Court pathways. The Tribunal, too, has commented on the lack of cohesion between the two pathways, causing prejudice to applicants. Applicants suggested Te Arawhiti needs to support all applicants, regardless of the pathway they have chosen.

A strategy should ensure applicants are supported to resolve overlapping customary interests

36. Finally, I heard that the strategy should take seriously the Crown's obligations to support all applicants to address overlapping interests in their rohe moana. This mirrors what the Tribunal has said in its Stage 1 report; the Crown encouraging applicants to resolve overlapping interests is rendered "effectively meaningless" without additional support.

I have developed a strategy for the Crown's engagement with applicants

37. I have developed a strategy that will allow the Crown to begin working with all applicants, when those applicants are ready. It refines the draft strategy and responds to the above concerns raised by applicants during consultation. The full strategy can be found at Appendix One.
38. At the heart of this strategy is a 'coastline approach' so that engagement with iwi, hapū and whanau applicant groups occurs across 20 coastal areas. These are indicated on the maps included in Appendix One.
39. Te Arawhiti will work with all applicants in a coastal area to determine the approach to progressing applications most appropriate for all parties. This will include work to identify whether the coastal area is correct and contains all relevant parties, determine the connections between applicant groups in each coastal area, set mutually acceptable timeframes, and put in place appropriate support to reach a determination.
40. While Te Arawhiti cannot be directly involved in High Court proceedings, it can work with applicants to support them, for example in resolving overlapping interests, before a case is heard. This will also help create better cohesion between the pathways. Under the strategy, Te Arawhiti will work with all applicants in a coastal area irrespective of their chosen pathway. This will promote cohesion between the two pathways.
41. Further work is required with applicants to work through how the strategy will be implemented in each coastal area across each of the following phases:
- 41.1. an *establishment phase*, which will include: discussion and agreement to the boundaries of the coastal area and to make sure all applicants are included that need to be, identifying the needs of applicants (for example, funding and research requirements, support to discuss shared or overlapping interests, preference to be heard in the High Court or in Crown engagement), and agreeing next steps, including timeframes and processes. [REDACTED] s9(2)(f)(iv)
[REDACTED] s9(2)(g)(i)
- 41.2. a *research and evidence gathering phase*, which will focus on the core work of research and evidence gathering about customary interests and may include ongoing discussions about shared or overlapping customary interests through appropriate tikanga processes. During this phase, non-applicants will also have the opportunity to provide information about their use of, and connection to, the takutai moana. [REDACTED] s9(2)(f)(iv)
[REDACTED] s9(2)(g)(i)
- 41.3. a *determination and recognition phase*, during which the collected evidence from applicants, the Crown, and non-applicants will be considered by the Minister for Treaty of Waitangi Negotiations or by the High Court. Applications may be decided in full or in part. Where customary interests are recognised, this phase also include the processes needed to give full legal effect to that recognition. [REDACTED] s9(2)(f)(iv)
[REDACTED] s9(2)(g)(i)
42. Through all phases, Te Arawhiti will need to support and link applicant groups with other agencies who have responsibilities under the takutai moana legislation, who have work programmes that impact the takutai moana, or who also provide evidence and information to support determinations (for example, fishing data provided by the Ministry of Primary Industries).

43. I have assessed the proposed strategy against both the current approach and the draft strategy. While both the draft strategy and the strategy developed in this paper improve on the current approach, I consider the strategy proposed in this paper to be preferable. It responds to applicant feedback and does so in a way that reduces the total time it will take to reach determinations with all applicant groups.
44. The strategy means that applicant groups will not need to wait 95 years to have their application determined, as Te Arawhiti estimate they would under the current approach. They would not need to wait up to 40 years, as they would under the draft strategy. Instead, I estimate that most applications will have determinations within 10 – 20 years.
45. The strategy will:
- 45.1. help make the Crown engagement pathway a realistic alternative to progressing applications through the High Court;
 - 45.2. support applicant aspirations and enable them to progress their applications in their preferred pathway;
 - 45.3. allow for a bespoke approach to be adopted in each coastline area, allowing applicants and the Crown to jointly identify the most efficient and productive use of resources; and
 - 45.4. reduce delays and increase certainty for applicants and the Crown while increasing the amount of information available to all parties.
46. The strategy will help the Crown to meet its obligations under Te Tiriti, as Te Arawhiti will be able to provide timely and relevant information to all applicants. It will also help Te Arawhiti and applicants to work together to resolve overlapping interests, providing additional certainty about the nature and location of the customary interests sought to be recognised prior to a determination.

