

**Hon Andrew Little**  
Minister for Treaty of Waitangi Negotiations

**Proactive release – Point England and Ngāti Paoa Treaty Settlement**

Date of issue: 28 May 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	<p><b>Point England and Ngāti Paoa Treaty Settlement</b> Cabinet paper Office of the Minister for Treaty of Waitangi Negotiations and Office of the Minister for Housing and Urban Development 10 April 2019</p>	<p>Some information has been withheld in accordance with the following sections of the OIA:</p> <ul style="list-style-type: none"> <li>• section 9(2)(h) – maintain legal professional privilege; and</li> <li>• section 9(2)(j) – negotiations sensitive.</li> </ul>
2	<p><b>DEV-19-MIN-0077</b> Cabinet Committee Minute Cabinet Office 10 April 2019</p>	<p>Some information has been withheld in accordance with section 9(2)(j) as it is negotiations sensitive.</p>
3	<p><b>CAB-19-MIN-0168</b> Cabinet Minute Cabinet Office 12 April 2019</p>	<p>Some information has been withheld as out of scope.</p>
4	<p><b>Point England and Ngāti Paoa Treaty Settlement – Revised Offer</b> Cabinet paper Office of the Minister for Treaty of Waitangi Negotiations 11 December 2019</p>	<p>Some information has been withheld in accordance with the following sections of the OIA:</p> <ul style="list-style-type: none"> <li>• section 9(2)(b)(ii) – protect information that would unreasonably prejudice commercial position of subject;</li> <li>• section 9(2)(h) – maintain legal professional privilege; and</li> <li>• section 9(2)(j) – negotiations sensitive.</li> </ul>
5	<p><b>CAB-19-MIN-0675.01</b> Cabinet Minute Cabinet Office 16 December 2019</p>	<p>Some information has been withheld in accordance with the following sections of the OIA:</p> <ul style="list-style-type: none"> <li>• section 9(2)(b)(ii) – protect information that would unreasonably prejudice commercial position of subject;</li> <li>• section 9(2)(h) – maintain legal professional privilege; and</li> <li>• section 9(2)(j) – negotiations sensitive.</li> </ul>

In Confidence

Office of the Minister for Housing and Urban Development

Office of the Minister for Treaty of Waitangi Negotiations

Chair, Cabinet Economic Development Committee

## POINT ENGLAND AND NGĀTI PAOA TREATY SETTLEMENT

### Proposal

1. This paper seeks your approval to:
  - 1.1. return 9.69 hectares (ha) of land currently held for state housing purposes within Point England (Kiano) Reserve (the Reserve), to recreation reserve; and
  - 1.2. replace the existing Treaty settlement offer to Ngāti Paoa of the first opportunity to purchase and develop land at the Reserve for housing (the Point England Housing Development Opportunity) with a cultural redress offer to:
    - 1.2.1. transfer 2ha of land at the Reserve for papakāinga housing, which will remain zoned Residential – Mixed Housing Urban, but be made inalienable; and
    - 1.2.2. vest the balance of the Reserve, including the balance of the development land, in Ngāti Paoa as recreation reserve with the Auckland Council as administering body; and
    - 1.2.3. repeal the Point England Development Enabling Act 2017 (the Enabling Act) through the Ngāti Paoa Claims Settlement Bill (the Ngāti Paoa Bill).
2. Cabinet agreement is also sought to offer Ngāti Paoa a commercial development opportunity under KiwiBuild's Land for Housing Programme (the Programme), if the cultural redress offer is not sufficient to conclude negotiations.

### Executive summary

#### *Point England Development Enabling Act 2017*

3. On 28 June 2017 the Enabling Act came into force to enable housing development on 11.69ha of the Reserve (the development land). A map of the Reserve and development land is attached at Appendix 1. Further background on the Enabling Act is attached at Appendix 2.

#### *Treaty settlement negotiations with Ngāti Paoa*

4. An overview of Ngāti Paoa's Treaty settlement negotiations is attached at Appendix 3. These negotiations are largely complete except for redress at Point England. The Minister for Treaty of Waitangi Negotiations intends to sign a Deed of Settlement (the Deed) with Ngāti Paoa in 2019.
5. The initialled Deed contains the following redress offer for Ngāti Paoa at the Reserve:
  - 5.1. cultural redress – the transfer of 2ha for the development of a marae, and a statutory acknowledgement over the balance of the Reserve; and
  - 5.2. commercial redress – the Point England Housing Development Opportunity.

*Minister for Housing and Urban Development intends to overturn the Enabling Act*

- 6. The Minister for Housing and Urban Development seeks to overturn the Enabling Act in recognition of the high value of the public open space at the Reserve to the community. The Ministers of Conservation and Treaty of Waitangi Negotiations support this position.

*Minister for Treaty of Waitangi Negotiations proposes an alternative cultural redress offer for Ngāti Paoa to replace the Point England Housing Development Opportunity*

- 7. Ngāti Paoa have agreed in principle to an alternative cultural redress offer at the Reserve comprising:
  - 7.1. the transfer of 2ha for a papakāinga at the Reserve, which will remain zoned Residential – Mixed Housing Urban but be made inalienable; and
  - 7.2. the transfer of the balance of the Reserve, being 40.61ha, subject to recreation reserve status, with Auckland Council as the administering body. Auckland Council and Ngāti Paoa will jointly prepare and approve the reserve management plan for the Reserve.
- 8. The map attached at Appendix 4 shows the alternative cultural redress offer. The Point England Housing Development Opportunity will be withdrawn. In addition, the statutory acknowledgement over the balance of the Reserve is no longer required. The vesting in Ngāti Paoa of an additional 2ha of land for a marae will remain.

*Back-pocket commercial option to conclude negotiations*

- 9. Ngāti Paoa have made their agreement in principle conditional on receiving a new commercial opportunity. Should the alternative cultural redress offer be insufficient to reach agreement with Ngāti Paoa, we seek Cabinet agreement to offer Ngāti Paoa a commercial development opportunity under the Programme. This offer, which will be over development land to be identified, will only be made if necessary to conclude negotiations.

*Ngāti Paoa Bill to override and repeal the Enabling Act*

- 10. Cabinet’s approval is sought to use the Ngāti Paoa Bill to:
  - 10.1. provide the alternative cultural redress offer to Ngāti Paoa, which will override the changes made by the Enabling Act, and
  - 10.2. repeal the Enabling Act, as it will no longer contain any substantive provisions.
- 11. The proposal to repeal the Enabling Act could be kept separate, however, a combined approach is more efficient and straightforward for all parties.

*Financial implications*

- 12. 


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*Finalising negotiations with Ngāti Paoa and proceeding to ratification*

- 13. As the Deed has already been initialled, once the changes to the alternative offer proposed in this paper are approved by Cabinet, the Deed and the alternative offer can be put to the Ngāti Paoa claimant community to consider during a ratification process.

14. We are working with the Mandated Negotiator for Ngāti Paoa, Morehu Wilson, so the Ngāti Paoa claimant community can consider whether to accept the alternative offer during ratification.
15. Although Ngāti Paoa currently has a mandate dispute, between the mandated entity, the post-settlement governance entity and the Mandated Negotiator, the Crown considers ratification to be the next step for Ngāti Paoa.

## **Background**

### *Existing redress offer at the Reserve*

16. The initialled Ngāti Paoa Deed contains the following redress at the Reserve:
  - 16.1. cultural redress – transfer of 2ha as cultural redress for the development of a marae, subject to local purpose (marae) reserve under the Reserves Act 1977, with Ngāti Paoa as the administering body, and a statutory acknowledgement over the balance of the Reserve; and
  - 16.2. commercial redress – the Point England Housing Development Opportunity, being the first opportunity to develop housing on the 11.69ha of development land that was formerly part of the Reserve.
17. The vesting of 2ha of the Reserve for the development of a marae remains unchanged in the proposal in this paper.

### *Ministers' investigation of an alternative offer*

18. Large scale commercial housing development on public reserve land is not appropriate at a location with highly valued green space and sports fields. The Reserve is also habitat for rare and endangered shore birds. We consider the Enabling Act should be overridden and repealed to protect these conservation and recreation values.
19. The Point England Housing Development Opportunity is contained in a counter-signed letter and initialled Deed with Ngāti Paoa. Therefore, as a matter of good faith, Ngāti Paoa's agreement is needed to replace this development opportunity.
20. In November 2017 Ngāti Paoa confirmed to Ministers they were open to considering an alternative offer. The Minister for Treaty of Waitangi Negotiations then directed Lead Crown Negotiator Hon Rick Barker to explore these with Ngāti Paoa.

## **Alternative cultural redress offer**

21. The alternative cultural redress offer in this paper enables the Crown to address public and Auckland Council concerns about the impact of housing on the Reserve's open space and natural environment while continuing to provide redress to Ngāti Paoa in settlement of their historical Treaty of Waitangi claims in an area where they have significant cultural interests.
22. Ngāti Paoa have an historical association with the Tāmaki area of Auckland including significant interests in the Point England area, which is a former Ngāti Paoa kāinga (settlement). Ngāti Paoa have sought to rebuild their connection and presence in the Point England area through their Treaty settlement. A key component of this is the 2ha marae site at the Reserve, which will vest in Ngāti Paoa on settlement date.

*Papakāinga housing*

23. Ngāti Paoa have conveyed throughout negotiations that a marae needs people to function and have long sought housing for their own people at the Reserve. The Point England Housing Development Opportunity provided a vehicle to enable Ngāti Paoa to create a community near the marae. The alternative cultural redress offer includes the transfer of 2ha for papakāinga housing, which helps meet this cultural aspiration.
24. The Minister for Treaty of Waitangi Negotiations seeks agreement to the transfer of 2ha for a papakāinga as marked on the map attached at Appendix 4, subject to the condition that it be inalienable. The land will never be able to be sold, reflecting the cultural nature of the transfer, although it will be able to be leased.
25. The land will retain its Residential – Mixed Housing Urban zoning. This is a reasonably high-intensity zone under the Auckland Unitary Plan. It permits development of up to three stories high and up to three dwellings per site as of right. The zoning is appropriate for a papakāinga at this location where the housing adjacent to the Reserve is zoned for Mixed Housing Urban and Terraced Housing and Apartments. Ngāti Paoa will still be required to obtain resource consents to proceed with the papakāinga development.
26. Auckland Council may place conditions on the development, so long as these are anticipated by the applicable planning rules.

