

Hon Andrew Little, Minister for Treaty of Waitangi Negotiations

Cabinet Paper for: Moriori Deed of Settlement and MCR-19-MIN-0018

Required date of issue: 13 August 2019

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These documents have been proactively released:

1. 17 June, Cabinet Office *MCR-19-MIN-0018* Cabinet Committee Minute;
2. 17 June 2019, Office of the Minister for Treaty of Waitangi Negotiations, *Moriori Deed of Settlement* Cabinet paper

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RELEASED BY THE 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.

Report of the Cabinet Māori Crown Relations - Te Arawhiti Committee: Period Ended 14 June 2019

On 17 June 2019, Cabinet made the following decisions on the work of the Cabinet Māori Crown Relations - Te Arawhiti Committee for the period ended 14 June 2019:

withheld
as out
of
scope

[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

MCR-19-MIN-0018	Mori Mori Deed of Settlement Portfolio: Treaty of Waitangi Negotiations	CONFIRMED
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withheld
as
outside
of scope

[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	CONFIRMED

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:
Cabinet Māori Crown Relations - Te Arawhiti Committee



Cabinet Māori Crown Relations: Te Arawhiti Committee

Minute of Decision

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Moriori Deed of Settlement

Portfolio Treaty of Waitangi Negotiations

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

Background

- 1 **noted** that in July 2017, the previous government noted that Moriori accepted a quantum of \$18.000 million, and agreed a Crown offer for Moriori [TOW-17-MIN-0019];
- 2 **noted** that in August 2017, an Agreement in Principle was signed with Moriori;

Proposed changes to redress in Agreement in Principle

Cultural redress

- 3 **noted** that some of the cultural redress proposed for inclusion in the Moriori Deed of Settlement differs from the redress approved by Cabinet in July 2017 [REDACTED]

s9(2)(j)

4

s9(2)(j)

5

s9(2)(j)

- 6 **agreed** to the geographic name changes for Moriori set out in Appendix 4 of the paper under MCR-19-SUB-0018;

- 7 **noted** that the Minister for Treaty of Waitangi Negotiations (the Minister) intends to remove seven cultural redress sites included in the Moriori Agreement in Principle as exclusive transfers from the Moriori settlement package;

- 8 **agreed** to offer Moriori the following, as outlined in Appendix 2 of the paper under MCR-19-SUB-0018;

- 8.1 overlay classifications over site 100 ex Wharekauri Station (excluding Cape Young portion) and site 102 ex Wharekauri Station;

- 8.2 statutory acknowledgements and deeds of recognition over 11882 Owenga site, Ocean Mail Scenic Reserve and Te Awatea Scenic Reserve;
 - 8.3 the transfer of the Glory and Waihere blocks (public conservation land totalling approximately 1200 hectares) on Pitt Island, subject to appropriate reserve status and conditions which will keep them available to the Pitt Island community for grazing until at least 2036;
 - 8.4 the transfer of approximately 26 hectares of the Waipaua Conservation Area on Pitt Island subject to appropriate reserve status; and
 - 8.5 co-management over an area of remnant indigenous forest within the Waipaua Conservation Area, comprising a mix of Crown owned land (approximately 160 hectares) and approximately 26 hectares proposed for transfer to Moriori subject to appropriate reserve status;
- 9 **noted** that the Minister of Conservation has agreed to the proposal to transfer the Glory and Waihere blocks on Pitt Island to Moriori, and the Pitt Island community was consulted on the proposal;

Shared redress with Ngāti Mutunga o Wharekauri

- 10 **noted** that in July 2017 and October 2018, Cabinet approved shared redress between Moriori and Ngāti Mutunga o Wharekauri [TOW-17-MIN-0019 and CMR-18-MIN-0027];
- 11 **agreed** to offer Moriori and Ngāti Mutunga o Wharekauri a joint overlay classification over site 100 ex Wharekauri Station (Cape Young portion), subject to Moriori and Ngāti Mutunga o Wharekauri agreeing a set of joint protection principles and Director-General of Conservation actions;
- 12 **noted** the shared redress for Moriori and Ngāti Mutunga o Wharekauri as set out in Appendix 3 of the paper under MCR-19-SUB-0018;
- 13 **noted** that shared redress, excluding the shared right of first refusal and provision for customary non-commercial fishing regulations, will be delivered to Moriori and Ngāti Mutunga o Wharekauri through a separate shared redress deed and bill;
- 14 **noted** that the Minister intends to seek Cabinet approval on shared redress, and approval to sign a shared redress deed with Moriori and Ngāti Mutunga o Wharekauri in due course;

Overlapping interests

- 15 **noted** that prior to initialling the Moriori Deed of Settlement, overlapping interests must be addressed to the Crown’s satisfaction;

s9(2)(j) 16

[REDACTED]

Financial implications

s9(2)(j) 17

[REDACTED]

18

[REDACTED]

24 **noted** that:

24.1 after joint Ministers have noted the estimated implementation costs, the Department of Conservation will seek implementation funding for this Treaty settlement through the baseline update process, shortly after the settlement legislation is enacted;

24.2 this is deemed to have no financial implications on the basis that any revenue from Crown land sales funds that would otherwise be available for the purchase of new reserves may be used to offset Treaty of Waitangi settlement implementation costs;

[CAB Min (10) 9/7]

25 **noted** that the Department of Conservation implementation costs referred to in paragraphs 23 and 24 above are in addition to those outlined in the financial implications table in paragraph 19;

Delegation to act

26 **authorised** joint Ministers to note the estimated implementation costs for the Mori settlement when they are known;

27 **authorised** the Minister for Treaty of Waitangi Negotiations:

27.1 to make a final determination that overlapping interests have been addressed to the Crown's satisfaction prior to initialling the Mori Deed of Settlement;

27.2 to finalise or vary the redress consistent with the intent of Cabinet's decisions, in consultation with relevant portfolio Ministers;

27.3 together with the Minister for Māori Development, to consider whether the ratification results demonstrate sufficient support for the settlement package from the claimant community;

27.4 upon confirmation of the ratification results, to sign, on behalf of the Crown, a Deed of Settlement with Mori.