Resourcing and timing

Initial engagement with applicants must focus on building and strengthening relationships, and developing plans for each coastal area

47. To make real progress under the strategy, Te Arawhiti's initial engagement with all applicants over the 2021/22 financial year must focus on building and strengthening relationships and developing how the strategy will be implemented in each coastal area. This collaborative approach will strengthen subsequent implementation of the strategy.

Baseline funding is insufficient to deliver the full strategy

48. Te Arawhiti's ability to undertake engagement (including relationship building and implementation planning) across all coastal areas in the 2021/22 financial year will require additional resourcing.
49. Baseline funding of \$3.64 million has been allocated for Takutai Moana work. This is not enough to undertake the engagement across all coastal areas outlined in this paper. This is because this funding is fully allocated in 2021/22 to:
- 49.1. support engagement with the Crown's eight pre-existing commitments, independently of other applicants in each coastal area;

- 49.2. continue the Crown's existing, significant historical and contemporary research programme;
 - 49.3. meet the costs associated with the Attorney-General appearing as an interested party in High Court proceedings (such as the preparation and presentation of Crown evidence);
 - 49.4. meet the costs of the Crown appearing in Stage 2 of the Tribunal's kaupapa inquiry into te Takutai Moana Act; and
 - 49.5. administer the financial assistance scheme which supports applicants to meet the costs of progressing applications.
50. With some reprioritisation within current resources, Te Arawhiti could begin socialising the strategy and undertake some preparatory work with individual applicants in the 2021/22 financial year. There is, however, not enough resource to commence the level of engagement required to successfully plan for implementation of the strategy within each coast area.

Delaying engagement until 2022/23 creates significant risk

- 51. Delaying engagement and implementation planning with the applicants until 2022/23 creates significant risks. The Tribunal has found that the Crown is in breach of the principle of active protection under Te Tiriti due to its failure to progress of applications. Further delays will be considered a continued breach.
- 52. Delay may also impact on other government priorities for work underway in the takutai moana and related areas. [REDACTED] s9(2)(f)(iv)
[REDACTED] s9(2)(g)(i)
- 53. At the same time, the High Court will continue to schedule hearings for applicants who are ready to proceed in that pathway but drawing in overlapping applicants who are waiting for direct engagement with the Crown. This will increase overall costs to the Crown. The High Court would likely continue to express its displeasure at the lack of action in the Crown engagement pathway.

A transfer of funds between appropriations would allow engagement with applicants to begin in 2021/22

- 54. In order to begin engagement with applicants in 2021/22, I propose to transfer \$2.262 million from the 2020/21 non-departmental other expenses appropriation *Financial Assistance Toward Determining Customary Interests in the Marine and Coastal Area* to the 2021/22 departmental output expenses appropriation *Treaty Negotiations and Marine and Coastal Area Customary Interests*.
- 55. This would be an Expense Transfer and Fiscally Neutral Adjustment to enable some of the forecast underspend in 2020/21 to be transferred to resource the first year of engagement.
- 56. In addition to the matters addressed in paragraph 49 above, which are covered by existing baseline funding, the proposed transfer will enable Te Arawhiti to work with applicants to build relationship and develop plans for implementing the strategy in their coastal area. In the 2021/22 financial year, Te Arawhiti would also be able to:

- 56.1. begin engagement with applicants in all coastal areas;
 - 56.2. determine alignment with ongoing Treaty Settlement negotiations;
 - 56.3. make significant progress with and refine the approach proposed in the strategy for all applicants in the East Cape coastal area, where some determinations have already been made on applications from Ngā Hapū o Ngāti Porou; and
 - 56.4. make significant progress in developing implementation of the strategy in a further four coastal areas where applicants appear most ready to move into the research and evidence gathering phase of engagement once the strategy is implemented.
57. The proposed transfer of funding would specifically fund the employment of analysts and historians (new FTE) to undertake engagement work and historical research within each of the 20 coastal areas, and to provide policy advice to Ministers on the determination of customary interests. It would also fund management, in-house solicitors and administrative support, including support to administer the applicant financial assistance scheme.
 58. The proposed transfer of funding would also enable Te Arawhiti to engage external advisers to provide specialist skills such as tikanga, pūkenga and other mediation or facilitation expertise, historians, communications, and project management.
 59. Funding the engagement needed in 2021/22 to prepare for implementation of the strategy will strengthen the Māori Crown relationship by publicly demonstrating the Crown's commitment to engaging with all applicants under the takutai moana legislation. It would also provide a proportionate response to feedback I have heard from applicants, including in the High Court and the Tribunal.
 60. As an alternative option, I have considered delaying release of the strategy until 2022/23. But I consider this would leave the Crown in breach of the principles of Te Tiriti, constitute a continued unreasonable delay to the timely progression of applications, unnecessarily increase the number of expensive High Court cases, and be detrimental to good Māori Crown relations.
 61. For these reasons, I recommend that Cabinet approve the Expense Transfer and Fiscally Neutral Adjustment of \$2.262 million as outlined above.
 62. Appendix Two sets out the forecasting on which Te Arawhiti has estimated that there will be a \$2.262 million underspend of the 2020/21 non-departmental other expenses appropriation *Financial Assistance Toward Determining Customary Interests in the Marine and Coastal Area*. It also outlines the costs of engagement in 2021/22 and anticipated costs of implementing the strategy from 2022/23 onwards.

Risks

63. In certain coastal areas there are ongoing Treaty settlement negotiations to progress or post-settlement relationships to maintain. Engaging with applicants in such areas under the takutai moana legislation may be in tension with Treaty settlement negotiations or relationships, potentially undermining existing Māori Crown relations. However, this is a risk for any strategy that proposes engagement with applicants in such areas.

64. The alternative is to avoid engagement in such areas. This, in turn, risks exacerbating tensions with, and between, other groups in such areas. On balance, I think the approach outlined in this paper offers the best opportunity to mitigate such risks insofar as it is flexible and permits sensitivity to the specific circumstances in a coastal area.
65. Full implementation of the strategy requires Te Arawhiti to begin engagement with applicants as soon as it is practicable to do so. This will likely result in higher upfront costs than the current approach, with a greater impact on the applicant financial assistance scheme. However, the strategy outlined in this paper will ultimately reduce transaction costs to applicants and the Crown, leading to long-term efficiencies. The strategy will increase the information available to the parties, reducing long-term uncertainty and unpredictability.

Next steps

66. If the strategy is approved, Te Arawhiti will contact all applicants directly and will also publish the strategy on its website. If the funding transfer is approved for the 2021/22 financial year, Te Arawhiti will begin the engagement outlined in this paper once the strategy is published.

Consultation

67. The Department of Conservation, the Ministry for Primary Industries, the Ministry for the Environment, the Treasury, the Crown Law Office, and Te Puni Kōkiri have been consulted. The Department of the Prime Minister and Cabinet has been informed.
68. Treasury is concerned that the paper is seeking agreement to the strategy while the future funding of the implementation of the strategy is uncertain. To the extent that funding is not included in the Budget 2022 package, implementation costs will need to be met through a combination of scaling of costs and reprioritisation within Te Arawhiti's existing departmental baselines.

Financial implications

69. This submission seeks a transfer of \$2.262 million from the 2020/21 non-departmental other expenses appropriation *Financial Assistance Toward Determining Customary Interests in the Marine and Coastal Area* to the 2021/22 departmental output expenses appropriation *Treaty Negotiations and Marine and Coastal Area Customary Interests*. This would be a fiscally neutral transfer over the forecast period.

Legislative implications

70. This paper has no legislative implications.

Impact analysis

71. An impact analysis is not required as this paper does not contain regulatory proposals.

Human rights

72. The proposals outlined in this paper do not raise any issues of inconsistency with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Gender implications

73. There are no gender implications that arise directly from this paper.

Disability perspective

74. A disability perspective is not required.

Publicity

75. Te Arawhiti will have an appropriate communications plan in place ahead of the strategy being publicly announced.

Proactive release

76. I intend to proactively release this paper, making any necessary redactions, within 30 business days of publicly announcing the strategy.

Recommendations

77. The Minister for Treaty of Waitangi Negotiations, as the responsible Minister for the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, recommends that the Committee:

1. **note** that the current approach to progressing applications under the Takutai Moana Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 is slow, creates uncertainty for applicants, is detrimental to good Māori Crown relations, breaches the principles of Te Tiriti o Waitangi, and does not provide a realistic alternative to expensive High Court hearings;

2. **agree** to the strategy for engagement with Takutai Moana applicants including that;

2.1 the New Zealand coastline be initially divided into 20 coastal areas;

2.2 the strategy adopts a coastline approach, whereby Te Arawhiti will work with all applicants within each coastal area to determine the approach and timeframes for progressing applications most appropriate in each coastal area;

2.3 the strategy requires Te Arawhiti to engage with all applicants, including those in high third-party use areas and in areas covered by High Court proceedings; and

2.4 delivery under the strategy will occur in three phases:

- | | | |
|-------|---|-----------------------------|
| 2.4.1 | an establishment phase, [REDACTED] | s9(2)(f)(iv)
s9(2)(g)(i) |
| 2.4.2 | a research and evidence gathering phase, [REDACTED] | s9(2)(f)(iv)
s9(2)(g)(i) |
| 2.4.3 | a determination and recognition phase, [REDACTED] | s9(2)(f)(iv)
s9(2)(g)(i) |

3. **note** that current baseline funding is insufficient to fully implement the strategy in 2021/22 which will likely result in further criticism and breaches of the principles of Te Tiriti o Waitangi;
4. **agree** to the Expense Transfer and Fiscally Neutral Adjustment of \$2.262 million from the 2020/21 non-departmental other expenses appropriation Financial Assistance Toward Determining Customary Interests in the Marine and Coastal Area to the 2021/22 departmental output expenses appropriation Treaty Negotiations and Marine and Coastal Area Customary Interests.
5. **approve** the following changes to appropriations, to give effect to the policy decision in recommendation 4 above, with no impact on the operating balance and/or net core Crown debt over the forecast period:

Vote Treaty Negotiations Minister for Treaty of Waitangi Negotiations	\$m – increase/(decrease)				
	2020/21	2021/22	2022/23	2023/24	2024/25 & Outyears
Non-Departmental Output Expense: Financial Assistance Toward Determining Customary Interests in the Marine and Coastal Area (funded by revenue Crown)	(2.262)	-	-	-	-
Departmental Output Expense: Treaty Negotiations and Marine and Coastal Area Customary Interests (funded by revenue Crown)	-	2.262	-	-	-

6. **agree** that the proposed changes to appropriations for 2020/21 above be included in the 2020/21 Supplementary Estimates; and

Authorised for lodgement

Hon Andrew Little
Minister for Treaty of Waitangi Negotiations

Appendix One: Outline of the Takutai Moana Crown Engagement Strategy

78. The Crown is committed to working with applicants to achieve fair, transparent and timely determination of applications for recognition of customary marine title and protected customary rights under the Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (the Takutai Moana legislation).
79. The strategy, which will be reviewed every three years, sets out a collaborative coastline approach with engagement occurring within identified coastal areas. Within each coastal area, Te Arawhiti and applicants will work together to identify the needs of the applicants and the approach for progressing their applications.
80. Twenty coastal areas have been identified to guide the discussions between Te Arawhiti and applicants (see map 1 and 2 at the end of this appendix). Due to the nature of shared and overlapping interests, some applicants will be in more than one coastal area. Once the work gets underway, the boundaries of the coastal areas may change if agreed that doing so would better reflect the relationships between application areas and applicants.
81. Prior to the development of this strategy, the Crown had made engagement commitments directly to a small number of applicants (existing commitments). These existing commitments will be upheld, and may progress alongside other applications in the same coastal area where appropriate.
82. The strategy includes all applicants in a coastal area regardless of whether they are seeking recognition of customary interests directly from the Crown or from the High Court. This means that High Court applicants can also be supported to work through shared or overlapping interests, meet their research requirements, and navigate the differences between the two pathways.
83. The strategy has three engagement phases: establishment; research and evidence gathering; and determination and recognition. [REDACTED]

[REDACTED] Each phase is described briefly below.

s9(2)(f)(iv)
s9(2)(g)(i)

Establishment [REDACTED]

84. This phase includes discussion and agreement to the boundaries of the coastal area and to make sure all applicants are included that need to be, identifying the needs of applicants (for example, funding and research requirements, support to discuss shared or overlapping interests, preference to be heard in the High Court or in Crown engagement), and agreeing next steps, including timeframes and processes.

Research and evidence gathering [REDACTED]

s9(2)(f)(iv)
s9(2)(g)(i)

85. This phase focuses on the core work of research and evidence gathering about customary interests and may include ongoing discussions about shared or overlapping customary interests through appropriate tikanga processes. During this phase, non-applicants will also have the opportunity to provide information about their use of, and connection to, the Takutai Moana.

Determination and recognition [REDACTED]

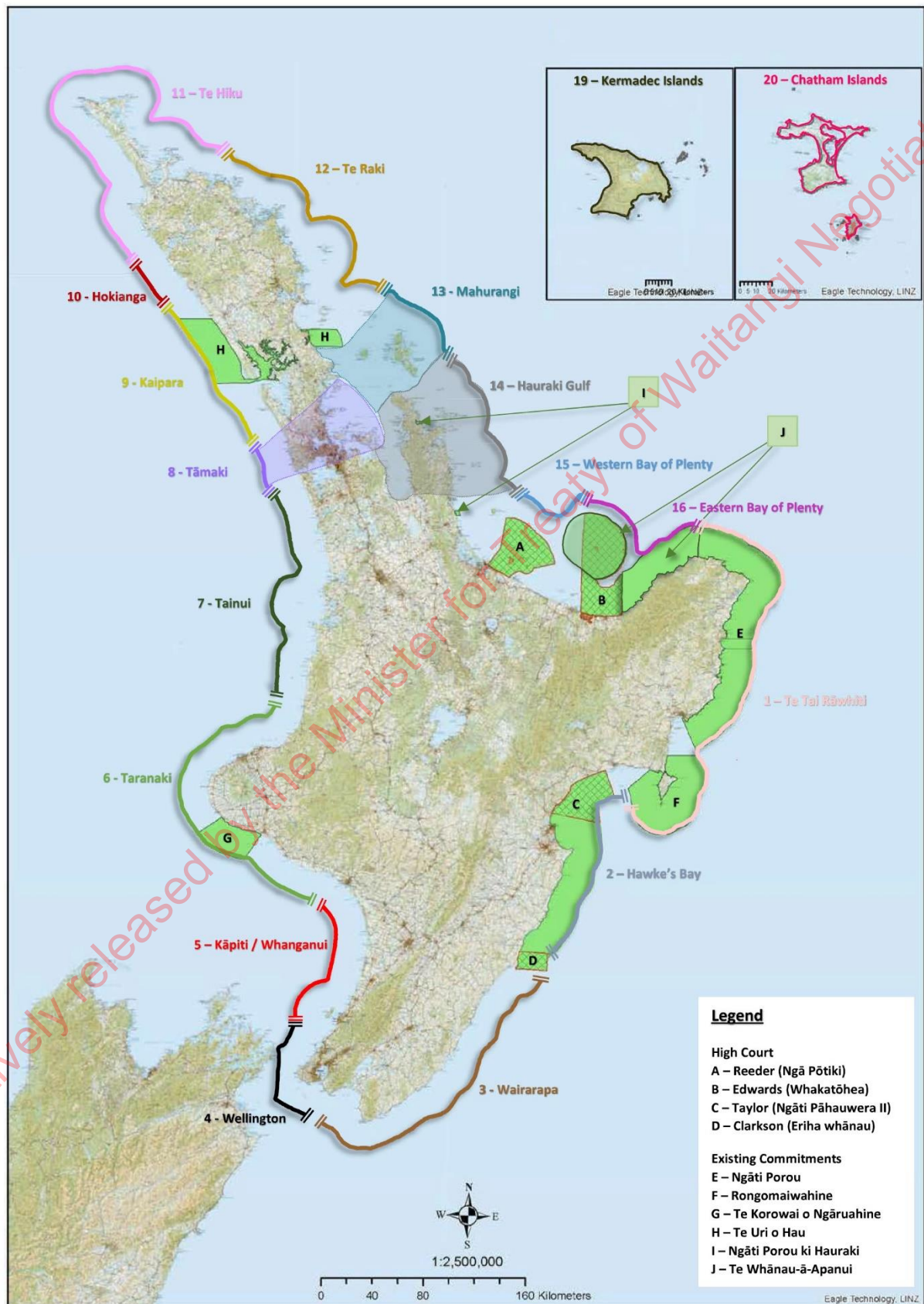
s9(2)(f)(iv)
s9(2)(g)(i)

86. During this phase, the collected evidence from applicants, the Crown, and non-applicants will be considered by the Minister for Treaty of Waitangi Negotiations or by the High

Court. Applications may be decided in full or in part. Where customary interests are recognised, this phase also include the processes needed to give full legal effect to that recognition.

Proactively released by the Minister for Treaty of Waitangi Negotiations

Map 1: North Island and offshore island coastal areas



Map 2: South Island coastal areas



Forecasting the funding required to support applicant groups

88. The Minister of Finance and I have agreed to a review of the financial assistance scheme which is supported by this appropriation. I anticipate reporting back to Cabinet on this work in May.

89. Similar to previous years, the appropriation is forecast to have an underspend in 2020/21. The current position of the appropriation and forecast expenditure is outlined in table 1.

[illegible]

[REDACTED]

[REDACTED]

s9(2)(f)(iv)

s9(2)(f)(iv)



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Māori Crown Relations: Te Arawhiti Committee: Period Ended 19 March 2021

On 22 March 2021, Cabinet made the following decisions on the work of the Cabinet Māori Crown Relations - Te Arawhiti Committee for the period ended 19 March 2021:

MCR-21-MIN-0005 **Takutai Moana Crown Engagement Strategy** CONFIRMED
Portfolio: Treaty of Waitangi Negotiations

Michael Webster
Secretary of the Cabinet



Cabinet Māori Crown Relations - Te Arawhiti Committee

Minute of Decision

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Takutai Moana Crown Engagement Strategy

Portfolio Treaty of Waitangi Negotiations

On 16 March 2021, the Cabinet Māori Crown Relations - Te Arawhiti Committee (MCR):

- 1 **noted** that the current approach to progressing applications under the Takutai Moana Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 is slow, creates uncertainty for applicants, is detrimental to good Māori Crown relations, breaches the principles of Te Tiriti o Waitangi, and does not provide a realistic alternative to expensive High Court hearings;
- 2 **agreed** to the strategy for engagement with Takutai Moana applicants including that;
 - 2.1 the New Zealand coastline be initially divided into 20 coastal areas;
 - 2.2 the strategy adopts a coastline approach, whereby Te Arawhiti will work with all applicants within each coastal area to determine the approach and timeframes for progressing applications most appropriate in each coastal area;
 - 2.3 the strategy requires Te Arawhiti to engage with all applicants, including those in high third-party use areas and in areas covered by High Court proceedings; and
 - 2.4 delivery under the strategy will occur in three phases:
 - 2.4.1 an establishment phase, [REDACTED]
 - 2.4.2 a research and evidence gathering phase, [REDACTED]
 - 2.4.3 a determination and recognition phase, [REDACTED]
- 3 **invited** the Minister for Treaty of Waitangi Negotiations to report back to the first meeting of MCR in 2022 on the emerging approach, progress, timeframes and sequencing for progressing applications in each coastal area;
- 4 **noted** that current baseline funding is insufficient to fully implement the strategy in 2021/22 which will likely result in further criticism and breaches of the principles of Te Tiriti o Waitangi;

s9(2)(f)(iv)
s9(2)(g)(i)

- 5 **agreed** to the Expense Transfer and Fiscally Neutral Adjustment of \$2.262 million from the 2020/21 non-departmental other expenses appropriation Financial Assistance Toward Determining Customary Interests in the Marine and Coastal Area to the 2021/22 departmental output expenses appropriation Treaty Negotiations and Marine and Coastal Area Customary Interests.
- 6 **approved** the following changes to appropriations, to give effect to the decision in paragraph 5 above, with no impact on the operating balance and/or net core Crown debt over the forecast period:

Vote Treaty Negotiations Minister for Treaty of Waitangi Negotiations	\$m – increase/(decrease)				
	2020/21	2021/22	2022/23	2023/24	2024/25 & Outyears
Non-Departmental Output Expense: Financial Assistance Toward Determining Customary Interests in the Marine and Coastal Area (funded by revenue Crown)	(2.262)	-	-	-	-
Departmental Output Expense: Treaty Negotiations and Marine and Coastal Area Customary Interests (funded by revenue Crown)	-	2.262	-	-	-

- 7 **agreed** that the changes to appropriations for 2020/21 above be included in the 2020/21 Supplementary Estimates.

Gerrard Carter
Committee Secretary

Present:

Hon Grant Robertson
Hon Kelvin Davis (Chair)
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Peeni Henare
Hon Willie Jackson
Hon Kiri Allan
Hon Meka Whaitiri

Officials present from:

Office of the Prime Minister
Officials Committee for MCR

Hard-copy distribution:

Minister for Treaty of Waitangi Negotiations