*Vesting of balance of Reserve as recreation reserve*

27. The Minister for Treaty of Waitangi Negotiations also seeks agreement to the transfer of the balance of the Reserve, where the title is Crown derived, being 40.61ha, subject to recreation reserve status with Auckland Council as the administering body. Ngāti Paoa and Auckland Council will jointly prepare and agree a reserve management plan for the Reserve.

*Existing commercial redress offer and statutory acknowledgement at the Reserve to be withdrawn*

28. The alternative cultural redress offer will replace the Point England Housing Development Opportunity, which will be withdrawn. The statutory acknowledgement offered over the balance of the Reserve will also be replaced by the alternative cultural redress offer as the relevant land will be vested in Ngāti Paoa.

*Ngāti Paoa have agreed in principle to the alternative cultural redress offer*

29. The Lead Crown Negotiator presented this alternative cultural redress as a proposal to Ngāti Paoa, subject to Cabinet's approval. Ngāti Paoa agreed in-principle to this by letter.
30. Ngāti Paoa have, however, made their agreement conditional on receiving a new commercial opportunity.
31. The Minister for Treaty of Waitangi Negotiations considers the alternative cultural redress offer fair and reasonable, and believes it may now be possible to reach agreement with Ngāti Paoa. However, if necessary to conclude negotiations, we recommend Ngāti Paoa be offered an alternative housing development opportunity. This is discussed in further detail later in this paper.

*Conservation considerations of the alternative cultural redress offer*

32. The Minister for Treaty of Waitangi Negotiations and the Minister of Conservation have considered the impact on reserve values of the alternative cultural redress offer, particularly the transfer of 2ha for a papakāinga, and the transfer of the balance of the land at the Reserve with Crown-derived title to Ngāti Paoa subject to recreation reserve status.

33. Relative to the current redress offer in the Deed, the alternative cultural redress offer will have a much more limited impact on the Reserve's values. The proposed repeal of the Enabling Act will allow Auckland Council and Ngāti Paoa to draft a new reserve management plan permitting grazing, which will improve the utility of the open space at the Reserve as a nesting site for foreshore birds. The proposed papakāinga site will likely promote increased public use of the open space through the provision of roading infrastructure for better access and by providing an enhanced sense of public safety for users.
34. Auckland Council has been involved throughout the discussions as the Reserve's current administering body and have endorsed the alternative cultural redress offer. The Maungakiekie-Tāmaki Local Board has also been consulted.
35. The Minister of Conservation has a strong interest in the protection and preservation of wildlife and wildlife habitat at the Reserve. The Department of Conservation will have the opportunity to advocate for appropriate measures to protect wildlife and wildlife habitat at the Reserve by submitting on the draft reserve management plan. The Department of Conservation may also have the opportunity to participate in the resource consent process for the papakāinga. Whether or not the Department of Conservation will be considered an affected party will be decided by Auckland Council, in accordance with the statutory tests in the Resource Management Act 1991, when the papakāinga subdivision consent is considered.

#### **Overriding and repealing the Point England Development Enabling Act 2017**

36. The Ngāti Paoa Bill will override the provisions in the Enabling Act by providing the alternative cultural redress. The Ngāti Paoa Bill will:
  - 36.1. return 9.69ha of the development land to recreation reserve;
  - 36.2. vest 2ha of the development land in Ngāti Paoa for papakāinga housing;
  - 36.3. create new records of title for the land to be vested in Ngāti Paoa, including the reserve, the marae site and the papakāinga housing site;
  - 36.4. enable Auckland Council to rezone 9.69ha of the development land as Open Space; and
  - 36.5. enable Auckland Council and Ngāti Paoa to draft a new reserve management plan unlimited by the restrictions in the Enabling Act with respect to grazing and sports fields.
37. We propose the Ngāti Paoa Bill also repeal the Enabling Act. Parliamentary Counsel Office advises this is appropriate as the Ngāti Paoa Bill will strip the Enabling Act of its effect.
38. The alternative cultural redress offer will be contained in the initialled Deed to be ratified and signed by Ngāti Paoa, meaning there is no possibility the land will be developed for housing in the meantime and before the enactment of the Ngāti Paoa Bill.

#### *Overriding and repealing the Enabling Act will not affect Government housing objectives*

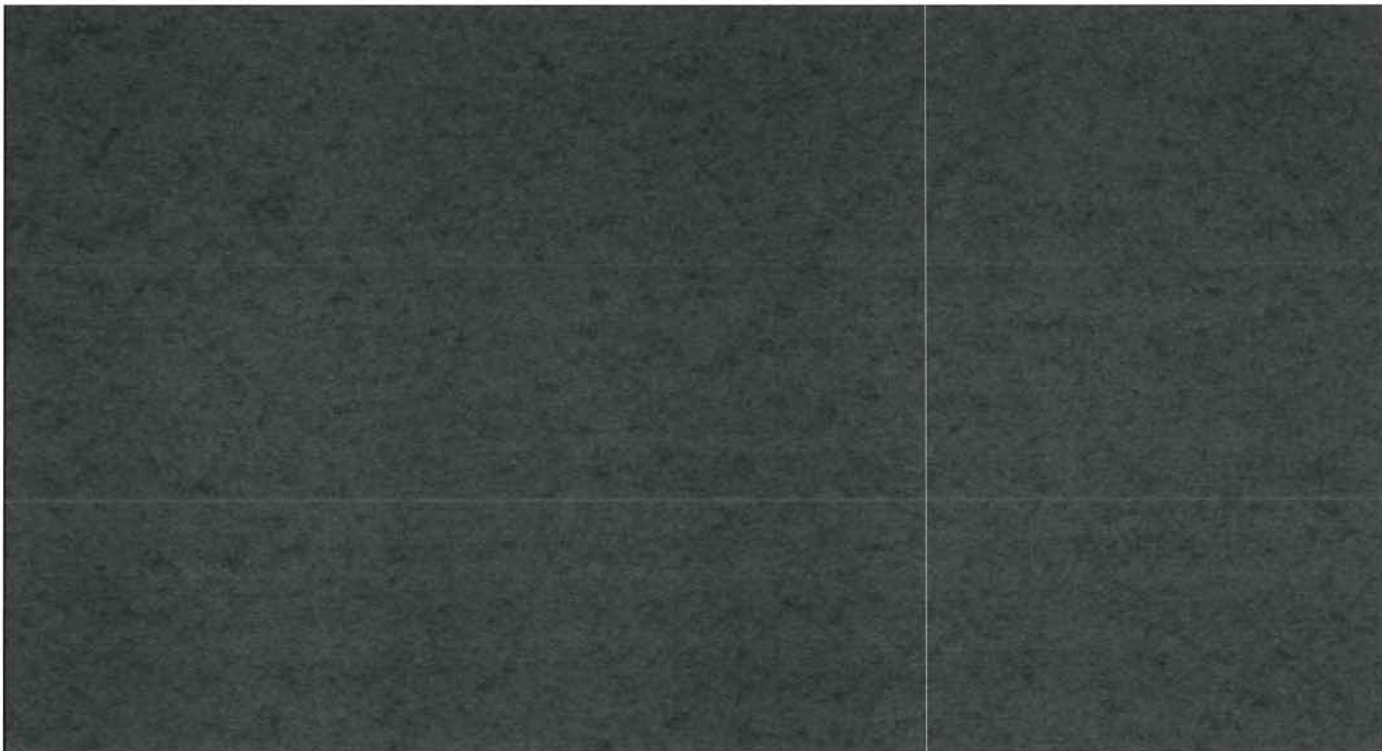
39. The Enabling Act's objectives included increasing the supply to market of affordable and public housing, supporting the Tāmaki Regeneration project and the Ngāti Paoa Treaty settlement. However, this Government has a more active and comprehensive programme for increasing housing supply through other initiatives, including an increase in the number of state houses, KiwiBuild, a programme of Large Scale Developments at a number of sites across Auckland and New Zealand and the enactment of Housing and Urban Development Authority legislation.