Rachel Clarke
Committee Secretary

Present:

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

Officials present from:

Office of the Prime Minister
Officials Committee for MCR

Hard-copy distribution:

Minister for Treaty of Waitangi Negotiations
Minister for Māori Development
Minister of Conservation

In Confidence

Office of the Minister for Treaty of Waitangi Negotiations
Chair, Cabinet Māori Crown Relations: Te Arawhiti Committee

MORIORI DEED OF SETTLEMENT

Proposal

1. I seek Cabinet agreement to the final redress package for the comprehensive settlement of the historical Treaty of Waitangi claims of Moriori.

2. [REDACTED]

s9(2)(j)

3. Subject to Cabinet agreement, I intend to initial a Deed of Settlement (Deed) with Moriori on [REDACTED]

s9(2)(g)(i)

Executive Summary

4. The Crown and Moriori are close to finalising a settlement package for the historical Treaty of Waitangi claims of Moriori. I seek agreement to a final redress package and, subject to resolution of final issues, I intend to initial a Deed with Moriori on [REDACTED]

s9(2)(g)(i)

5. The Moriori area of interest comprises the entirety of the Chatham Islands and is entirely overlapped with the Ngāti Mutunga area of interest (see **Appendix 1**).

6. Following an unsuccessful negotiation between 2004 and 2008, the Crown recommenced negotiations with Moriori and began negotiations with Ngāti Mutunga in March 2016. Concurrent negotiations was a strategy by the Crown to give parties the best chance of resolving overlapping interests. Early in negotiations, both iwi and the Crown agreed in-principle to significant shared redress, including the joint ownership and management of Te Whanga Lagoon.

7. In April 2017, subject to Cabinet approval, my predecessor made Crown offers to Moriori and Ngāti Mutunga. [REDACTED]

s9(2)(j)

[REDACTED]. In July 2017, Cabinet approved a Crown offer to Moriori [CAB-17-MIN-0388 refers]. As Moriori had accepted their Crown offer in good faith, my predecessor considered the Crown should sign an AIP with them. An AIP was signed in August 2017, subject to addressing overlapping interests to the Crown's satisfaction.

s9(2)(j)

8. [REDACTED]

[REDACTED]

9. In December 2018, I also made a revised cultural redress offer to Moriori.

s9(2)(j)

[REDACTED]. The revised offer includes the transfer of approximately 1200 hectares of public conservation land on Pitt Island to Moriori, upon which there are Moriori ancestors buried, in exchange for most of the land offered to Moriori on Chatham Island remaining in Crown ownership. I seek Cabinet agreement to these variations to the cultural redress package since the AIP was signed.

s9(2)(j) 10.

[REDACTED]

Accordingly, alongside seeking Cabinet agreement to this redress, I also seek delegated authority to make final determinations on overlapping interests and finalise or, if necessary, vary the redress consistent with the intent of Cabinet's decisions.

11. Ideally, the Crown would be settling with Moriori and Ngāti Mutunga concurrently. However, this has not proved possible at this time. [REDACTED]

s9(2)(j)

[REDACTED]

12. However, Moriori have expressed a clear settlement aspiration to have sites of spiritual and cultural significance on the Chatham Islands returned. Moriori have a legitimate expectation to settle and a right to receive appropriate settlement redress, in accordance with Crown policy. Accordingly, subject to Cabinet agreement to the final redress package, I intend to initial a Deed with Moriori.

s9(2)(j) 13.

[REDACTED]

[REDACTED] I have confidence in the Crown's processes and am prepared to defend the Moriori settlement offer should it be challenged.

14. Shared redress agreed between Moriori, Ngāti Mutunga and the Crown will be delivered through a separate shared redress deed and bill, which is intended to progress alongside the second settling group's settlement legislation. This means Moriori will be entering a full and final settlement of their historical Treaty of Waitangi claims without the full suite of redress being delivered. Moriori understand this and have indicated they are prepared to settle on this basis. Nevertheless, I remain open

to alternative ways to deliver the shared redress and, if agreement was reached with Moriori and Ngāti Mutunga, would seek Cabinet approval to a proposed way forward.

15.

s9(2)(j)

[REDACTED]

16. Once the Deed is initialled, Moriori will vote on whether to ratify the proposed Deed. In addition to the delegations noted above, I seek authority for the Minister of Māori Development and I to consider whether the ratification results demonstrate sufficient support for the Deed and, following assessment, authorisation to sign the Deed with Moriori on behalf of the Crown.

Background

17. Moriori and Ngāti Mutunga are tangata whenua of the Chatham Islands. Their areas of interest comprise the entirety of the Chatham Islands and are entirely overlapped. Moriori inhabited the Chatham Islands in isolation for several hundred years before the arrival of Europeans in 1791 and Ngāti Mutunga from mainland New Zealand in 1835. The Crown annexed the Chatham Islands to New Zealand on 1 November 1842.

Moriori historical Treaty claims

18. In its 2001 *Rekohu* report, the Waitangi Tribunal found Moriori to have well-founded claims. The key grievances of Moriori relate to:

- 18.1. the Crown's failure to intervene to end the enslavement of Moriori;
- 18.2. Moriori landlessness following the 1870 Native Land Court decision;
- 18.3. the Crown's role in the collection and trade of Moriori ancestral remains; and
- 18.4. the Crown's role in promoting myths that stigmatised Moriori as a racially inferior people who became extinct.

Previous negotiations with Moriori

19. In 2003, the Crown recognised the mandate of the Hokotehi Moriori Trust to negotiate the settlement of all historical Treaty of Waitangi claims of Moriori.

20. From 2004 to 2008, negotiations occurred between the Hokotehi Moriori Trust and the Crown, but ceased before a comprehensive Crown offer was made. Negotiations ceased due to the:

- 20.1. inability of Moriori and Ngāti Mutunga to address overlapping interests (in part because Ngāti Mutunga did not have a mandated entity at the time);
- 20.2. inability of the Crown and Moriori to reach agreement on quantum; and
- 20.3. concentration of Crown resources on other negotiation priorities.

Current negotiations with Moriori

21. In March 2016, following the reconfirmation of the Hokotehi Moriori Trust mandate, the Crown recommenced negotiations with Moriori and began negotiations with Ngāti Mutunga. Concurrent negotiations gave parties the best chance of resolving overlapping interests. Both iwi and the Crown reached in-principle agreement on an approach to the joint ownership and management of Te Whanga Lagoon and some adjoining sites, a joint planning committee of the Chatham Island Council, a shared right of first refusal over Crown properties, and a new regulatory regime for customary fisheries.