**Back-pocket commercial option to conclude negotiations**

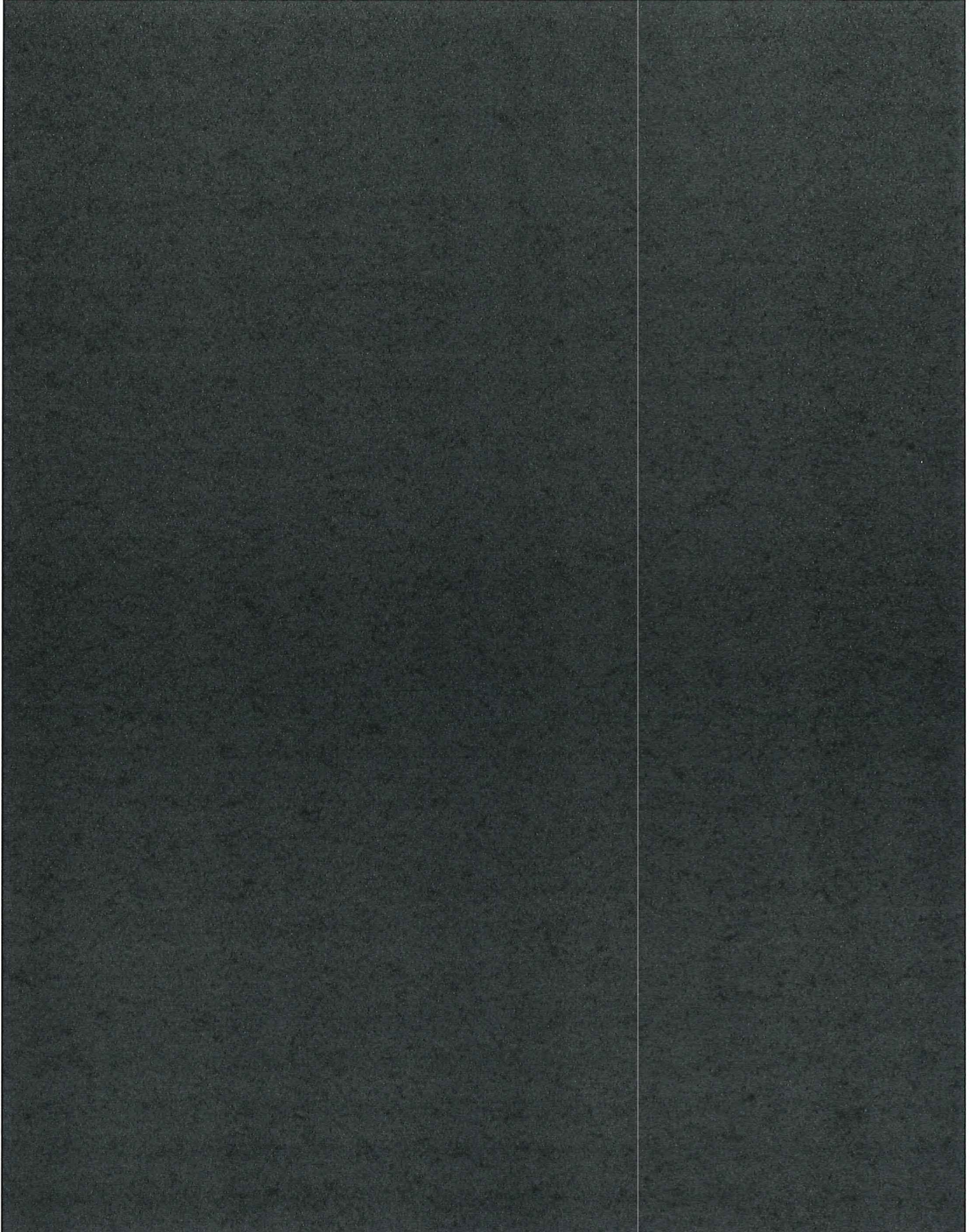
- 40. Cabinet agreement is also sought to offer Ngāti Paoa a commercial opportunity, should the alternative cultural redress offer be insufficient to conclude negotiations.
- 41. The commercial development opportunity would be provided under the Programme on private land (or Crown land not subject to existing Treaty settlement obligations) to be identified by Ngāti Paoa. The terms of that offer would be:
  - 41.1. Ngāti Paoa are responsible for identifying the development land;
  - 41.2. the land must be at least the equivalent of other sites being progressed under the Programme; that is, suitable for development in the short-term, including for market, KiwiBuild and public housing;
  - 41.3. the value of the land, to be purchased and then on-sold to Ngāti Paoa at its market value, should be approximately \$20 million;
  - 41.4. the opportunity is on a 'best endeavours' basis and, in particular, would depend on the land being successfully acquired by the Programme;
  - 41.5. it is triggered by the signing of the Ngāti Paoa Deed; and
  - 41.6. the opportunity is time-limited. If Ngāti Paoa and the Crown cannot identify the land and conclude associated negotiations within 24 months of signing the Deed then the opportunity will lapse.
- 42. This opportunity can be funded from budget available to KiwiBuild, and has no other financial implications for the Treaty settlement as it is an opportunity only (most similar to a right of first refusal or deferred selection property, where the Crown offers its land for sale on commercial terms).

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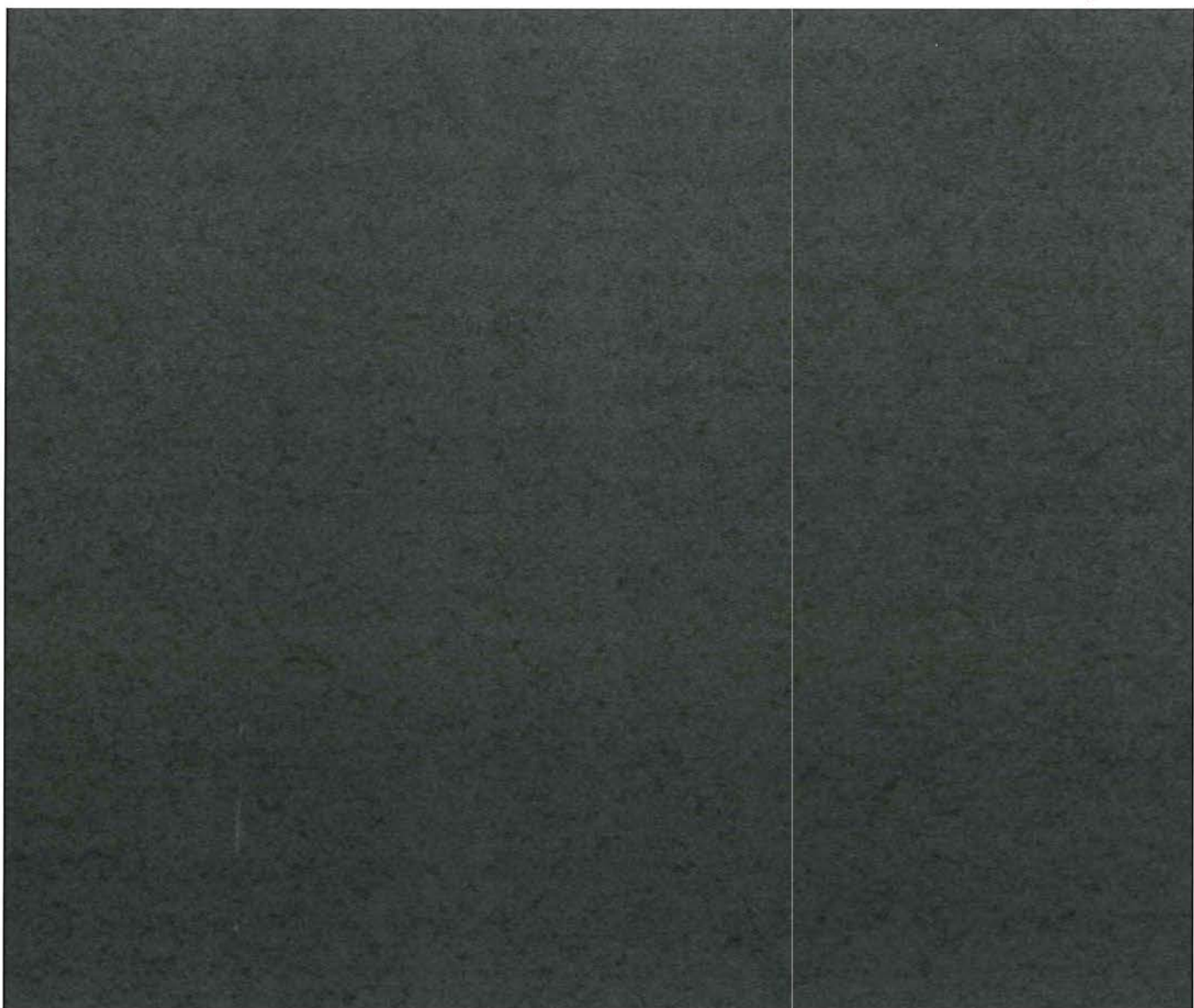
**Financial implications**



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### Overlapping interests

57. As with all Treaty settlement redress, the alternative cultural redress offer is subject to overlapping interests being addressed to the Crown's satisfaction. In November 2016 overlapping interests in relation to the existing redress offer at the Reserve were addressed to the Crown's satisfaction. Ngāi Tai ki Tāmaki objected to the previous offer, and is the iwi most likely to have concerns with the alternative cultural redress offer. We will engage with them on any concerns.
58. Further details on iwi interests at Point England and negotiations to address overlapping interests are contained in Appendix 5.

### Risks

59. Redress at Point England is the last matter to be resolved before Ngāti Paoa can ratify the Deed. There is a risk if the alternative cultural redress offer at the Reserve is not approved by Cabinet the Crown will either need to further delay the Ngāti Paoa settlement in order to reach agreement, or provide the Point England Housing Development Opportunity. Further delay to these negotiations could have consequential impacts on some or all of the remaining Hauraki settlements.

60. There is a risk that mandate issues may delay the Ngāti Paoa settlement, and put agreement to the alternative redress offer at risk. This risk is mitigated by the in-principle agreement of the Ngāti Paoa Mandated Negotiator to the alternative cultural redress offer. The initialled Deed, including the alternative redress offer, will also go through a ratification process with the Ngāti Paoa claimant community.
61. The alternative cultural redress offer may be criticised because of its impact on the supply of housing. As above, the Government has other measures to address this objective, and which are much larger scale than the Point England Housing Development Opportunity.
62. The alternative cultural redress offer affects the Reserve. A total of 4ha of land at the Reserve will be available for development by Ngāti Paoa (i.e. the marae site and papakāinga housing).
63. A significant amount of criticism of the Enabling Act was focused on the process the then Government followed in making changes to reserve land. Over half of all submitters commented on the lack of public consultation before the introduction of legislation.
64. It is not unusual for Treaty settlements to contain redress over public conservation land and for public consultation on these offers to be limited to preserve the confidentiality of negotiations. In this case, we expect the alternative cultural redress offer to be received favourably by the majority of the public, but there may still be some criticism about the process.
65. The alternative cultural redress offer will impact existing New Zealand dotterel habitat at the Reserve. However, overall it will have a much smaller impact on the reserve values at the Reserve than the housing development opportunity the Crown is currently committed to in the initialled Deed.
66. It is possible the Ngāti Paoa Bill could become more controversial than it would be otherwise due to the inclusion of the proposal to override and repeal the Enabling Act. However, we consider this risk to be low.
67. The Government's Housing and Urban Development Authority proposals will enable the new Authority to reconfigure reserves, including recreation reserves, in large scale developments such as at Tāmaki. These proposals will need to be differentiated from what is proposed at Point England.