22. However, agreement could not be reached on an approach to exclusive cultural redress for Moriori. Whilst Moriori sought ownership of their wāhi tapu on Crown land,

s9(2)(j)

[REDACTED]

23. In October 2016, Cabinet approved a natural resources brief to negotiate arrangements for Moriori and Ngāti Mutunga involvement in resource management decision making over Te Whanga Lagoon, alongside the Chatham Islands Council [CAB-16-MIN-0531 refers].

24.

[REDACTED]

s9(2)(j)

25. In April 2017, subject to Cabinet approval, Crown offers were made to Moriori and Ngāti Mutunga. In July 2017, Cabinet approved a Crown offer to Moriori and authorised the Minister for Treaty of Waitangi Negotiations to sign an AIP with Moriori [CAB- 17- MIN-0388 refers].

26. In August 2017, the Hokotehi Moriori Trust accepted a revised Crown offer, and Moriori and the Crown signed an AIP. While this was a departure from the Crown's strategy of progressing Moriori and Ngāti Mutunga's settlements in parallel, the Crown considered it should sign an AIP given Moriori had, in good faith, accepted the Crown's offer, and the AIP was subject to addressing overlapping interests.

27. The AIP includes provisional Crown acknowledgements, an agreed financial redress offer of \$18.000 million (including an on-account transfer of \$3.600 million, which is currently being progressed), a number of exclusive cultural redress transfers, and other standard commercial and cultural redress items. It also includes significant redress to be shared with Ngāti Mutunga as described in paragraph 21.

28. In December 2018, Moriori ratified and established their post-settlement governance entity (PSGE), to receive and manage settlement assets. At the same time, Moriori agreed for the mandate to finalise Treaty settlement negotiations to transfer from the Hokotehi Moriori Trust to the PSGE, the Moriori Imi Settlement Trust.

29. Following further negotiations, my Chief Crown Negotiator (CCN), Dame Fran Wilde, and my officials are close to finalising a settlement package with the Moriori Imi Settlement Trust, for inclusion in the Deed.

30. As a result of addressing overlapping interests, the cultural redress proposed for inclusion in the Deed differs from the AIP signed in August 2017. The rest of the settlement package is largely consistent with the AIP. Subject to Cabinet approval, I intend to initial the Deed with the Moriori Imi Settlement Trust on

s9(2)(g)(i)

[REDACTED]

Status of Ngāti Mutunga negotiation

31.

[REDACTED]

s9(2)(j)

[REDACTED]

32.

[REDACTED]

s9(2)(j)

33.

[REDACTED]

s9(2)(j)

Scope of the Moriori settlement

34. The proposed Moriori settlement will finally and comprehensively settle all historical Treaty of Waitangi claims of Moriori. Accordingly, all claims made by Moriori at any time (whether registered or not) which are founded on rights arising from the Treaty of Waitangi, or its principles, legislation, common law (including customary rights and aboriginal title), fiduciary duty, or otherwise; and arise from, or relate to, acts or omissions before 21 September 1992, either by or on behalf of the Crown, or by or under legislation, will be settled.

35. Except as provided in the Deed, the settlement will not affect any ongoing rights which Moriori may have under common law (including existing aboriginal title), legislation or the Treaty of Waitangi.

36. The Deed will not include the shared redress agreed between Moriori, Ngāti Mutunga and the Crown. This will be delivered through a separate shared redress deed and bill, which is intended to progress alongside the second settling group's settlement legislation. [REDACTED]

s9(2)(j)

[REDACTED]

37. This means Moriori will be entering a full and final settlement of their historical Treaty of Waitangi claims without the full suite of redress being delivered. Moriori understand this and have indicated they are prepared to settle on this basis. While not delivering all of a group's redress in the Deed that effects a full and final settlement of their claims is not ideal, the Deed will record the Crown owes Moriori a duty consistent with the principles of the Treaty of Waitangi to negotiate a shared redress deed in good faith.

Proposed changes to redress included in the AIP

38. The majority of redress for Moriori was approved by Cabinet in July 2017 and authority was delegated to me and relevant Ministers to make changes to the Crown offer agreed by Cabinet consistent with the intent of Cabinet's decisions [CAB-17-MIN-0388 refers].

39. The changes proposed below are within the financial parameters agreed to by Cabinet and no further funding is required for the Moriori settlement.

40. The Moriori settlement package, including variations since the AIP, is set out in **Appendix 2**.

Crown apology redress

41. The Crown apology redress in the Deed will include a Crown apology, a set of final Crown acknowledgements, and an agreed historical account.

42. The Crown and Moriori are presently working to finalise an historical account for inclusion in the Deed. The account describes the key interactions between Moriori and the Crown from 1842 to 1992 and provides context for the Crown's acknowledgements of its acts and omissions which breached the Treaty of Waitangi and its principles.

43. The Deed and settlement legislation will include the Crown's apology to Moriori and the Crown's acknowledgements.

Cultural redress

44. As a result of addressing overlapping interests between Moriori and Ngāti Mutunga, some cultural redress proposed for inclusion in the Deed differs from the redress approved by Cabinet in July 2017.

45. Following the signing of the AIP, [REDACTED]

s9(2)(j)

[REDACTED]

[REDACTED] In December 2018, I made a revised cultural redress offer to Moriori.

46. The proposed changes fall within the authority delegated to me and relevant Ministers by Cabinet in July 2017. However, due to the nature and extent of the changes, I seek specific Cabinet approval to the proposals outlined in paragraphs 48 to 55 below.

47. Other cultural redress offered to Moriori remains unchanged from the AIP.

Geographic name changes

48. The Crown offered Moriori the opportunity to change significant geographic names through their Treaty settlement following consideration by the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa. Ngāti Mutunga have been consulted on the proposed changes. Moriori and Ngāti Mutunga have agreed on a number of geographic name changes that will be offered as shared redress, for which I will seek Cabinet approval for in due course.

49. I seek Cabinet approval for the geographic name changes as set out in **Appendix 4**.

Changes to the original proposal for seven Chatham Island cultural redress sites to transfer exclusively to Moriori

50. I propose to remove the following cultural redress sites as exclusive transfers from the Moriori settlement package to address overlapping interests with Ngāti Mutunga:

50.1. 11882 Owenga site;

50.2. Ocean Mail Scenic Reserve;

50.3. Sites 100, 102, 107, and 108 ex Wharekauri Station; and

50.4. Te Awatea Scenic Reserve.

51. Instead of offering these sites to Moriori as exclusive transfers, I seek Cabinet approval to offer Moriori various non-exclusive redress instruments over these sites, as set out below and in **Appendix 2**:

Site	Non-exclusive redress instrument
11882 Owenga site	Statutory acknowledgement and deed of recognition
Ocean Mail Scenic Reserve	Statutory acknowledgement and deed of recognition
Site 100 ex Wharekauri Station (excluding Cape Young portion)	Overlay classification
Site 102 ex Wharekauri Station	Overlay classification
Te Awatea Scenic Reserve	Statutory acknowledgement and deed of recognition

52. Two Chatham Island sites, being site 109 ex Wharekauri Station and the former Owenga School site, will remain in the Moriori settlement as exclusive transfers.

Inclusion of Pitt Island sites in the settlement package

53. In exchange for most of the Chatham Islands sites proposed to transfer to Moriori remaining in Crown ownership, I now seek Cabinet approval for:

- 53.1. the transfer of the Glory and Waihere blocks (Public Conservation Land, totalling approximately 1200 hectares) on Pitt Island (the second largest island in the Chathams group) to Moriori, subject to appropriate reserve status, as well as conditions which will keep them available to the Pitt Island community for grazing until at least 2036;
- 53.2. the transfer of approximately 26 hectares of the Waipaua Conservation Area on Pitt Island to Moriori subject to appropriate reserve status; and
- 53.3. co-management over an area of remnant indigenous forest within the Waipaua Conservation Area, comprising a mix of Crown-owned land (approximately 160 hectares) and the approximately 26 hectares proposed for transfer to Moriori subject to appropriate reserve status.

54.

s9(2)(j)

[REDACTED]. Some of the Pitt Island community also oppose the transfer of these blocks to Moriori. However, the Minister of Conservation and I have agreed to this redress, subject to conditions developed in consultation with the Pitt Island community that largely address their concerns.

55. I consider transferring exclusive redress to Moriori on Pitt Island to be appropriate as:

- 55.1. there are extensive Moriori customary interests in the sites, including burial grounds;
- 55.2. there is limited other Crown land available on the Chatham Islands as settlement redress to Moriori;
- 55.3. the conditions of the transfers are reasonable and take into account the concerns of the Pitt Island community; and

s9(2)(j)

55.4. [REDACTED] Moriori have a right to redress in settlement of their historical Treaty of Waitangi claims.

Financial and commercial redress

56. The financial and commercial redress for Moriori was approved by Cabinet in July 2017 [CAB-17-MIN-0388 refers]. No changes to the financial and commercial redress for Moriori are proposed.

Shared redress with Ngāti Mutunga o Wharekauri

57. Shared redress between Moriori and Ngāti Mutunga was approved by Cabinet in July 2017 and October 2018 [CAB-17-MIN-0388 and CAB-18-MIN-0514 refer]. As

noted in paragraph 21, the shared redress includes the transfer of the bed of Te Whanga Lagoon, a management regime for Te Whanga Lagoon and some adjoining lands, a right of first refusal over Crown properties on the Chatham Islands, a new regime for the management of customary fishing on the Chatham Islands, and the establishment of a Joint Planning Committee of the Chatham Islands Council.

58. As advised in paragraph 50, I propose to remove site 100 ex Wharekauri Station from the Moriori settlement package as an exclusive transfer. I now seek Cabinet approval for Moriori and Ngāti Mutunga to be offered a joint overlay classification over the Cape Young portion of the site, subject to Moriori and Ngāti Mutunga agreeing a set of joint protection principles and Director-General of Conservation actions.
59. Due to the shared nature of the redress outlined in paragraphs 57 and 58 above, and because negotiations with Ngāti Mutunga are less advanced than negotiations with Moriori, it is practical to include shared redress in a separate Moriori and Ngāti Mutunga shared redress deed and bill, rather than deliver it through the Deed. However, the shared right of first refusal and provision for customary non-commercial fishing regulations will be included in the individual deeds and legislation.
60. The individual deeds and legislation will comprehensively settle the historical Treaty of Waitangi claims of Moriori and Ngāti Mutunga.
61. I will seek final Cabinet decisions on shared redress and agreement to sign a shared redress deed in due course. The shared redress offered to Moriori and Ngāti Mutunga is set out in **Appendix 3**.

Risks and rationale for proceeding with the Deed

62. While there are risks with proceeding with the Moriori settlement, on balance I do not consider there are sufficient reasons to delay initialling the Deed. [REDACTED]

s9(2)(j)

Overlapping interests and engagement with Ngāti Mutunga

63. [REDACTED]

s9(2)(j)

64. [REDACTED]

s9(2)(j)

65. [REDACTED]

s9(2)(j)

[REDACTED]
[REDACTED]
[REDACTED]. However, Moriori have significant customary interests in the Pitt Island public conservation sites and I consider the redress offer is appropriate.

Litigation risk

s9(2)(h)

66.

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

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

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

67.

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

[REDACTED]

[REDACTED]
[REDACTED]

Proposed approach to shared redress

69. Shared redress is intended to be delivered through a separate shared redress deed and bill. This means Moriori will settle their historical Treaty of Waitangi claims without receiving all agreed redress. Moriori understand this risk and are comfortable proceeding on this basis. It will also be made clear to the Moriori claimant community in the ratification material for the Deed. [REDACTED]

s9(2)(j)

[REDACTED]
[REDACTED]

RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS

Addressing outstanding overlapping interests and final matters

70. Prior to initialling a Deed with Moriori, overlapping interests must be addressed to the satisfaction of the Crown.

s9(2)(j) 71. [REDACTED] it is likely the Crown will be required to make final decisions on the inclusion of the redress that is contested in the final Moriori settlement package. I therefore propose Cabinet authorise me to make a final determination that overlapping interests have been addressed to the Crown's satisfaction prior to initialling the Deed.

72. In addition, as negotiations with Moriori draw to a close, there may be some final details of the redress that require minor variation. I propose Cabinet authorise me to finalise or vary the redress, without financial implications on the total settlement value and consistent with the intent of Cabinet's decisions, in consultation with relevant portfolio Ministers.