### **Consultation**

68. The Department of Conservation, The Treasury and Te Puni Kōkiri have been consulted in the preparation of this paper. The Lead Crown Negotiator has discussed the alternative cultural redress offer with elected officials at Auckland Council, including the Mayor of Auckland and the Maungakiekie-Tāmaki Local Board. The Local Board and Auckland Council's governing body have endorsed the alternative cultural redress offer, noting the offer is subject to Cabinet approval.

### **Human rights**

69. The proposal is not inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

### **Legislative implications**

70. Legislation will be required to give effect to the Minister for Housing and Urban Development's proposal to overturn the Enabling Act, and to provide for the Minister for Treaty of Waitangi Negotiations' alternative cultural redress offer to Ngāti Paoa. The details of this proposal are set out above at paragraphs 36-39.

71. We propose the proposal be given effect through one legislative vehicle, the Ngāti Paoa Bill.
72. Parliamentary Counsel Office and the Office of the Clerk have provided advice on the legislative implications of the proposal.

### **Regulatory impact statement**

73. The Regulatory Quality Team at The Treasury has assessed that the proposal is exempt from the Regulatory Impact Analysis (RIA) requirements on the grounds that the relevant issues have already been addressed by existing Impact Analysis (refer the Regulatory Impact Statement produced by the Ministry for Business, Innovation and Employment “Point England Development Enabling Bill: <https://treasury.govt.nz/publications/risa/regulatory-impact-statement-point-england-development-enabling-bill>”).

### **Publicity**

74. There is likely to be public interest in the proposal in this paper. Because the matter is negotiations sensitive there has been no public communication about the Point England Housing Development Opportunity being revisited, although some information has been made public in responses to Parliamentary written questions.
75. Subject to Cabinet’s approval of the proposal in this paper, we propose to make a joint media statement, with Ngāti Paoa, about the agreement we have reached to replace the Point England Housing Development Opportunity with an alternative offer of cultural redress. We intend to specify clearly the details of the alternative cultural redress offer. We expect the alternative cultural redress offer will be received favourably because of the opposition to the existing opportunity, but, as above, may still raise questions about the level of public engagement on proposals affecting the Reserve.
76. There will be no public consultation on the proposal included in this paper. Members of the public will have an opportunity to submit on the alternative cultural redress offer as part of the select committee process for the Ngāti Paoa Bill.

### **Proactive release**

77. The Minister for Treaty of Waitangi Negotiations intends to proactively release this Cabinet paper on the Office for Māori Crown Relations – Te Arawhiti website once negotiations have been concluded with Ngāti Paoa but including redactions under the Official Information Act 1981. This public release will be beyond the 30 days standard timeframe for proactive release due to the need for the Crown to conclude its negotiations with Ngāti Paoa.

## Recommendations

It is recommended the Committee:

1. **note** in June 2017 the Point England Development Enabling Act 2017 (the Enabling Act) came into force enabling housing development on 11.69 hectares (ha) of reserve land at Point England Reserve (the Reserve);

*Minister for Housing and Urban Development's proposal to override changes made by the Point England Development Enabling Act*

2. **agree** to override the Enabling Act to provide an alternative cultural redress offer for Ngāti Paoa; and
3. **agree** to the Ngāti Paoa Claims Settlement Bill repealing the remaining provisions of the Enabling Act that will not be overridden by the alternative cultural redress offer;

*Minister for Treaty of Waitangi Negotiations alternative cultural redress offer for Ngāti Paoa*

4. **note** negotiations on Ngāti Paoa's iwi-specific Treaty settlement are well advanced and, subject to the outcome of ratification, the Minister for Treaty of Waitangi Negotiations intends to sign the Ngāti Paoa Deed of Settlement (the Deed) with Ngāti Paoa in 2019;
5. **note** Ngāti Paoa have been offered a commercial opportunity to purchase the 11.69ha of development land at the Reserve for housing development (the Point England Housing Development Opportunity) as Treaty settlement redress and this redress was included in the initialled Deed;
6. **note** Ngāti Paoa have agreed in principle to an alternative cultural redress offer which balances Ngāti Paoa's cultural aspiration to re-establish a community at the Reserve with protecting reserve and conservation values;
7. **agree** to the alternative Treaty settlement offer to Ngāti Paoa of cultural redress over the Reserve comprising:
  - 7.1. the transfer of 2ha to Ngāti Paoa for a papakāinga, unencumbered by Reserve status and subject to the condition that it be inalienable;
  - 7.2. the vesting of the balance of the Reserve (including the balance of the current development land), where title is derived from the Crown, in Ngāti Paoa, subject to recreation reserve status;
  - 7.3. the appointment of Auckland Council as the administering body for the Reserve land vested in Ngāti Paoa, with Ngāti Paoa and the Auckland Council to jointly prepare and agree the Reserve Management Plan;
8. **note** the 2ha for papakāinga housing is from within the development land and will therefore retain the land's existing zoning of Residential – Mixed Housing Urban;
9. **note** the vesting of 2ha for papakāinga housing is in addition to the 2ha at the Reserve to be vested for a marae;
10. **note**, subject to agreement from Ngāti Paoa to the Deed during ratification, this offer will replace the Point England Housing Development Opportunity;
11. **note** the alternative cultural redress offer remains subject to overlapping interests, which must be addressed to the Crown's satisfaction before the Deed is signed with Ngāti Paoa;

*Back-pocket commercial option to conclude negotiations*

- 12. **agree**, should it be necessary to secure agreement with Ngāti Paoa, to also offer a housing development opportunity;
- 13. **agree** the housing development opportunity will be:
  - 13.1. on similar terms and conditions to other development opportunities offered under the KiwiBuild Land for Housing Programme (the Programme);
  - 13.2. up to an approximate land value of \$20 million;
  - 13.3. on land to be identified by Ngāti Paoa;
  - 13.4. on a 'best endeavours' basis and, in particular, dependent on appropriate land being able to be purchased by the Programme at a commercially feasible price and the conditions of sale being agreed with Ngāti Paoa;
  - 13.5. triggered by the signing of the Deed; and
  - 13.6. time limited: if all negotiations associated with the opportunity cannot be concluded within 24 months from the signing of the Deed, then it will lapse;
- 14. **delegate** authority to the Minister for Treaty of Waitangi Negotiations and the Minister for Housing and Urban Development to finalise the terms of the alternative commercial opportunity, should it be required;
- 15. **note** the housing development opportunity has no financial implications for the Treaty settlement;

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*Financial implications*

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*Publicity*

24. **note** the overriding of the Enabling Act and the alternative cultural redress offer are likely to be of public interest; and
25. **note**, subject to Cabinet agreement to the proposal in this paper, we propose to issue a joint-media statement with Ngāti Paoa at the appropriate time.

Authorised for lodgement

Hon Phil Twyford  
Minister for Housing and Urban Development

Hon Andrew Little  
Minister for Treaty of Waitangi Negotiations

## Appendix 1: Point England (Kiano) Reserve



Point England (Kiano) Reserve		
Area	Size	Description
	30.92 hectares	Crown owned portion of Point England (Kiano) Reserve, designated as recreation reserve. Auckland Council is the administering body.
	11.69 hectares	Development land currently offered to Ngāti Paoa (proposed to be withdrawn and transferred to Ngāti Paoa with the same conditions as for the balance of the Reserve above).
	2.00 hectares	Existing offer of a site for the development of a marae as cultural redress, subject to local purpose (marae) reserve status under section 23 of the Reserves Act 1977.
n.b. red dotted line on map not relevant.		

## Appendix 2: Background on Point England (Kiano) Reserve and the Point England Development Enabling Act 2017

1. Point England (Kiano) Reserve (the Reserve) is a 47.32 hectare (ha) recreation reserve on the western edge of the Tāmaki Estuary.
2. The Reserve has high open-space, amenity and conservation values. It is predominantly coastal semi-rural open space within urban Auckland with large areas of pasture and twelve sports fields.
3. The Reserve is zoned open space and is also part of a coastal management area. The lower reaches of the Omaru Creek flow through the Reserve, and the creek surrounds and coastal landscape have significant ecological and cultural values.
4. There are a number of shorebird species recorded at the Reserve including white faced heron, South Island pied oyster catcher, royal spoonbill, caspian terns, pied stilts and New Zealand and banded dotterels. It is well used by the public, including for sport, walking and other passive recreation.
5. Auckland Council advises it owns two portions of the Reserve (totalling 2.71ha) in fee simple. The Crown has underlying ownership in the balance of the Reserve. The Reserve is administered by Auckland Council, but the Minister of Conservation retains overarching responsibilities under the Reserves Act 1977 and Wildlife Act 1953.
6. While the Reserve is suitable for New Zealand dotterel, as open nesting space and as a food source on the adjacent coastal mudflats, the dotterels have had limited breeding success, in part because of the use and activities at the Reserve.
7. Historically, Point England was an important Ngāti Paoa kāinga (settlement). Missionary reports written prior to 1840 record extensive settlement and agriculture in the area. Ngāti Paoa rangātira signed the Treaty of Waitangi at nearby Karaka Bay.

### *Point England Development Enabling Act 2017*

8. Work to regenerate Tāmaki has been underway since 2007. The Tāmaki Regeneration Company (TRC) was established in 2012 to lead the redevelopment of the area. In 2015 Cabinet directed agencies to explore options to support the acceleration of the Tāmaki Regeneration, including exchanging, revoking and realigning reserves.
9. In 2015 Ngāti Paoa learned that a portion of the Reserve was proposed for housing development by the TRC. Ngāti Paoa approached the Crown about the possibility they could develop the land instead, on the basis the housing would still contribute to the Tāmaki Regeneration and would complement their existing redress offer at the Reserve. The former Government agreed to support these housing development aspirations, via the Point England Development Enabling Act (the Enabling Act) and a letter counter-signed with the Minister for Treaty of Waitangi Negotiations on 13 October 2016.
10. The Enabling Act subdivided 11.69ha of the Reserve, revoked the reserve status of the development land, and deemed the land to be set apart for State housing purposes. It also changed the zoning of the development land from Open Space to Residential – Mixed Housing Urban and deemed the existing Reserve Management Plan amended. As these measures have all taken place, new legislation is required to reverse them.