Tax indemnity

73. An indemnity will be sought from the Minister of Finance for income tax and Goods and Services Tax (GST) upon the transfer of settlement redress. The Inland Revenue Department has published interpretation statements that support the view the transfer of settlement redress does not give rise to either income tax or GST consequences. To ensure Moriori retain the full value of their settlement, and for the avoidance of doubt, the Minister of Finance's agreement will be sought to indemnify the PSGE against income tax and GST on the transfer of redress.

Mandate

74. The Hokotehi Moriori Trust, and subsequently the Moriori Imi Settlement Trust, have provided mandate maintenance reports to my officials outlining their engagement with the Moriori claimant community and any challenges to the Moriori Imi Settlement Trust's mandate, along with their response.

Ratification of settlement

75. I seek delegated authority for the Minister for Māori Development and I to consider whether the Deed ratification results demonstrate sufficient support by Moriori for the Deed.

76. I also seek delegated authority to sign the Deed on behalf of the Crown should the ratification results demonstrate sufficient support from Moriori.

Conditions of the settlement

77. The settlement will be conditional on:

77.1. any overlapping interests being addressed to the satisfaction of the Crown;

77.2. ratification of the Deed by Moriori; and

77.3. the enactment of settlement legislation to implement certain aspects of the Deed.

Next steps

- 78. If Cabinet approves the proposed settlement package to Moriori, as detailed in this paper, I intend to initial the Deed with Moriori on 30 June 2019.
- 79. Subject to the outcome of the Deed ratification process, I anticipate signing the Deed in late 2019.

Consultation

- 80. The Office for Māori Crown Relations – Te Arawhiti has consulted with and incorporated the views of the Treasury, Department of Conservation, Ministry for the Environment, Ministry of Education, Ministry of Business Innovation and Employment, Department of Internal Affairs, Ministry for Culture and Heritage, Heritage New Zealand, Ministry for Primary Industries, Land Information New Zealand, New Zealand Police, Ministry of Justice and Te Puni Kōkiri.
- 81. The Crown Law Office has reviewed this paper.

Proactive Release

- 82. I intend to release this paper proactively, making any necessary redactions, within 30 business days of final Cabinet decisions. However, if a Deed has not been initialled with Moriori within 30 business days of Cabinet's decision, then I intend to defer proactive release of this paper until after the Deed has been initialled, as all of the content will remain negotiations sensitive until that time.

Financial Implications

- 83. [REDACTED]

s9(2)(j)

RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS

Estimated Implementation Operating Costs for Department of Conservation

88. Treaty settlements establish extra commitments for the Department of Conservation (the Department). These impose additional costs on the Department through, for example, enhanced iwi engagement on managing specific sites and implementing relationship agreements.
89. In 2010, Cabinet agreed a funding process to enable the Department to meet its costs to implement Treaty settlements [Cab Min (10) 9/7 refers].
90. Ideally, the Department's estimated implementation costs for a Treaty settlement are considered and noted by Cabinet before the Crown and iwi initial a Deed.
91. If it is not possible for the Department to provide estimated implementation costs before signing a deed, Cabinet can agree either to:
 - 91.1. note the Department's estimated implementation costs after signing of a deed;
or
 - 91.2. authorise relevant Ministers (usually the Minister of Finance and Minister of Conservation) to note the Department's estimated implementation costs.
92. The Department will then seek implementation funding for a Treaty settlement at baseline updates shortly after the settlement legislation is enacted [CAB Min (10) 9/7 refers].
93. Due to the timing of the revised Crown offer and the proposed approach to shared redress, it is not possible at this time to provide an estimate of the funding required by the Department to implement the Moriori settlement. I request Cabinet to note the Department is still estimating the implementation costs and will provide the Minister of Finance and Minister of Conservation with an estimate when available.
94. There are no impairment costs arising from the five Public Conservation Land sites that are proposed to transfer exclusively to Moriori.

Human Rights

95. 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.

Legislative Implications

96. Legislation is required to implement aspects of the settlement. Draft legislation will be attached to the Deed. Once the Deed is signed I will seek Cabinet approval to introduce the settlement legislation.

Regulatory Impact Statement

97. No Regulatory Impact Statement is required because the proposal is consistent with existing policy.

Publicity

98. The Office for Māori Crown Relations – Te Arawhiti, jointly with Moriori, will develop a communications strategy to ensure interested parties are informed of the content of the Deed at the time it is initialled.

RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS

Recommendations

The Minister for Treaty of Waitangi Negotiations recommends the Committee:

Background

- 1 **note** Cabinet agreed a Crown offer for Moriori in July 2017 [CAB-17-MIN-0388 refers];
- 2 **note** the previous Minister for Treaty of Waitangi Negotiations signed an Agreement in Principle with Moriori in August 2017;

Proposed changes to redress in Agreement in Principle

Cultural redress

- 3 **note** some of the cultural redress proposed for inclusion in the Moriori Deed of Settlement differs from the redress approved by Cabinet in July 2017 as a result of

s9(2)(j)

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- 6 **agree** the geographic name changes for Moriori set out in **Appendix 4**;
- 7 **note** I propose to remove seven cultural redress sites included in the Moriori Agreement in Principle as exclusive transfers from the Moriori settlement package;
- 8 **agree** to offer Moriori the following, as outlined in **Appendix 2**;
 - 8.1 overlay classifications over site 100 ex Wharekauri Station (excluding Cape Young portion) and site 102 ex Wharekauri Station;
 - 8.2 statutory acknowledgements and deeds of recognition over 11882 Owenga site, Ocean Mail Scenic Reserve and Te Awatea Scenic Reserve;
 - 8.3 the transfer of the Glory and Waihere blocks (public conservation land totalling approximately 1200 hectares) on Pitt Island, subject to appropriate reserve status and conditions which will keep them available to the Pitt Island community for grazing until at least 2036;
 - 8.4 the transfer of approximately 26 hectares of the Waipaua Conservation Area on Pitt Island subject to appropriate reserve status; and
 - 8.5 co-management over an area of remnant indigenous forest within the Waipaua Conservation Area, comprising a mix of Crown owned land (approximately 160 hectares) and approximately 26 hectares proposed for transfer to Moriori subject to appropriate reserve status;

9 **note** the Minister of Conservation has agreed to the proposal to transfer the Glory and Waihere blocks on Pitt Island to Moriori and the Pitt Island community was consulted on the proposal;

Shared redress with Ngāti Mutunga o Wharekauri

10 **note** shared redress between Moriori and Ngāti Mutunga o Wharekauri was approved by Cabinet in July 2017 and October 2018 [CAB-17-MIN-0388 and CAB-18-MIN-0514 refer];

11 **agree** to offer Moriori and Ngāti Mutunga o Wharekauri a joint overlay classification over site 100 ex Wharekauri Station (Cape Young portion), subject to Moriori and Ngāti Mutunga o Wharekauri agreeing a set of joint protection principles and Director-General of Conservation actions;

12 **note** the shared redress for Moriori and Ngāti Mutunga o Wharekauri as set out in **Appendix 3**;

13 **note** shared redress, excluding the shared right of first refusal and provision for customary non-commercial fishing regulations, will be delivered to Moriori and Ngāti Mutunga o Wharekauri through a separate shared redress deed and bill;

14 **note** Cabinet approval on shared redress, and approval to sign a shared redress deed with Moriori and Ngāti Mutunga o Wharekauri, will be sought in due course;

Overlapping interests

15 **note** prior to initialling the Moriori Deed of Settlement, overlapping interests must be addressed to the Crown's satisfaction;

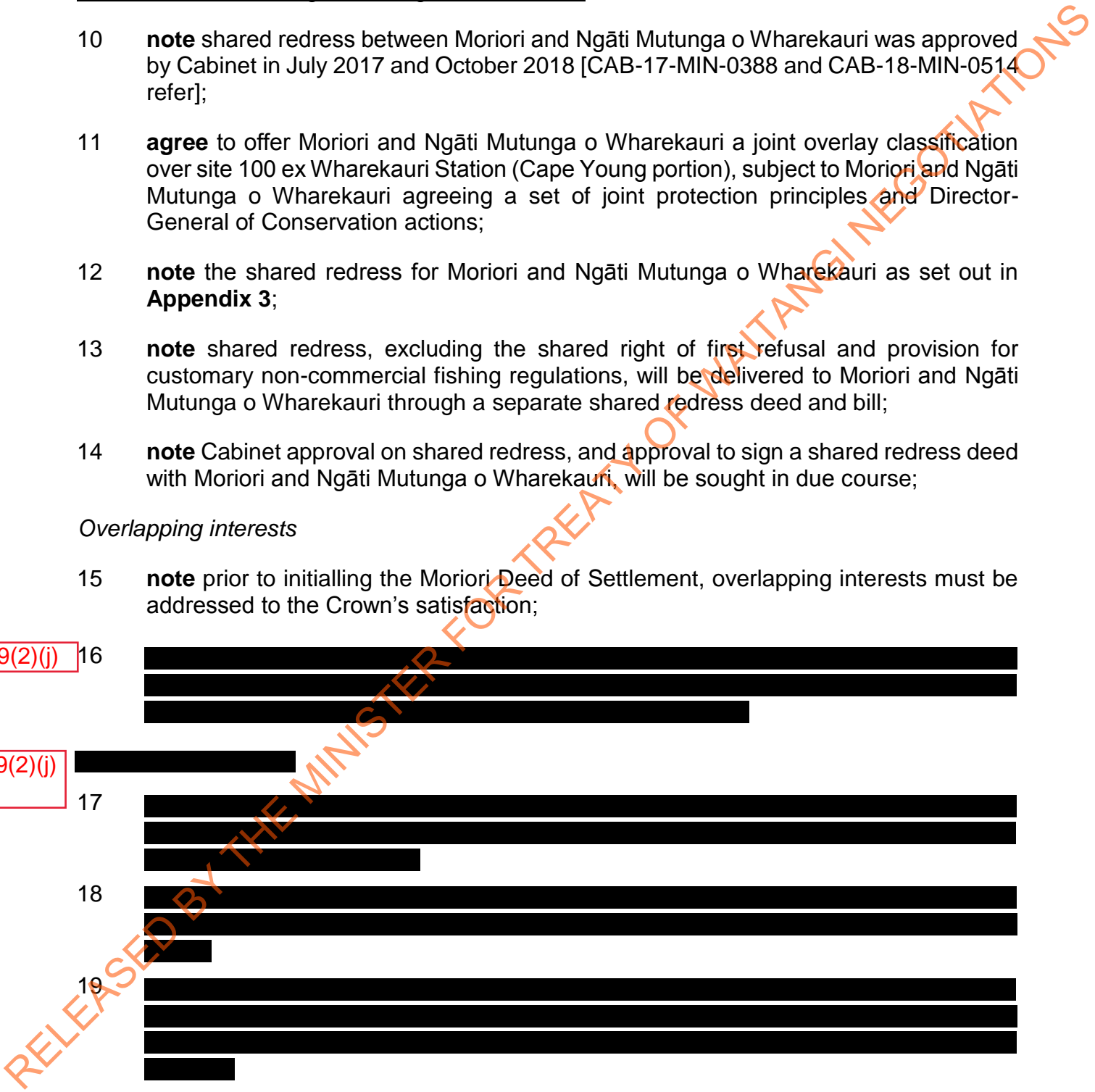
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17 [Redacted]

18 [Redacted]

19 [Redacted]



Department of Conservation implementation operating costs

- 23 **note** the Department of Conservation is currently estimating the implementation costs and will provide the Minister of Finance and Minister of Conservation with the estimate when available;
- 24 **note** the Minister of Finance and Minister of Conservation will note the estimated implementation costs when known;
- 25 **note** after joint Ministers have noted the estimated implementation costs, the Department of Conservation will seek implementation funding for this Treaty settlement through the baseline update process [CAB Min (10) 9/7 refers], shortly after the settlement legislation is enacted. This is deemed to have no financial implications on the basis that any revenue from Crown land sales funds that would otherwise be available for the purchase of new reserves may be used to offset Treaty of Waitangi settlement implementation costs [CAB Min (10) 9/7 refers];
- 26 **note** the Department of Conservation implementation costs referred to above are in addition to those outlined in the financial implications table in recommendation 19;

Delegation to act

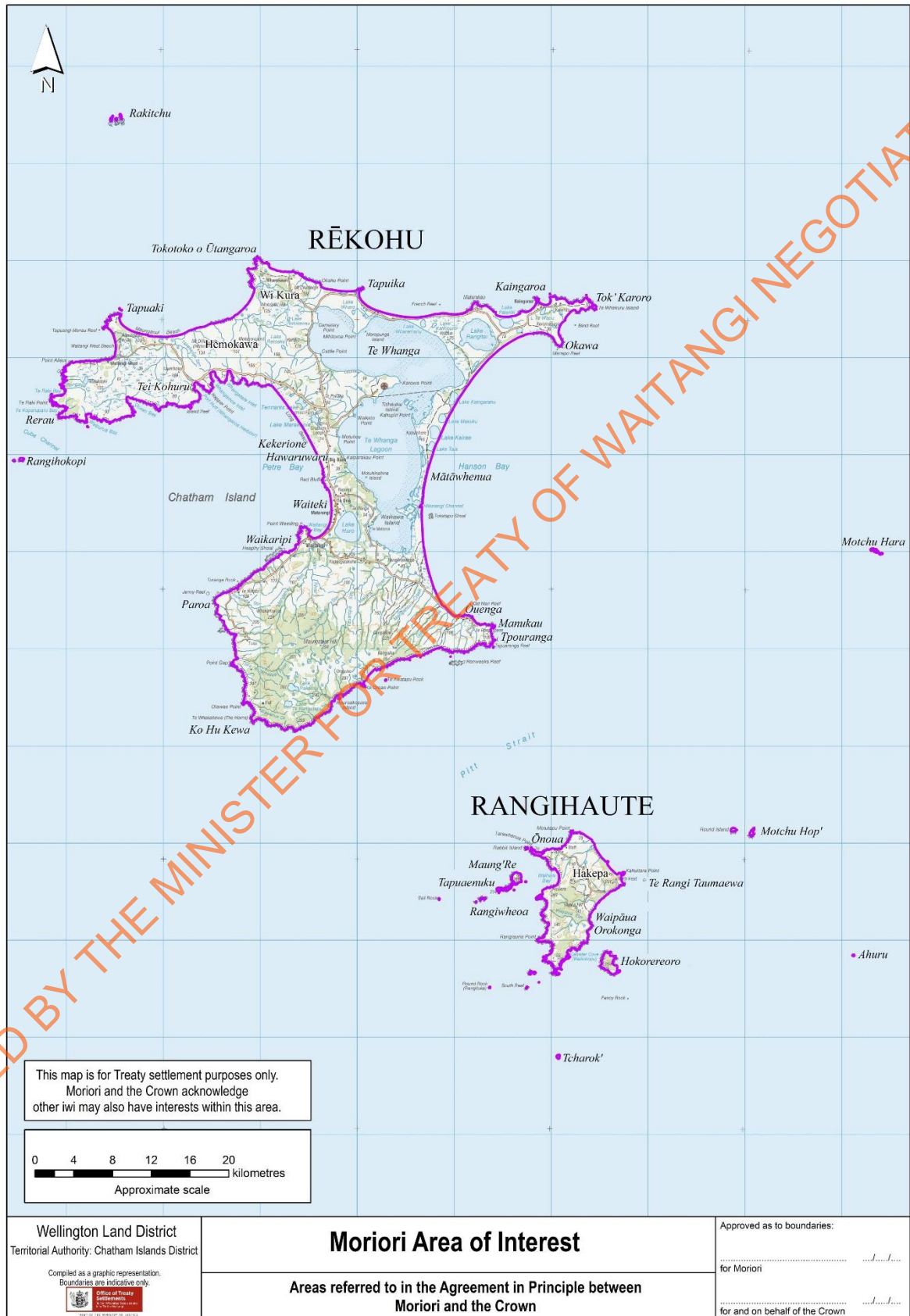
- 27 **authorise** the Minister of Finance and the Minister of Conservation to note the estimated implementation costs for the Moriori settlement when they are known;
- 28 **authorise** the Minister for Treaty of Waitangi Negotiations:
- 28.1 to make a final determination that overlapping interests have been addressed to the Crown's satisfaction prior to initialling the Moriori Deed of Settlement;
- 28.2 to finalise or vary the redress consistent with the intent of Cabinet's decisions, in consultation with relevant portfolio Ministers;
- 28.3 together with the Minister for Māori Development, to consider whether the ratification results demonstrate sufficient support for the settlement package from the claimant community; and
- 28.4 upon confirmation of the ratification results, to sign, on behalf of the Crown, a Deed of Settlement with Moriori.

Authorised for lodgement

Hon Andrew Little

Minister for Treaty of Waitangi Negotiations

Appendix 1: Mori area of interest



Appendix 2: proposed Moriori settlement package

Crown apology redress	
Agreed historical account, acknowledgements and apology	
Financial and commercial redress	
Financial redress of \$18.000 million (including an on-account transfer of \$3.600 million)	
Right of first refusal over species that are managed under the Fisheries Act 1996 and are introduced into the quota management system after the Moriori settlement date	
Cultural redress	
Ability to erect a memorial marker on Auckland Islands	
14 geographic name changes (outlined at Appendix 4)	
Relationship redress	
Agency	Instrument
Department of Conservation	Relationship agreement
Ministry of Business, Innovation and Employment	Crown Minerals protocol
Ministry for the Environment	Relationship agreement
Ministry for Primary Industries	Primary Industries protocol
Department of Internal Affairs, Ministry of Culture and Heritage, Te Papa and Heritage New Zealand	Hokoaetanga Tiaki Miheke
Ngā Taonga Sound & Vision	Letter of Introduction
	Letters of Introduction to organisations are to be identified and agreed prior to initialling the Moriori Deed of Settlement
Non-exclusive cultural redress instruments	
Overlay classifications:	<ul style="list-style-type: none"> • Canister Cove Scenic Reserve • Mangere Island Nature Reserve • part Site 100 ex Wharekauri Station (excluding Cape Young portion) • Rangatira Nature Reserve • Site 102 ex Wharekauri Station • Waipaua Scenic Reserve
Statutory acknowledgement:	<ul style="list-style-type: none"> • Coastal statutory acknowledgement area • Tikitiki Hill Conservation Area – Department of Conservation staff house and land

<p>Statutory acknowledgements and deeds of recognition:</p>	<ul style="list-style-type: none"> • 11882 Owenga site • Hanson Bay South Marginal Strip • Lake Huro Marginal Strip • Ocean Mail Scenic Reserve • Owenga Marginal Strip • Pacific Ocean Marginal Strip • Petre Bay Marginal Strip • Pitt Straight Marginal Strip • Site 101 ex Wharekauri Station • Site 103 ex Wharekauri Station • Site 104 ex Wharekauri Station • Site 105 ex Wharekauri Station • Te Awatea Scenic Reserve • Waitangi Marginal Strip 	
<p>Co-management arrangements with the Department of Conservation:</p>	<ul style="list-style-type: none"> • over an area of remnant indigenous forest on Pitt Island on a combination of Crown-owned land (approx. 165 ha) and land proposed to transfer to Moriori (approx. 26 ha) • J M Barker (Hapupu) National Historic Reserve 	
<p>Sites for transfer</p>	<p>Approx size (ha)</p>	<p>Conditions of transfer</p>
<p>Glory block</p>	<p>460</p>	<ul style="list-style-type: none"> • the rental from the current and future leases will be paid into a new Trust to be established from the date of settlement, and to be managed by Moriori with 2 seats for the Pitt Island community, to be used for social, educational, cultural, economic and ecological purposes on Pitt Island • the terms of the existing grazing leases will be honoured until their expiry in 2026 • from 2026 5-plus-5 year leases of both blocks will be made available to members of the Pitt Island community • the new Trust will decide who receives the leases • the Glory block will thereafter be used for the social, educational, cultural, economic and ecological development of Pitt Island • subject to appropriate reserve status
<p>Owenga property</p>	<p>1.6</p>	<ul style="list-style-type: none"> • subject to a marginal strip, to be managed by Moriori, being surveyed off
<p>Wharekauri site 109</p>	<p>2</p>	<ul style="list-style-type: none"> • unencumbered

Waihere block	768	<ul style="list-style-type: none"> • the rental from the current and future leases will be paid into a new Trust to be established from the date of settlement, and to be managed by Moriori with 2 seats for the Pitt Island community, to be used for social, educational, cultural, economic and ecological purposes on Pitt Island • the terms of the existing grazing leases will be honoured until their expiry in 2026 • from 2026 5-plus-5 year leases of both blocks will be made available to members of the Pitt Island community • the new Trust will decide who receives the leases • the Waihere block will thereafter be used for the social, educational, cultural, economic and ecological development of Pitt Island • subject to appropriate reserve status
Waipaua coastal property	26	<ul style="list-style-type: none"> • subject to appropriate reserve status
Waipaua property	1	<ul style="list-style-type: none"> • unencumbered
Rangiauria property	36	<ul style="list-style-type: none"> • subject to appropriate reserve status

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Appendix 3: proposed shared redress between Moriori and Ngāti Mutunga o Wharekauri

Commercial redress		
Right of first refusal on Crown-owned properties and specified Canterbury District Health Board properties*		
Proposed site for transfer	Approx size (ha)	Conditions of transfer
Kaingaroa School site (land only)	1.47	<ul style="list-style-type: none"> • leaseback • subject to agreement on suitable ownership arrangement
Cultural redress		
Joint Planning Committee with the Chatham Islands Council related to natural resource planning processes that affect the Chatham Islands		
Development of customary non-commercial fishing regulations for the Rēkohu/Wharekauri fisheries area (the whole of the Chatham Islands to 320 kilometres offshore)*		
Overlay classification over Cape Young portion of Site 100 ex Wharekauri Station (subject to Ngāti Mutunga o Wharekauri and Moriori agreement to a statement of shared values, protection principles and Director-General of Conservation actions)		
Geographic name changes and alternative geographic names		
Proposed joint transfer sites	Approx size (ha)	Conditions of transfer
Te Whanga Lagoon and related sites	18,600	<ul style="list-style-type: none"> • bed vesting fee simple and administered by the Te Whanga Management Board • inalienable • third party rights, public access and rights of navigability maintained
Wharekauri site 110	15.3	<ul style="list-style-type: none"> • vesting fee simple and administered by the Te Whanga Management Board • inalienable • third party rights and public access maintained
Wharekauri site 111	14.9	<ul style="list-style-type: none"> • vesting fee simple and administered by the Te Whanga Management Board • inalienable • third party rights and public access maintained
Wharekauri site 112	5.3	<ul style="list-style-type: none"> • vesting fee simple and administered by the Te Whanga Management Board • inalienable • third party rights and public access maintained

Wharekauri site 113	0.25	<ul style="list-style-type: none"> • vesting fee simple and administered by the Te Whanga Management Board • inalienable • third party rights and public access maintained
Wharekauri site 114	0.7	<ul style="list-style-type: none"> • vesting fee simple and administered by the Te Whanga Management Board • inalienable • third party rights and public access maintained
Tikitiki Hill Conservation Area – white house (land and buildings)	0.6	<ul style="list-style-type: none"> • vesting fee simple • subject to there being no historic values to be protected • subject to an easement in favour of the Chathams Council to protect existing water infrastructure assets
Tikitiki Hill Conservation Area – southern site	0.12	<ul style="list-style-type: none"> • vesting fee simple; • subject to an agreed registrable ground lease for the Education asset located onsite with ownership of the improvements remaining unaffected by the transfer.
Tikitiki Hill Conservation Area – paddocks	1.4	<ul style="list-style-type: none"> • vesting fee simple • subject to an easement in favour of the Chathams Council to protect existing water infrastructure assets • subject to a short-term grazing concession in favour of the Port Company
Tikitiki Hill Conservation Area – conical hill	1.16	<ul style="list-style-type: none"> • vesting fee simple as a reserve

*This shared redress will be included in the individual Moriori and Ngāti Mutunga o Wharekauri deeds and bills.

Appendix 4: proposed geographic name changes for inclusion in the Moriori settlement package

Existing name	Proposed name	Feature type
Waipaua	Waipāua	Locality
Hakepa	Hakepa	Hill
Blind Jims Creek	Pana / Blind Jims Creek	Stream
Point Alison	Waimihia / Point Alison	Point
Napper Point	Tamarau Point	Point
Taupeka	Tapuika	Locality
Red Bluff	Whenuahau Point	Point
Te Whenuahau	Whenuahau	Hill
unnamed	Manauea	Beach
unnamed (local use name Murumuru Islands or The Nuggets)	Te Rangakiore Islands	Island group
Western Reef	Rangihokopoi / Western Reef	Reef
Hapupu	Hāpūpū	Locality
unnamed	Ta Upoko-o-Rangimene Reef	Reef
unnamed	Takapu Beach	Beach

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