### Appendix 3: Background on Ngāti Paoa and their negotiations

1. Ngāti Paoa descend from the Tainui and Te Arawa waka and are one of the Marutūāhu Iwi. The Ngāti Paoa area of interest includes the western shores of Tīkapa Moana (the Firth of Thames), the Tāmaki isthmus, the Piako River catchment, the Hauraki Plains and the Hauraki Gulf islands including Waiheke, Ponui, Rotoroa and Pakatoa. The 2013 census records 3459 people who identify as Ngāti Paoa.
2. Ngāti Paoa are a party to the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Deed (signed in December 2012). They are also a party to the Pare Hauraki Collective Redress Deed (signed by the Crown in August 2018 and by Ngāti Paoa in February 2019) and the Marutūāhu Collective negotiations with the Crown for collective redress in Tāmaki Makaurau and Mahurangi.
3. Ngāti Paoa have also negotiated an iwi-specific deed of settlement which, together with their collective redress, will result in a full and final settlement of their historical Treaty of Waitangi claims. Settlement negotiations with Ngāti Paoa are well advanced. On 18 August 2017 the Crown and Ngāti Paoa initialled the Ngāti Paoa Deed of Settlement (the Deed), although ratification of the Deed has not yet commenced.

#### Mandate

4. The Ngāti Paoa Trust Board (the Trust Board) is the mandated entity for Ngāti Paoa. Pursuant to the Ngāti Paoa Deed of Mandate, the Trust Board delegated its mandate to negotiate its historical Treaty of Waitangi claims to two Mandated Negotiators appointed by the claimant community as part of the mandate process. One of the Mandated Negotiators stood down from his position on 6 May 2018, but the other has continued to negotiate on behalf of Ngāti Paoa.
5. The Trust Board was effectively in abeyance for a period of years during negotiations due to trustee appointments expiring and new elections not being held. The Mandated Negotiators have largely carried the negotiations for Ngāti Paoa. They have held hui-a-iwi throughout negotiations to re-confirm support from the claimant community for their positions. By comparison, the record of mandate maintenance by the Trust Board is limited.
6. In 2016 a member of Ngāti Paoa made an application to the High Court for directions for the election of new trustees for the Trust Board and the High Court granted orders requiring those elections. New trustees were elected in March 2017. The relationship between the new trustees and the remaining Mandated Negotiator is not strong.
7. The Ngāti Paoa Iwi Trust was established in 2013 as the post-settlement governance entity (PSGE) for Ngāti Paoa. The PSGE has had a close relationship with the Mandated Negotiators and has provided them with support and advice during negotiations.
8. There has been tension recently between the mandated entity and the PSGE, particularly in relation to ratification of the Deed. The Maori Land Court has directed the parties to mediation. The Minister for Treaty of Waitangi Negotiations has also offered funding to support the parties in mediation.

s 9(2)(h)

9. [REDACTED]

Appendix 4: Map of alternative cultural redress offer at Point England (Kiano) Reserve



Point England Reserve		
Area	Size	Description
A	30.92 hectares	Proposed transfer to Ngāti Paoa as cultural redress, subject to recreation reserve status, where Auckland Council will remain the administering body, and Ngāti Paoa and Auckland Council will jointly prepare and agree a reserve management plan.
B	9.69 hectares	Development land currently offered to Ngāti Paoa (proposed to be withdrawn and transferred to Ngāti Paoa with the same conditions as for Area A above).
C	2.00 hectares	The proposed transfer of 2 hectares fee simple as cultural redress for a papakāinga located near the centre of the Reserve, subject to certain conditions.
D	2.00 hectares	Existing offer of a site for the development of a marae as cultural redress, subject to local purpose (marae) reserve status under section 23 of the Reserves Act 1977.
E	0.34 hectares	Reserve land owned by Auckland Council (which will remain in Council ownership).
F	2.37 hectares	

## Appendix 5: Overlapping interests process

1. As with all Treaty settlement redress the alternative cultural redress offer is subject to overlapping interests being addressed to the Crown's satisfaction. Overlapping groups who claim interests in the Point England area include Ngāi Tai ki Tāmaki, Ngāti Whātua Ōrākei, Te Rūnanga o Ngāti Whātua and the Marutūāhu Collective. Ngāpuhi also claim interests in Tāmaki generally.
2. Ngāti Whātua Ōrākei and Ngāi Tai ki Tāmaki signed deeds of settlement in 2012 and 2015 respectively while Ngāpuhi is resolving mandate issues. Te Rūnanga o Ngāti Whātua is currently in Treaty settlement negotiations with the Crown. Ngāti Paoa are a member of the Marutūāhu Collective, which initialled a collective redress deed on 27 July 2018. Of the member iwi of the Marutūāhu Collective, Ngāti Paoa has the strongest historical association with the Point England area.
3. In March and April 2016 Ngāti Paoa engaged with iwi with interests in Point England on redress at the Reserve and communications at that time noted Ngāti Paoa were seeking potential further redress at Point England. No significant concerns were raised at that time with Ngāti Paoa interests at Point England.
4. However, in August 2016 Ngāi Tai ki Tāmaki reminded the Crown it had sought redress at Point England during its negotiations and was disappointed the opportunity was not disclosed to them during their own negotiations, which were concluded in November 2015. Ngāi Tai ki Tāmaki may react strongly to this alternative cultural redress offer, particularly the joint development of a Reserve Management Plan, and seek to participate in it.
5. Ngāti Paoa have reached an agreement with Ngāti Whātua Ōrākei in relation to separate overlapping claims issues in Tāmaki. We expect this agreement will assist with any discussions over the alternative cultural redress offer at the Reserve.
6. Officials will write to Ngāi Tai ki Tāmaki, Ngāti Whātua Ōrākei, Te Rūnanga o Ngāti Whātua, the Marutūāhu Collective and Ngāpuhi again to seek their view on the alternative cultural redress offer following Cabinet approval. Overlapping interests will be addressed to the Crown's satisfaction before signing the Deed.



# Cabinet Economic Development Committee

## 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.*

### Point England and Ngāti Paoa Treaty Settlement

**Portfolios**                      **Housing and Urban Development / Treaty of Waitangi Negotiations**

On 10 April 2019, the Cabinet Economic Development Committee:

#### Background

- 1        **noted** that in June 2017, the Point England Development Enabling Act 2017 (the Enabling Act) came into force enabling housing development on 11.69 hectares (ha) of reserve land at Point England Reserve (the Reserve);

#### Minister for Housing and Urban Development's proposal to override changes made by the Enabling Act

- 2        **agreed** to override the Enabling Act to provide an alternative cultural redress offer for Ngāti Paoa;
- 3        **agreed** that the Ngāti Paoa Claims Settlement Bill repeal the remaining provisions of the Enabling Act that will not be overridden by the alternative cultural redress offer;

#### Minister for Treaty of Waitangi Negotiations' alternative cultural redress offer for Ngāti Paoa

- 4        **noted** that negotiations on Ngāti Paoa's iwi-specific Treaty settlement are well advanced and, subject to the outcome of ratification, the Minister for Treaty of Waitangi Negotiations intends to sign the Ngāti Paoa Deed of Settlement (the Deed) with Ngāti Paoa in 2019;
- 5        **noted** that Ngāti Paoa have been offered a commercial opportunity to purchase the 11.69ha of development land at the Reserve for housing development (the Point England Housing Development Opportunity) as Treaty settlement redress, and that this redress was included in the initialled Deed;
- 6        **noted** that Ngāti Paoa have agreed in principle to an alternative cultural redress offer, which balances Ngāti Paoa's cultural aspiration to re-establish a community at the Reserve with protecting reserve and conservation values;
- 7        **agreed** to the alternative Treaty settlement offer to Ngāti Paoa of cultural redress over the Reserve comprising:
  - 7.1      the transfer of 2ha to Ngāti Paoa for a papakāinga, unencumbered by Reserve status and subject to the condition that it be inalienable;

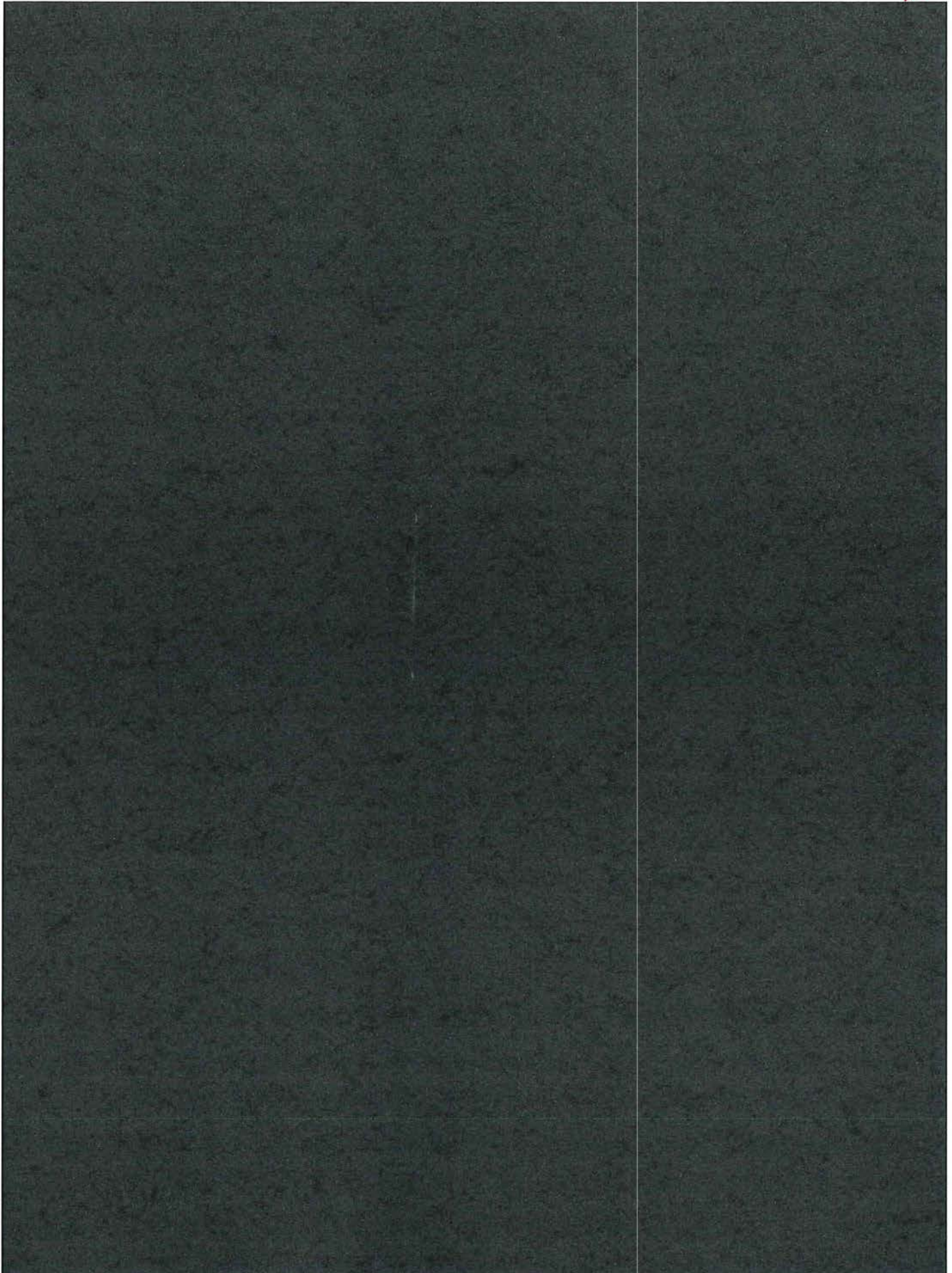
- 7.2 the vesting of the balance of the Reserve (including the balance of the current development land), where title is derived from the Crown, in Ngāti Paoa, subject to recreation reserve status;
- 7.3 the appointment of Auckland Council as the administering body for the Reserve land vested in Ngāti Paoa, with Ngāti Paoa and the Auckland Council to jointly prepare and agree the Reserve Management Plan;
- 8 **noted** that the 2ha for papakāinga housing is from within the development land, and will therefore retain the land's existing zoning of Residential – Mixed Housing Urban;
- 9 **noted** that the vesting of 2ha for papakāinga housing is in addition to the 2ha at the Reserve to be vested for a marae;
- 10 **noted** that, subject to agreement from Ngāti Paoa to the Deed during ratification, this offer will replace the Point England Housing Development Opportunity;
- 11 **noted** that the alternative cultural redress offer remains subject to overlapping interests, which must be addressed to the Crown's satisfaction before the Deed is signed with Ngāti Paoa;

#### **Back-pocket commercial option to conclude negotiations**

- 12 **agreed**, should it be necessary to secure agreement with Ngāti Paoa, to also offer a housing development opportunity;
- 13 **agreed** that the housing development opportunity be:
- 13.1 on similar terms and conditions to other development opportunities offered under the KiwiBuild Land for Housing Programme (the Programme);
- 13.2 up to an approximate land value of \$20 million;
- 13.3 on land to be identified by Ngāti Paoa;
- 13.4 on a 'best endeavours' basis and, in particular, dependent on appropriate land being able to be purchased by the Programme at a commercially feasible price and the conditions of sale being agreed with Ngāti Paoa;
- 13.5 triggered by the signing of the Deed; and
- 13.6 time limited: if all negotiations associated with the opportunity cannot be concluded within 24 months from the signing of the Deed, then it will lapse;
- 14 **delegated** authority to the Minister for Treaty of Waitangi Negotiations and the Minister for Housing and Urban Development to finalise the terms of the alternative commercial opportunity, should it be required;
- 15 **noted** that the housing development opportunity has no financial implications for the Treaty settlement;

Financial implications

s 9(2)(j)



PROACTIVELY RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS

**Publicity**

s 9(2)(j)

- 24 **noted** that the overriding of the Enabling Act and the alternative cultural redress offer are likely to be of public interest;
- 25 **noted** that, subject to Cabinet agreement to the proposal in the paper under DEV-19-SUB-0077, the Minister for Housing and Urban Development and the Minister for Treaty of Waitangi Negotiations will issue a joint media statement with Ngāti Paoa at the appropriate time.

Janine Harvey  
Committee Secretary

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**Present:**

Rt Hon Winston Peters (Chair)  
Hon Kelvin Davis  
Hon Phil Twyford  
Hon Andrew Little  
Hon David Parker  
Hon Stuart Nash  
Hon Iain Lees-Galloway  
Hon Jenny Salesa  
Hon Shane Jones  
Hon Kris Faafoi  
Hon Willie Jackson  
Hon James Shaw  
Hon Eugenie Sage

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV

**Hard-copy distribution:**

Minister of Housing and Urban Development  
Minister for Treaty of Waitangi Negotiations



# Cabinet

## Minute of Decision

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### Report of the Cabinet Economic Development Committee: Period Ended 12 April 2019

On 15 April 2019, Cabinet made the following decisions on the work of the Cabinet Economic Development Committee for the period ended 12 April 2019:

withheld as out of scope

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

PROACTIVELY RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS





withheld as out of scope

[Redacted]

DEV-19-MIN-0077

**Point England and Ngāti Paoa Treaty Settlement**

CONFIRMED

Portfolios: Housing and Urban Development / Treaty of Waitangi Negotiations

withheld as out of scope

[Redacted]

[Redacted]

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

PROACTIVELY RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS

withheld as out of scope →

[REDACTED]

Michael Webster  
Secretary of the Cabinet

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**Hard-copy distribution:**  
Cabinet Economic Development Committee  
Minister for Treaty of Waitangi Negotiations

PROACTIVELY RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS

In Confidence

Office of the Minister for Treaty of Waitangi Negotiations  
Chair, Cabinet Economic Development Committee

## POINT ENGLAND & NGĀTI PAOA TREATY SETTLEMENT – REVISED OFFER

### Proposal

1. I seek Cabinet agreement to offer Ngāti Paoa an opportunity to purchase up to three school sites (land only) in Tāmaki Makaurau, with a combined 2018 book value of up to \$41 million, as Treaty settlement redress. Any purchased school sites must be leased back to the Ministry of Education on standard terms.
2. If agreed, I intend to include the redress in a revised offer to Ngāti Paoa to replace a housing development opportunity at Point England Reserve (the Reserve). The revised offer will also include cultural redress at the Reserve, approved by Cabinet in April [CAB-19-MIN-0168].
3. The revised offer will conclude Treaty settlement negotiations with Ngāti Paoa and allow the Government to repeal the Point England Development Enabling Act 2017 (the Enabling Act).

### Executive summary

4. Negotiations with Ngāti Paoa commenced in 2009. The Ngāti Paoa Deed of Settlement (the Ngāti Paoa deed), initialled in August 2017, contains a housing development opportunity at the Reserve. The Reserve land was made available for development by the Enabling Act.
5. The Government seeks to repeal the Enabling Act [CAB-19-MIN-0168] but must first reach agreement with Ngāti Paoa to withdraw the housing development opportunity at the Reserve.
6. In April, Cabinet agreed to offer Ngāti Paoa an alternative comprised of cultural redress at the Reserve and new commercial redress (a housing opportunity) elsewhere [CAB-19-MIN-0168].
7. Ngāti Paoa has agreed in principle to the cultural redress but does not support the new commercial redress. It instead seeks to purchase \$41 million worth of school sites in Tāmaki Makaurau. \$41 million is the valuation of the housing development land at the Reserve.

### Revised offer

8. I therefore seek Cabinet agreement to offer Ngāti Paoa an opportunity to purchase up to three school sites (land only) in Tāmaki Makaurau, with a combined 2018 book value of up to \$41 million. Any purchased school sites must be leased back to the Ministry of Education on standard terms. The Minister of Education supports this offer. If agreed, I will make a revised offer to Ngāti Paoa which includes the cultural redress at the Reserve, approved by Cabinet in April [CAB-19-MIN-0168].

### Financial implications

9. Cabinet approval is required as the proposal could result in the disposal of assets with a carrying value of \$25 million or more [CO (19) 6].

[REDACTED]

[REDACTED]

[REDACTED]

s 9(2)(j)  
s 9(2)(b)(ii)

### Risks

10. Risks associated with the proposal include the precedent for other Treaty settlements and overlapping interests. A potential purchase right may also arise for the Tāmaki Collective.

## Background

### *Ngāti Paoa*

11. Ngāti Paoa is an iwi of 3459 people (2013 census). The Ngāti Paoa area of interest includes Tāmaki Makaurau, the Hauraki Plains and Gulf islands, and parts of Waikato.

### *Collective negotiations*

12. Ngāti Paoa is a party to Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Deed (December 2012) and the Pare Hauraki Collective Redress Deed (August 2018).
13. Ngāti Paoa is also a member of the Marutūāhu Collective. In July 2018, the Crown and four of the five Marutūāhu iwi initialled the Marutūāhu Iwi Collective Redress Deed (the Marutūāhu deed). Ngāti Paoa is yet to initial the Marutūāhu deed due to concerns over the collective governance structures and apportionment of commercial redress. Ngāti Paoa has the option to initial and ratify the Marutūāhu deed now, or accede later.

### *Ngāti Paoa iwi-specific negotiations*

14. In 2011, Ngāti Paoa began iwi-specific Treaty negotiations with the Crown. In August 2017, the Crown and Ngāti Paoa initialled the Ngāti Paoa deed.

### *Point England - Enabling Act and housing development opportunity*

15. The Ngāti Paoa deed includes a commercial redress opportunity for Ngāti Paoa to develop 11.69 hectares of former reserve land for housing at the Reserve [CAB-16-MIN-0399]. In October 2016, Ngāti Paoa and the Crown counter-signed a letter recording the redress as an on-account settlement to allow the housing development to proceed ahead of finalising the Ngāti Paoa deed. [REDACTED]
16. The Reserve land was made available for housing development by the Enabling Act, passed under the previous Government. The Enabling Act attracted opposition from the local community and Auckland Council. The Reserve provides the local community with highly valued urban green space and sports fields, and is also habitat for rare and endangered birds.
17. In December 2017, in response to public and Auckland Council concerns, Ministers asked Ngāti Paoa if it would consider an alternative offer. Ngāti Paoa agreed but would not forego the housing development opportunity at the Reserve until it negotiated a suitable alternative.

s 9(2)(j)  
s 9(2)(b)(ii)

### *Crown's Point England alternative offer*

18. My Lead Crown Negotiator initially explored with Ngāti Paoa a range of alternatives to the housing development opportunity at the Reserve, without reaching agreement.
19. In April 2019, I reported to Cabinet on negotiations with Ngāti Paoa to agree an alternative offer to replace the housing development opportunity at the Reserve, and to repeal the Enabling Act. Cabinet agreed an alternative offer to Ngāti Paoa comprising:

#### Cultural redress (at the Reserve)

- 19.1. the transfer of 2 hectares for a marae site;
- 19.2. the transfer of 2 hectares for papakāinga housing;
- 19.3. the vesting of the balance of the Reserve (40.61 hectares) as recreation reserve; and

#### Commercial redress (not at the Reserve)

- 19.4. a new housing development opportunity [CAB-19-MIN-0168].

20. In May 2019, I made the alternative offer to Ngāti Paoa. There is agreement in principle to the cultural redress at the Reserve, but the Ngāti Paoa post-settlement governance entity (the PSGE) does not support the new commercial redress.

s 9(2)(j)  
s 9(2)(b)(ii)

*Ngāti Paoa PSGE's counter proposal*

21. In July 2019, the PSGE made a counter proposal seeking to purchase school sites in Tāmaki Makaurau (which must be leased back to the Ministry of Education) [REDACTED]

22. The PSGE seeks to purchase from a list of 12 potential school sites in the Marutūāhu deed. Under the terms of the Marutūāhu deed, the Marutūāhu Collective (which Ngāti Paoa is a member of) can purchase a maximum of five of the 12 potential school sites for lease back to the Ministry of Education. There is a two-year period in which the Marutūāhu Collective can exercise its opportunity. At least seven sites will be left over after the Marutūāhu Collective has made its purchases. Ngāti Paoa could therefore be offered an exclusive opportunity to purchase additional school sites from those that remain available on the Marutūāhu deed list. The PSGE is aware Ngāti Paoa's selection could be limited by the school sites the Marutūāhu Collective may choose to purchase first.

23. The Ngāti Paoa mandated negotiator supports the PSGE's counter proposal, but has asked for the cultural redress offer at the Reserve (agreed in principle) to also be maintained.

s 9(2)(h)

24. [REDACTED]

**Revised offer**

25. I seek Cabinet agreement to offer Ngāti Paoa an exclusive opportunity to purchase additional school sites in Tāmaki Makaurau (from the list of 12 in the Marutūāhu deed), as part of a revised Point England alternative offer, on the following terms:

- 25.1. up to three school sites (land only) can be purchased;
- 25.2. the combined 2018 book value of the school sites must not exceed \$41 million;
- 25.3. the school sites can only be selected by Ngāti Paoa after:
  - 25.3.1. the Marutūāhu Collective has exercised its first potential right to purchase from the 12 school sites; or
  - 25.3.2. the Marutūāhu Collective's two-year deferred selection period in which it can exercise its potential right has lapsed;
- 25.4. Ngāti Paoa will then have a further period of three months to exercise its second potential right to purchase from the school sites that remain on the list, after which time the offer would lapse;
- 25.5. any school sites Ngāti Paoa purchase will be subject to a standard valuation process at the time of purchase to determine the transfer value of the site; and
- 25.6. school sites must be leased back to the Ministry of Education under its standard lease agreement (6% annual rental rate, 4% annual property value growth rate subject to market alignment, 7-year rent review, and 21-year lease renewable in perpetuity).

26. While the Marutūāhu deed lists 12 school sites, five are of too high a value to be selected by Ngāti Paoa. The school sites (maximum of three) Ngāti Paoa could potentially purchase are:

School site (land only)	2018 book value (\$)
Remuera Intermediate	14,385,000
Takapuna Normal Intermediate	11,604,000
Takapuna School	12,306,000
Ponsonby Intermediate	28,158,172
Bayswater School	10,585,000
Wairau Intermediate	12,139,000
Parnell School	15,921,000

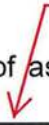
27. I propose including this redress in a revised offer along with the cultural redress at the Reserve, approved by Cabinet in April and agreed in principle with Ngāti Paoa. The alternative commercial redress approved by Cabinet in April will be withdrawn.
28. The proposal presents the best opportunity to close negotiations with Ngāti Paoa, commence ratification and sign the Ngāti Paoa deed. This will enable the repeal of the Enabling Act to proceed through the Ngāti Paoa Claims Settlement Bill (the Ngāti Paoa Bill). I will also encourage Ngāti Paoa to initial and ratify the Marutūāhu deed.
29. Should matters need finalising prior to signing the Ngāti Paoa deed, I seek a delegation from Cabinet to do so along with relevant portfolio ministers, for decisions that do not increase the total settlement value and are within the general Treaty settlement framework parameters.

**Financial Implications**

*Cabinet approval to dispose of assets*

30. Cabinet approval is required as the proposal could result in the disposal of assets with a carrying value of \$25 million or more [CO (19) 6].

s 9(2)(j)  
s 9(2)(b)(ii)



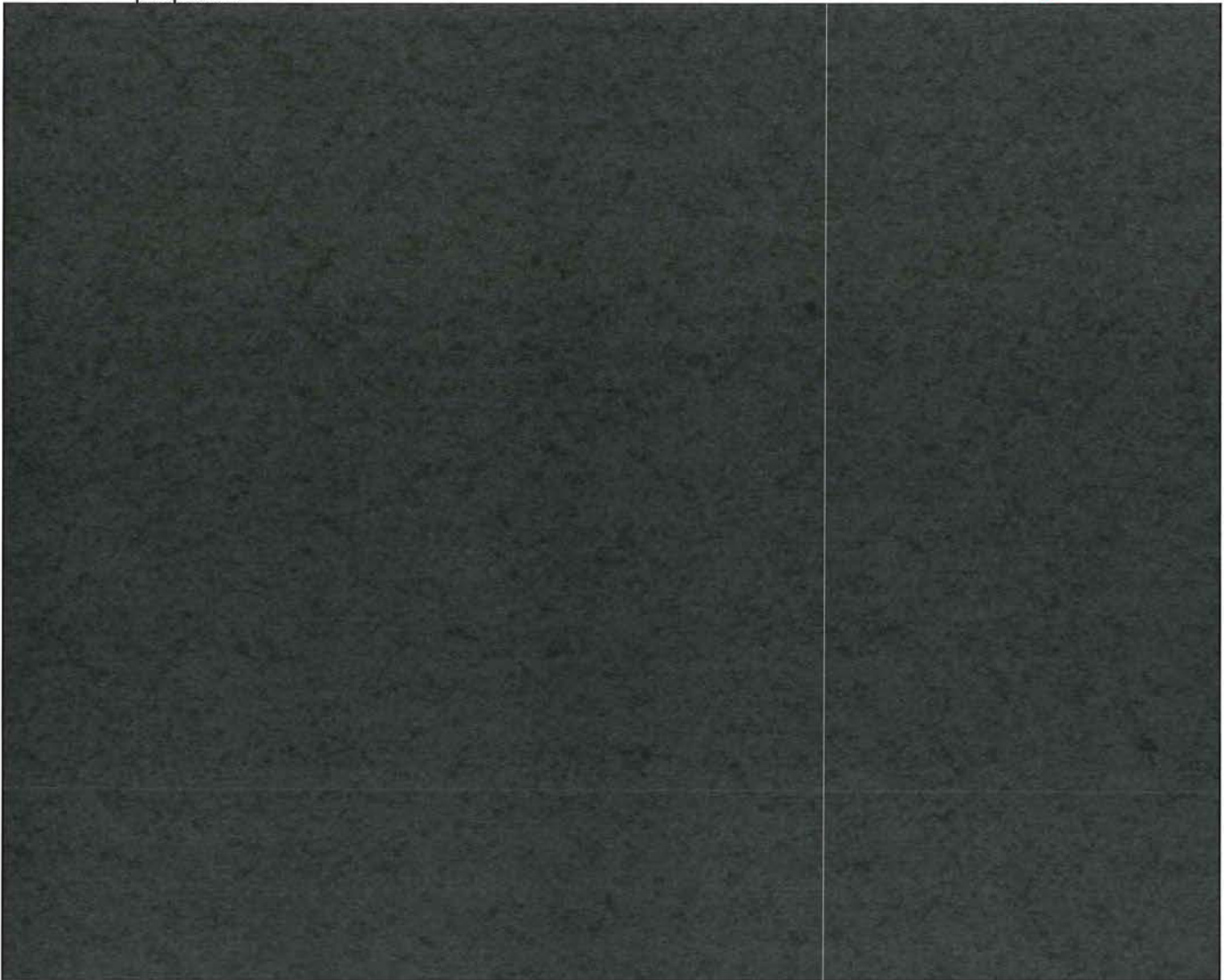


**Risks**

*Risk to other settlements in Tāmaki Makaurau arising from the proposal*

- 34. Treaty settlements and redress offers to other iwi in Tāmaki Makaurau are unaffected by this proposal.

s 9(2)(j)  
s 9(2)(b)(ii)



*Overlapping interests*

- 40. The school sites in the Marutūāhu deed have previously been through an overlapping-interests process with iwi in Tāmaki Makaurau. I do not propose conducting further overlapping-interests discussions based on the proposal in this paper.

41. If Cabinet approve the proposal in this paper, I will carefully manage relationships between Ngāti Paoa and the other iwi of the Marutūāhu Collective. The Chair of the Marutūāhu Collective is aware of the proposal. Other Marutūāhu iwi may be unhappy Ngāti Paoa has an exclusive opportunity to purchase school sites, but this will not affect the redress offer to the Marutūāhu Collective. I will encourage Ngāti Paoa to initial, ratify and sign the Marutūāhu deed alongside the other Marutūāhu iwi.
42. Ngāti Whātua Ōrākei has contested redress offers to some iwi in Tāmaki Makaurau. I note Ngāti Paoa has reached an agreement with Ngāti Whātua Ōrākei on their respective interests. Ngāti Paoa has advised it intends to select school sites in areas which respect its agreement with Ngāti Whātua Ōrākei.

*Tāmaki Collective deed provides the potential for a subsequent right to purchase*

43. Cabinet should note the Tāmaki Collective, through the Tāmaki deed, has a subsequent right to purchase school sites in Tāmaki Makaurau offered in other Treaty settlements. Under the proposal in this paper, this right can only be triggered if Ngāti Paoa exercise its opportunity to purchase one or more of the potential school sites, but then fail to complete the purchase. If Ngāti Paoa do not exercise its opportunity, the Tāmaki Collective's subsequent right will not be triggered, as the school sites remain potential sites only. In the event the Tāmaki Collective right to purchase is triggered, the resulting financial implications would be the same as those discussed above for Ngāti Paoa.
44. For the avoidance of doubt, there is no change or risk to the Tāmaki Collective right of first refusal as a result of the proposal in this paper.

### **Next steps**

45. If agreed by Cabinet, I propose writing to Ngāti Paoa to revise the Crown's Point England alternative offer. I will detail both the alternative offer of cultural redress at the Reserve, and the opportunity to purchase school sites proposed in this paper. I will also write to the Marutūāhu Collective advising them of the revised offer.
46. I expect the Ngāti Paoa deed and revised offer will be put to the Ngāti Paoa claimant community for ratification shortly, so that the Ngāti Paoa deed can be signed in 2020.

### **Consultation**

47. The Ministry of Education, The Treasury, the Ministry of Housing and Urban Development, and Te Puni Kōkiri have been consulted in the preparation of this paper.
48. Auckland Council supports the Crown negotiating an alternative to housing development at Point England. The Council has been involved in the development of the cultural redress at the Reserve, approved by Cabinet in April.

### **Legislative Implications**

49. The Ngāti Paoa Bill will be required to implement aspects of the Ngāti Paoa deed including the proposal in this paper. The Ngāti Paoa Bill will also repeal the Enabling Act [CAB-19-MIN-0168]. I will report back to Cabinet seeking approval to introduce the Ngāti Paoa Bill to Parliament at the appropriate time.

### **Impact Analysis**

50. A regulatory impact statement is not required because the proposal does not amend or affect existing regulatory arrangements.



**Human Rights**

51. The proposal is not inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

**Publicity**

52. The public are likely to have an interest in the proposal in this paper. I expect the revised offer will be received favourably by the local community because of the public opposition to housing development at the Reserve. To date, there has been no public communication because the negotiations are sensitive, although some information has been made public in responses to Parliamentary questions.

53. Subject to Cabinet’s agreement to the proposal in this paper, I propose to make a joint media statement with Ngāti Paoa. The public will have an opportunity to submit on the proposal as part of the select committee process for the Ngāti Paoa Bill.

**Proactive Release**

54. I intend to defer proactive release of this paper until after the Ngāti Paoa deed has been signed, as all of the content will remain negotiations sensitive until that time.

**Recommendations**

The Minister for Treaty of Waitangi Negotiations recommends the Committee:

- 1. **note** in August 2016, Cabinet agreed to offer Ngāti Paoa the opportunity to purchase part of Point England Reserve (the Reserve), for the purpose of a housing development opportunity, prior to settlement date, subject to the removal of reserve status [CAB-16-MIN-0399];
- 2. **note** in June 2017, the Point England Development Enabling Act 2017 (the Enabling Act) came into force, removing reserve status from 11.69 hectares of the Reserve and rezoning the land for housing purposes;
- 3. **note** in August 2017, the Crown and Ngāti Paoa initialled the Ngāti Paoa Deed of Settlement;
- 4. **note** in April 2019, Cabinet agreed to repeal the Enabling Act and replace the housing development opportunity at the Reserve, with an alternative offer comprised of cultural redress at the Reserve and a new commercial development opportunity elsewhere [CAB-19-MIN-0168];
- 5. **note** the Ngāti Paoa post-settlement governance entity does not support the new commercial development opportunity and instead wishes to purchase \$41 million worth of school sites in Tāmaki Makaurau;

s 9(2)(h)



6. [REDACTED]

*Revised offer*

- 7. **agree** to withdraw the commercial development opportunity agreed by Cabinet in April 2019;
- 8. **agree** to offer Ngāti Paoa an opportunity to purchase up to three school sites (land only) in Tāmaki Makaurau (from the list of potential deferred selection purchase properties in the Marutūāhu Iwi Collective Redress Deed), with a combined 2018 book value of up to \$41 million, which must be leased back to the Ministry of Education;

9. **note** the opportunity to purchase school sites will be included in a revised offer to Ngāti Paoa along with the cultural redress at the Reserve approved by Cabinet in April 2019 [CAB-19-MIN-0168];

*Financial implications*

s 9(2)(j)  
s 9(2)(b)(ii)

10. **approve** the disposal of school sites (land only) that could result from the revised offer, which may surpass the significance threshold of \$25 million or more [CO (19) 6];



*Publicity*

13. **note**, subject to Cabinet agreement to the revised offer, the Minister for Treaty of Waitangi Negotiations proposes to issue a joint-media statement with Ngāti Paoa at the appropriate time; and

*Delegation*

14. **authorise** the Minister for Treaty of Waitangi Negotiations and relevant portfolio ministers to finalise or vary redress relevant to their portfolios that does not increase the total value of the settlements, within the general parameters of the Treaty settlement framework, and in consultation with affected agencies, to take account of any final issues prior to signing the Ngāti Paoa Deed of Settlement.

Authorised for lodgement

Hon Andrew Little

Minister for Treaty of Waitangi Negotiations



# 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.*

### Point England and Ngāti Paoa Treaty Settlement: Revised Offer

**Portfolio** Treaty of Waitangi Negotiations

On 16 December 2019, following reference from the Cabinet Economic Development Committee (DEV), Cabinet:

#### Background

- 1 **noted** that in August 2016, the previous government agreed to offer Ngāti Paoa the opportunity to purchase part of Point England Recreation Reserve (the Reserve), for the purpose of a housing development opportunity, prior to settlement date, subject to the removal of reserve status [CAB-16-MIN-0399];
- 2 **noted** that in June 2017, the Point England Development Enabling Act 2017 (the Enabling Act) came into force, removing reserve status from 11.69 hectares of the Reserve and rezoning the land for housing purposes;
- 3 **noted** that in August 2017, the Crown and Ngāti Paoa initialled the Ngāti Paoa Deed of Settlement;
- 4 **noted** that in April 2019, DEV agreed to repeal the Enabling Act and replace the housing development opportunity at the Reserve, with an alternative offer comprised of cultural redress at the Reserve and a new commercial development opportunity elsewhere [DEV-19-MIN-0077];
- 5 **noted** that the Ngāti Paoa post-settlement governance entity does not support the new commercial development opportunity, and instead wishes to purchase \$41 million worth of school sites in Tāmaki Makaurau;

s 9(2)(h)

- 6 [REDACTED]

#### Revised offer

- 7 **agreed** to withdraw the commercial development opportunity referred to in paragraph 4 above;

- 8 **agreed** to offer Ngāti Paoa an opportunity to purchase up to three school sites (land only) in Tāmaki Makaurau (from the list of potential deferred selection purchase properties in the Marutūāhu Iwi Collective Redress Deed), with a combined 2018 book value of up to \$41 million, which must be leased back to the Ministry of Education;
- 9 **noted** that the opportunity to purchase school sites will be included in a revised offer to Ngāti Paoa along with the cultural redress at the Reserve referred to in paragraph 4 above;

**Financial implications**

- 10 **approved** the disposal of school sites (land only) that could result from the revised offer, which may surpass the significance threshold of \$25 million or more [Cabinet Office Circular CO (19) 6];

s 9(2)(j)  
s 9(2)(b)(ii)



**Publicity**

- 13 **noted** that the Minister for Treaty of Waitangi Negotiations proposes to issue a joint-media statement with Ngāti Paoa at the appropriate time;

**Delegation**

- 14 **authorised** the Minister for Treaty of Waitangi Negotiations, in consultation with relevant portfolio Ministers, to finalise or vary redress relevant to their portfolios that does not increase the total value of the settlements, within the general parameters of the Treaty settlement framework, and in consultation with affected agencies, to take account of any final issues prior to signing the Ngāti Paoa Deed of Settlement.

Michael Webster  
Secretary of the Cabinet

*Secretary's Note: This minute replaces DEV-19-MIN0357. Cabinet amended paragraph 12.*

**Hard-copy distribution:**

Prime Minister  
Deputy Prime Minister  
Minister for Treaty of Waitangi Negotiations

PROACTIVELY RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS