



Cabinet Māori Crown Relations: Te Arawhiti Committee

Minute of Decision

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Ngāpuhi Treaty Settlement - Sovereign Fund for Ngāpuhi

Portfolio Treaty of Waitangi Negotiations

On 23 June 2020, the Cabinet Māori Crown Relations: Te Arawhiti Committee:

- 1 **noted** that in November 2019, Cabinet authorised a group of Ministers to develop, and submit for Cabinet approval, a proposal for a Ngāpuhi sovereign fund including investment objectives of the fund, options for delivery and associated risks of establishment [CAB-19-MIN-0629];
- 2 **noted** that in March 2020, the Cabinet Māori Crown Relations: Te Arawhiti Committee (MCR) noted that:
 - 2.1 government parties have agreed funding of \$150 million for the proposed sovereign fund and a Cabinet paper is being developed;
 - 2.2 the sovereign fund is intended to move Treaty settlement negotiations with Ngāpuhi forward;
 - 2.3 there is an expectation that existing funding in the Treaty of Waitangi Negotiations Multi-Year Appropriation will be used for the sovereign fund

[MCR-20-MIN-0008];
- 3 **agreed** to establish a sovereign fund for Ngāpuhi;
- 4 **agreed** the following broad parameters for the Ngāpuhi Sovereign Fund (the Fund), subject to further technical refinement:
 - 4.1 the Fund will be established as soon as possible, [REDACTED] **s.9(2)(g)(i)**
 - 4.2 the Fund's performance will be reviewed after two years to inform Cabinet on whether further capital contributions should be made,
 - 4.3 the Fund's investment purpose will be to:
 - 4.3.1 acquire and develop diverse assets for the Crown to offer as redress in a Ngāpuhi settlement, and
 - 4.3.2 grow the financial value of the Fund;

4.4 the Fund will hold two portfolios - one with an objective of acquiring settlement assets that generate a positive revenue return across the portfolio, and one with a standard commercial objective of achieving benchmark returns;

4.5 the Fund will generally, but not exclusively, invest in the Ngāpuhi rohe;

5 **agreed** that the Crown contribution to the Ngāpuhi Sovereign Fund be \$150 million;

6 **agreed** that the entity managing the Fund will be established as a Crown company in Schedule 4A of the Public Finance Act 1989 and governed by Crown-appointed directors;

7 **agreed** that investment principles be developed and incorporated into the proposed company's constitution;

8 **agreed** that the Fund's shareholding Ministers will be the Minister of Finance and the Minister for Treaty of Waitangi Negotiations, each with a 50 percent shareholding;

9 **agreed** that the Fund director candidates will be assessed principally on their business and investment expertise, and need not be of Ngāpuhi descent;

10 **agreed** that the Fund's earnings will be used to make disbursements to Ngāpuhi uri, from late 2021, for social development purposes and to mandated Ngāpuhi entities to support the development of governance capability, subject to Cabinet decisions, and with corresponding fiscal impacts;

11 [REDACTED] s.9(2)(f)(iv)

12 [REDACTED] s.9(2)(f)(iv)
and
s.9(2)(g)(i)

13 **agreed** that the proper level of Ngāpuhi involvement in the design and establishment of the Fund is limited to being informed as Cabinet decisions are taken;

14 [REDACTED] s.9(2)(g)(i)

15 **authorised** the Minister of Finance to issue drafting instructions to the Parliamentary Counsel Office to draft an Order in Council to add the entity managing the Ngāpuhi Sovereign Fund to Schedule 4A of the Public Finance Act 1989;

16 **authorised** the Minister of Finance and the Minister for Treaty of Waitangi Negotiations to determine whether any of sections 161-165 of the Crown Entities Act 2004 (regarding financial restraints) do not apply to the Fund prior to drafting instructions being issued;

17 **agreed** to establish the following new appropriations:

Vote	Appropriation Minister	Title	Type	Scope
Treaty Negotiations	Minister for Treaty of Waitangi Negotiations	Operations of the Ngāpuhi Sovereign Fund Entity	Non-Departmental Output Expense	This appropriation is limited to the administration and management of the Ngāpuhi Sovereign Fund
Treaty Negotiations	Minister for Treaty of Waitangi Negotiations	Capital Investment in the Ngāpuhi Sovereign Fund Entity	Non-Departmental Capital Expenditure	This appropriation is limited to the Crown's capital investment in the Ngāpuhi Sovereign Fund

18 **approved** the following changes to appropriations to give effect to the policy decisions above, with a corresponding impact on the operating balance and debt:

	\$m – increase/(decrease)			
	2020/21	2021/22	2022/23	2023/24 & Outyears
Vote Treaty Negotiations Minister for Treaty of Waitangi Negotiations				
Non-Departmental Capital Expenditure: Capital Investment in the Ngāpuhi Sovereign Fund Entity	150.000	-	-	-
Non-Departmental Output Expense: Operations of the Ngāpuhi Sovereign Fund Entity	1.000	2.000	2.050	1.900
Total Operating Balance Impact	1.000	2.000	2.050	1.900
Total Debt Impact	150.000	-	-	-

19 **agreed** that the proposed change to appropriations for 2020/21 above be included in the 2020/21 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;

20 **agreed** that the output expenses under paragraph 18 above be charged against the Budget 2020 between-Budget operating contingency;

21 **agreed** that the capital expenditure in paragraph 18 above will be offset through a corresponding reduction in the charge against the Treaty settlement multi-year appropriation at the time of the finalisation of the agreement of the Ngāpuhi mandated entity to accept the Fund as redress;

22 **noted** that the above decisions will not affect the quantum forecast for Ngāpuhi, though funding will ultimately need to be returned to the fiscal forecast ahead of settlement to provide for the settlement expense, and any loss in the value of the Fund will require additional funding to meet the expense;

23 **agreed** that the capital expenditure will not be a charge against the Budget 2021 multi-year capital allowance on the basis that the cost will be fiscally neutral as it will be offset by a future reduction in the Treaty settlement multi-year appropriation;

24 **noted** that, in preparing the Pre-Election Economic and Fiscal Update, Treasury will need to consider the certainty that the \$150 million capitalisation of the fund will be offset by an equivalent reduction in the Treaty settlement multi-year appropriation within the ten-year forecasting period;

- 25 **noted** that the Pre-Election Economic and Fiscal Update fiscal forecasts prepared by Treasury are likely to incorporate the \$150 million capitalisation cost in the debt track without a corresponding reduction within the ten-year period, but include a Specific Fiscal Risk that the cost might be offset within the ten-year forecasting period;
- 26 **noted** that there are additional one-off establishment costs for the Fund in the 2020/21 year, which will be reprioritised within Te Arawhiti baselines;
- 27 **noted** that the Minister for Treaty of Waitangi Negotiations, in consultation with the Ministers of Finance, Māori Development and Regional Economic Development, will report back to MCR by the end of the year seeking final decisions on the design of the Ngāpuhi Sovereign Fund including investment principles, monitoring arrangements, [REDACTED] [REDACTED] how the Fund will be managed, and **s.9(2)(f)(iv)** final establishment timeframes.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta (Chair)
Hon Stuart Nash
Hon Shane Jones
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Officials Committee for MCR

NGĀPUHI TREATY SETTLEMENT – SOVEREIGN FUND FOR NGĀPUHI

Proposal

1. This paper seeks agreement to establish a Ngāpuhi Sovereign Fund (the Fund) that will form part of a Ngāpuhi historical Treaty settlement, and agreement to the broad parameters of such a fund.

Executive Summary

2. There are several factors in the Ngāpuhi negotiation that require a novel response from the Crown to support settlement. Ngāpuhi are the largest iwi grouping and their rohe covers an area characterised by significant economic and social deprivation.
3. It has been challenging to secure and maintain a Ngāpuhi mandate to settle historical Treaty of Waitangi claims with the Crown. Remaining unsettled comes at a cost to Ngāpuhi in the form of missed opportunities to invest and grow settlement redress, provide greater support to their communities, and broaden and strengthen relationships with government agencies.

4.

[REDACTED]

s.9(2)(j)

5. I consider a sovereign (investment) fund for Ngāpuhi would help address these factors and assist the Crown's negotiations towards the settlement of Ngāpuhi historical Treaty of Waitangi claims by:

- a. acquiring a broader diversity of assets for the Crown to offer Ngāpuhi as financial and commercial redress than would otherwise be available;

- b.

[REDACTED]

s.9(2)(f)(iv)

- c.

[REDACTED]

s.9(2)(f)(iv)

- d. demonstrating the positive potential of a well-resourced entity operating for the benefit of Ngāpuhi in ways similar to a post-settlement governance entity (PSGE).

6. Through its operations and investments, a sovereign fund for Ngāpuhi would bring regional development benefits to the north. It would ensure that Ngāpuhi does not miss

out on desirable investment opportunities in the period up until settlement. A fund would support economic activity in the aftermath of the COVID-19 pandemic.

7. I therefore seek Cabinet's agreement to establish such a fund, including decisions on five high-level questions in respect of a sovereign fund for Ngāpuhi:

a. What is the Fund's investment purpose?

Consistent with the policy rationale for the Fund, I propose that its investment purposes be to:

- i. acquire and develop diverse assets for the Crown to offer as redress in a Ngāpuhi Treaty settlement, and
- ii. grow the financial value of the Fund.

Detailed investment principles, which I will put to Cabinet by the end of the year, will ensure the Fund's two purposes are achieved.

b. What should the Crown's initial capital investment be? And where will the initial capital come from?

I propose that the Crown's initial Capital investment be \$150 million. This amount will allow the Fund to achieve its dual purposes on a scale in the short-term that will support Treaty settlement negotiations, while keeping the Crown's risk manageable. I propose the Fund be reviewed two years from establishment. Following this, Cabinet may choose to invest more capital in the Fund.

I propose the initial capitalisation of the Fund not be a charge against the Budget capital allowance, but instead that the capital expenditure be offset through a corresponding reduction in the charge against the Treaty settlement multi-year appropriation at the time of the finalisation of the agreement of the Ngāpuhi mandated entity to accept the Fund as redress.

This approach reflects my proposal that the Fund form part of the Ngāpuhi settlement. Treaty assets held by the Fund will be used as settlement redress. Any Fund value not directly used in the settlement may still be used to offset the settlement expense.

c. How should the Fund be structured, governed, and managed?

I am proposing that the Fund has both an 'asset-banking' and 'commercial investment, post-settlement governance entity-type' portfolio to guide directors in balancing purely commercial activity with the objective of acquiring settlement assets.

I have considered a range of entity types to govern and manage the Fund, including using an existing entity such as the New Zealand Superannuation Fund. While this would minimise investment risk and bring credibility, the acquisition of diverse assets for Treaty settlement purposes would be a new function for any of the Crown's investment management entities. This would require a special focus from a board with a large existing portfolio. New legislation would be required to add

the Fund's functionality to an existing entity, [REDACTED]

s.9(2)(g)(i)

I am instead proposing that the Fund is governed and managed by a newly created Schedule 4A company under the Public Finance Act 1989. Schedule 4A companies are anticipated to have mixed commercial and policy objectives as proposed here. Establishing the Fund as a Schedule 4A company would allow fit-for-purpose appointments to a dedicated governance board with a sole focus on the Fund.

d. How should Fund returns be used?

Up until settlement, I propose that a modest portion of the Fund's revenue is transferred to Ngāpuhi uri through social disbursements, and to those involved in the settlement negotiations as governance and training disbursements. I expect disbursements will start small and increase to no greater than [REDACTED] of the Fund's revenue. This will be determined in consultation with shareholding Ministers and Directors. I will return to Cabinet by the end of the year on arrangements for administering disbursements.

s.9(2)(f)(iv)

[REDACTED]

s.9(2)(f)(iv)

e. What is the proper level of Ngāpuhi involvement in designing and establishing the Fund?

As the Fund is to assist the Crown in negotiating a Treaty settlement with Ngāpuhi, seeded by Crown money with shareholding Ministers, and since the risk of financial loss will be borne by the Crown, I consider it proper that Cabinet should take decisions on how the Fund is designed and established.

Directors of the Fund will be Crown-appointed and will need to have a proven track record in commercial management and operating successful enterprises. Local and cultural knowledge would be an advantage, and I will encourage applications from qualified candidates with Ngāpuhi whakapapa. However, directors need not be of Ngāpuhi descent.

8. Should Cabinet approve the broad parameters of the Fund as set out in this paper, I intend to return with a final, detailed proposal for Cabinet consideration by the end of the year. If approved, directors would be appointed, and the Fund established, [REDACTED]

s.9(2)(g)(i)

Background

9. On 25 November 2019, in relation to the Fund, Cabinet:
 - a. authorised the Minister for Treaty of Waitangi Negotiations, in consultation with the Minister of Finance, Minister for Māori Development, and the Minister for Regional Economic Development to scope, develop, and submit for Cabinet approval, a proposal for a Ngāpuhi sovereign fund including investment objectives of the fund, options for delivery and associated risks of establishment;
 - b. noted that it is the expectation of Ministers that existing funding in the Treaty of Waitangi Negotiations Multi-Year appropriation be used to fund the Fund; and
 - c. directed Te Arawhiti and Treasury officials to work together to determine appropriate accounting treatment of the existing Treaty of Waitangi Negotiations Multi-Year Appropriation to finance the Fund [CAB-19-MIN-0629 refers].
10. In the context of the discontinuation of Crown recognition of the Tūhoronuku Independent Mandated Authority's mandate, the Minister for Māori Development and I indicated publicly that a Fund was being considered. We also noted that we intend the Ngāpuhi settlement to have the following characteristics:
 - a. a single settlement quantum amount; and
 - b. a single, shared package of commercial redress (of which the Fund and its assets would form part); but
 - c. area-specific cultural redress.
11. On 10 March 2020, the Cabinet Māori Crown Relations - Te Arawhiti Committee (MCR) noted that:
 - a. in November 2019, Cabinet authorised the Minister for Treaty of Waitangi Negotiations, in consultation with relevant Ministers, to develop a proposal for a sovereign fund for Ngāpuhi, including investment objectives of the fund, options for delivery, and associated risks of establishment;
 - b. government parties have agreed funding of \$150 million for the sovereign fund and that a paper outlining the matters above is being developed;
 - c. the sovereign fund is intended to move Treaty settlement negotiations with Ngāpuhi forward; and
 - d. the expectation is for existing funding in the Treaty of Waitangi Negotiations Multi-Year Appropriation will be used for the sovereign fund [MCR-20-MIN-008 refers].

The Fund is to support the Crown toward eventual Treaty settlement with Ngāpuhi

Novel approach to Ngāpuhi settlement required

12. The Ngāpuhi negotiation has several unique factors that justify a novel approach, including that:

a. Ngāpuhi are the largest iwi grouping, and settlement is a key Crown priority for Treaty negotiations – we need to innovate to get there;

b. [REDACTED] s.9(2)(j)

c. whilst Ngāpuhi remain unsettled, opportunities to purchase assets and potential gains are being lost; and

d. [REDACTED] s.9(2)(j)

A sovereign fund would support mandating by giving the Crown a better hand to play in getting Ngāpuhi to the table

13. On 4 December 2019, following the announcement that Crown recognition of the mandate of the Tūhoronuku Independent Mandated Authority to represent Ngāpuhi in Treaty settlement negotiations had been discontinued, Ministers invited ngā hapū o Ngāpuhi to submit mandate proposals to negotiate collective matters (such as He Wakaputanga, te reo Māori, and financial and commercial redress), and regional hapū groupings to negotiate cultural redress.

14. In mid-January 2020, Te Arawhiti and Te Puni Kōkiri officials convened hui with ngā hapū o Ngāpuhi in Hokianga, Whangāroa, Whangarei, Kaikohe, Waitangi, and Tāmaki Makaurau to provide further information on developing mandate proposals.

15. Since the January hui, Te Arawhiti and Te Puni Kōkiri officials have, on request, been engaging with hapū to develop regional hapū grouping proposals. Officials will continue to work closely with ngā hapū o Ngāpuhi on the development of their proposals.

16. I consider a sovereign fund would support mandating and provide greater impetus for groups to organise and develop mandate proposals by:

a. acquiring a broader diversity of assets for the Crown to offer Ngāpuhi as financial and commercial redress than would otherwise be available;

b. [REDACTED] s.9(2)(f)(iv)

c.

[REDACTED] s.9(2)(f)(iv)

d. demonstrating the positive potential of a well-resourced entity operating for the benefit of Ngāpuhi in ways similar to a post-settlement governance entity (PSGE).

The Fund would support regional economic development and ensure Ngāpuhi does not miss out on investment opportunities available prior to settlement

17. Through its investments in Northland, the Fund would contribute to regional economic development. Public and private investment in Northland has been historically low. Compared to the national average, gross domestic product in Northland is low and there are high levels of deprivation.
18. Establishing an investment fund with a focus on Northland ahead of settlement allows the Crown to take advantage of time-limited investment opportunities that can be passed on to Ngāpuhi at settlement. This could drive additional investment in Northland and work to stimulate economic activity in the wake of the COVID-19 pandemic.

Risks of not establishing a fund

19.

[REDACTED]

s.9(2)(j)

Design of the Fund

20. There are five critical design decisions that need to be made at this stage:
 - a. What is the Fund's investment purpose?
 - b. What should the Crown's initial capital investment be, and where will the initial capital come from?
 - c. How should the Fund be structured, governed, and managed?
 - d. How should Fund returns be used?
 - e. What is the proper level of Ngāpuhi involvement in designing and establishing the Fund?

What is the Fund's investment purpose?

The Fund will have two investment purposes

21. Consistent with the policy rationale for the Fund, I propose that its investment purposes be to:
 - a. acquire and develop diverse assets for the Crown to offer as redress in a Ngāpuhi Treaty settlement; and

- b. grow the financial value of the Fund.

Detailed investment principles will ensure the Fund's two purposes are achieved

- 22. To achieve the two purposes of the Fund, investment principles will be developed and incorporated into the Fund's constitution and/or a letter of expectations to address the following:
 - a. the Fund's risk investment profile;
 - b. the Fund's portion of investment required to be in the Ngāpuhi rohe;
 - c. the asset classes for investment, for example:
 - i. cash and New Zealand bonds,
 - ii. forestry, agricultural, residential and commercial land,
 - iii. public and private shareholdings,
 - iv. infrastructure, but excluding
 - v. foreign investments;
 - d. confirming the Fund holds two portfolios;
 - i. one with an objective of acquiring settlement assets that generate a positive revenue return across the portfolio, and
 - ii. one with a standard commercial objective of achieving benchmark returns;
 - e. the Fund will be able to actively invest, including selling and buying assets over time;
 - f. the Fund will prioritise investments that support economic development in the Ngāpuhi rohe; and
 - g. the Fund will invest in assets that align with best practice in mitigating negative environmental or social impacts.
- 23. I will bring the detail of investment principles to Cabinet by the end of the year for final approval.

What should the Crown's initial capital investment be, and where will the initial capital come from?

Initial capital investment

- 24. The Crown's initial Capital investment will be \$150 million. This amount will allow the Fund to achieve its dual purposes on a scale in the short-term that will support Treaty settlement negotiations [REDACTED]. I propose the Fund be reviewed two years from establishment. Following this, Cabinet may choose to invest more capital in the Fund.

s.9(2)(g)
(i)

- 25. Te Arawhiti estimate that a fund of \$150 million will generate on average [REDACTED] of investment growth per annum (assuming [REDACTED] returns in the commercial side of the

s.9(2)(i)

portfolio) and have approximately \$2 million per annum of operating costs. [REDACTED]

s.9(2)(f)(iv)

Source of initial capital

26. As MCR noted on 10 March 2020, the initial capitalisation of the Fund will come from funds set aside in the Treaty fiscal forecasts in the MYA for the Ngāpuhi settlement [MCR-20-MIN-0008 refers]. I propose that the capital expenditure be offset through a corresponding reduction in the charge against the Treaty settlement multi-year appropriation at the time of the finalisation of the agreement of the Ngāpuhi mandated entity to accept the Fund as redress.
27. The implication of this approach is that the Fund will ultimately be a credit against the usual settlement cost. This means that any loss in the value of the Fund will need to be made up with new money for the settlement to go ahead.
28. Detailed financial implications of my proposal are set out in the 'Financial Implications' section of this paper.

How should the Fund be structured, governed, and managed?

To balance both commercial and Treaty settlement objectives I propose that the Fund is structured with both an 'asset-banking' and 'commercial PSGE-type' portfolio

29. I am proposing that the Fund has both an 'asset-banking' and 'commercial PSGE-type' portfolio to guide directors in balancing purely commercial activity with the objective of acquiring settlement assets (which might be less prudent financial acquisitions):
 - a. **Asset-banking portfolio** - acquires and holds particular assets that are primarily compatible with a Treaty settlement objective. Is required to be revenue positive across the portfolio; and
 - b. **Commercial PSGE-type portfolio** - replicates the commercial operations of a PSGE and invests on a commercial basis [REDACTED]
30. This approach allows:
 - a. the Fund to operate under clearly articulated expectations from shareholding Ministers across both aspects of the Fund;
 - b. the Fund structure to reflect the dual commercial and Treaty settlement objectives, while maintaining a coherent investment strategy;
 - c. clarity of purpose for directors; and
 - d. provides for Ngāpuhi to acquire an established commercial fund at settlement, along with any other relevant settlement assets.

s.9(2)(f)(iv)

I recommend establishing a Schedule 4A company under the Public Finance Act 1989 to govern and manage the Fund

31. I have considered a number of entity types that could hold and manage the Fund against six key criteria. Analysis of the options against these criteria is summarised in the following table.

Entity form	Establishment costs	Establishment time	Clarity of purpose	Commercial imperative	Public policy purpose	Running cost
Existing Entity (e.g. NZSF)	Moderate – opportunity to piggyback on entity's existing infrastructure.	Long – requires legislative amendments to existing entity mandate.	Possibly confused or conflicted with existing purpose.	Strong if existing entity already has commercial function.	Would impact existing entity's policy purpose.	Low - economies of scale with other investment activities.
New Trust	Low – Trust model requires significantly less set-up than a commercial-type model.	Short – only requires registration of the Trust.	Directly ties Fund benefit to Ngāpuhi beneficiaries and requires Fund to be held by trustees, not the Crown.	Moderated by obligations to beneficiaries.	Moderated by obligations to beneficiaries.	Moderate – standalone investment capability required and some back-end requirements.
New Statutory Entity	High – everything newly established.	Long – requires new legislation.	Clear from legislation.	Embedded in legislation.	Embedded in legislation.	Moderate – standalone investment capability required and some back-end requirements.
New Crown Company (Schedule 4A, Public Finance Act 1989)	Moderate – requires a full suite of establishment activities such as branding and accommodation although there is the possibility of sharing costs with a similar entity.	Moderate – requires Order-in-Council.	Crown writes constitution.	Dictated in constitution.	Explicit by inclusion on public-purpose company schedule.	Moderate - standalone investment capability required and some back-end requirements.
In-house management by Te Arawhiti	Moderate – limited formal establishment activities.	Short – limited formal establishment activities.	Te Arawhiti would be conflicted as the agency leading the negotiations for settlement with Ngāpuhi.	Low – commercial imperatives rarely carried by departments.	Te Arawhiti does not have fund management expertise.	Low – limited investment activities require reduced investment staff.

32. For the Fund to be fit-for-purpose and established in a timely way, I propose that the Fund is governed by a Schedule 4A company under the Public Finance Act 1989.

33. This has the following advantages:

- a. Schedule 4A companies are anticipated to have mixed commercial and policy objectives as proposed here, and balance ministerial direction and independence;
 - b. they are timely to establish – [REDACTED] – as they only require an order-in-council for establishment, not primary legislation;
 - c. they follow standard Crown entity reporting and accountability requirements; and
 - d. it would allow for new, fit-for-purpose appointments to a dedicated governance board with a sole focus on the Fund.
34. I have considered using an existing statutory entity such as the New Zealand Superannuation Fund. Such an entity would provide a strong investment track-record, could utilise existing board appointments with investment experience, and may provide some cost-savings through use of existing infrastructure and portfolio managers.
35. However, the acquisition of diverse assets for Treaty settlement purposes would be a new function for any of the Crown’s investment management entities. This may raise compatibility issues with existing functions and may be outside the entity’s areas of expertise. Adding this function to an existing entity would also require time-consuming legislation. It is also likely that the entity would still need to bring in some additional expertise to support the full range of activities proposed for the Fund (e.g. buying and holding land).

s.9(2)(g)(i)

How should Fund returns be used?

The Fund will make social and governance disbursements

- 36. Up until settlement, I propose that a modest portion of the Fund’s revenue be disbursed to Ngāpuhi uri for social purposes.
- 37. I consider it important that the Fund help demonstrate the benefits of settlement for Ngāpuhi. [REDACTED]
- 38. It is equally important that Ngāpuhi entities negotiating with the Crown are supported to establish sound governance arrangements and build the governance capability of leaders. As a demonstration of the Crown’s practical support for reaching settlement, I consider the Fund should make disbursements for those purposes too.
- 39. Disbursements should be modest and low-cost to administer. I expect disbursements will start small and increase to no greater than [REDACTED] of the Fund’s revenue. The amount to be disbursed will be determined in consultation with shareholding Ministers and directors. I will seek final Cabinet decisions on disbursements by the end of the year. However, Ministerial discretion over disbursements will be maintained.
- 40. Administration costs could be minimised by utilising an agency that already manages similar disbursements. [REDACTED]

s.9(2)(g)(i)

s.9(2)(f)(iv)

s.9(2)(f)(iv)

[REDACTED]

[REDACTED]

[REDACTED]

How will the Fund's operational costs be funded?

43. There are two areas of non-capital costs for the Fund: establishment costs, and the ongoing costs of operating the Fund.
44. The establishment of the Fund requires specialist legal and investment expertise which does not exist within Te Arawhiti. There will be a significant cost of bringing this expertise into the project. Te Arawhiti has so far funded establishment costs from within its baseline.
45. Future establishment costs are estimated to be \$0.6 million in the 2020/21 year, which will be funded from reprioritisation within Te Arawhiti baselines.
46. All investment funds have significant operating costs. In the case of the Fund, these costs relate to:
 - a. the salaries of investment managers and analysts;
 - b. assurance and risk management staff;
 - c. back-office support (e.g. legal, administration, reporting, and ICT);
 - d. board fees and travel;
 - e. managing the additional social disbursement function; and
 - f. business overheads (e.g. property, IT).
47. I expect that the Fund as a business will operate in a lean way and minimise costs, where possible. This will include exploring options for sharing back-office and other costs with existing entities.
48. Ongoing operating costs are estimated at approximately \$2 million per year, sought from the between-Budget contingency.
49. Consideration was given to the possibility of the Fund self-funding its operational costs from its initial capital investment and proceeds. The Ministers of Finance and Treaty of Waitangi Negotiations have directed that operational costs not be met from the Fund because they are likely to take a large portion of any revenue in the short term or eat

away at the capital base if the fund is not making a profit. Additionally, this approach may be negatively perceived as the Crown's bureaucracy impacting on the Ngāpuhi settlement value (though this would not be the case as settlement value is preserved regardless of the performance or value of the Fund).

What is the proper level of Ngāpuhi involvement in designing and establishing the Fund?

50. The Minister for Māori Development and I met with approximately 350 members of Ngāpuhi on 8 December 2019 at Waitangi. Some attendees at this meeting expressed broad support for the Fund but also expressed an expectation that it would be co-designed between Ngāpuhi and the Crown. Te Puni Kōkiri consider Ngāpuhi should have input into the set-up of the Fund and the appointment of Fund directors.

Fund design and establishment decisions are properly for Cabinet alone

51. The Fund is to support the Crown toward eventual Treaty settlement with Ngāpuhi. How the Fund is designed, accounted for, and established must suit Crown purposes as I have set out in this paper. These are properly decisions for Cabinet alone.
52. There are risks of not seeking Ngāpuhi input to the design of the Fund. Members of Ngāpuhi may allege that the Crown failed to adequately engage with ngā hapū o Ngāpuhi on a decision that affects them.
53. However, this would be to misconstrue the intent and purpose of the Fund. I am proposing a Fund held by the Crown, seeded by Crown money and with shareholding Ministers. The risk of financial loss is borne by the Crown. While the Fund is intended to appeal to Ngāpuhi it will only belong to Ngāpuhi when a duly mandated entity resolves to purchase the Fund as redress.
54. To manage this risk, I will provide public communications that emphasise that:
- a. the Fund is a Crown entity designed to accumulate property and assets for a Ngāpuhi settlement;
 - b. the Fund's operation will not affect quantum negotiations and any loss on investments will be borne by the Crown;
 - c. Ngāpuhi uri are encouraged to apply to be directors of the Fund (if it is established as a Schedule 4A company); but candidates will be assessed principally on their business and investment expertise. I will invite suitably qualified Ngāpuhi to provide expressions of interest into the appointment of directors for the Fund if it is to be a Schedule 4A company; and
 - d. Ngāpuhi will be informed of the details of the Fund design as it is developed and kept apprised periodically of its operations.

The Fund should be established as soon as possible with an investment strategy that reflects its purposes

Final approvals to establish the Fund can be made by the end of the year

- 55. If Cabinet approves the broad principles of the Fund outlined in this paper, I will develop an investment strategy and detailed investment principles for Cabinet approval by the end of the year. If Cabinet approves the final form of the Fund, I anticipate the Fund will be established soon afterwards.
- 56. If Cabinet agrees that the Fund should be a Schedule 4A company, subject to Cabinet agreement to this paper, I will begin the director appointment process by calling for expressions of interest. Shareholding Ministers will appoint directors using standard processes for appointments of directors to Crown companies, including informing the Cabinet Appointment and Honours Committee prior to appointment. I propose that five directors be appointed to keep costs to a minimum but ensure sufficient breadth of skill, experience and background.

Risks and mitigation

Risk: Effect of this novel approach on the Treaty settlements framework

57. [Redacted]

s.9(2)(g)(i)

58. [Redacted]

s.9(2)(h)

59. [Redacted]

[Redacted]

s.9(2)(j)

[Redacted]

[Redacted]

s.9(2)(g)(i)

62. Communications will need to be clear that the Fund is about the Crown preparing for settlement negotiations with Ngāpuhi by accumulating property and assets for a Ngāpuhi Treaty settlement and that the Fund's operation will not affect quantum negotiations.

[Redacted]

s.9(2)(j)

[Redacted]

64. I will clearly communicate that the Fund is about establishing an asset base for Ngāpuhi to purchase. If agreed to by Cabinet, I propose to appoint directors following an expression of interest process. Furthermore, I propose that the Fund will be reviewed after two years against its purposes.

Consultation

65. The Treasury, State Services Commission, Te Puni Kōkiri, Ministry of Business Innovation and Employment and Crown Law Office have been consulted on this paper.

66. The Department of Prime Minister and Cabinet have been informed.

Treasury Comment

[Redacted]

s.9(2)(g)(i)

[Redacted]

[Redacted]

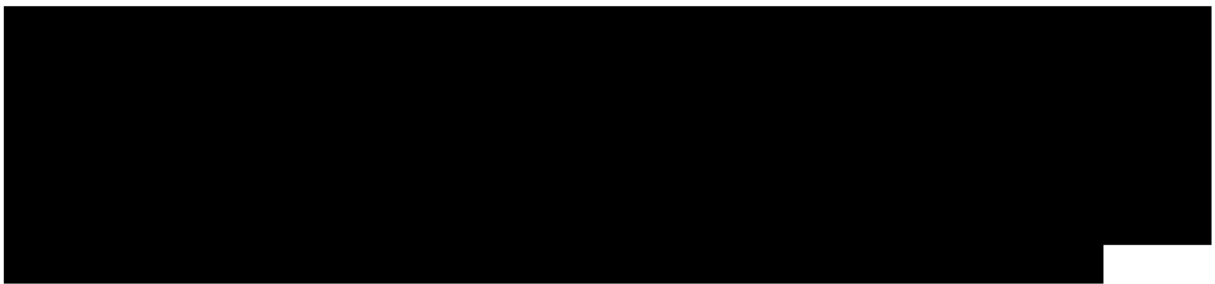
[Redacted]

69.



s.9(2)(g)(i)

70.



Proactive Release

71. I do not intend to release this paper proactively within 30 days of Cabinet consideration. The content of this paper is negotiation sensitive and I only anticipate releasing a redacted version of this paper after the Fund is established.

Human Rights

72. The proposals outlined in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Legislative Implications

73. The proposals set out in this paper do not require primary legislation. An Order in Council to include the Fund in Schedule 4A of the Public Finance Act 1989 will be required. I seek approval for the Minister of Finance to issue drafting instructions for the Order in Council. I also seek approval for the Minister of Finance and myself to determine which parts of the Crown Entities Act 2004 limiting the financial powers of entities the Fund will be exempt from for inclusion in the Order in Council.

Regulatory Impact Analysis

74. A regulatory impact assessment will be prepared before final decisions on the Fund are made by the end of the year.

Publicity

75.



s.9(2)
(g)(i)

Financial implications

Of establishing the Fund

76. I propose to establish two appropriations within Vote Treaty Negotiations:
- a. Non-Departmental Output Expense – Operations of the Ngāpuhi Sovereign Fund Entity. This appropriation will be limited to the administration and management of the Ngāpuhi Sovereign Fund; and
 - b. Non-Departmental Capital Expenditure – Capital Investment in the Ngāpuhi Sovereign Fund Entity. This appropriation will be limited to the Crown’s investment in the Ngāpuhi Sovereign Fund;
77. The second appropriation would usually require a charge against the Budget capital allowance, but instead I propose that the capital expenditure be offset through a corresponding reduction in the charge against the Treaty settlement multi-year appropriation at the time of the finalisation of the agreement of the Ngāpuhi mandated entity to accept the Fund as redress.
78. The implication of this approach is that the Fund will ultimately be a credit against the usual settlement cost. This means that any loss in the value of the Fund will need to be made up with new money for the settlement to go ahead.
79. Under section CW38B of the Income Tax Act 2007, public-purpose Crown-controlled companies are not liable for income tax on many types of transactions, including capitalisation. Officials will confirm that this applies to the company proposed here with Inland Revenue prior to the year-end report-back.
80. This proposed approach mirrors the approach taken in the establishment of the Provincial Growth Fund Limited.
81. The first appropriation, relating to the ongoing costs of operating the Fund, is sought as a charge against the between-Budget contingency. Te Arawhiti estimates the cost of operating the Fund will be around \$2 million per year based on the parameters outlined in this paper, broken down as below:

Operating costs	\$m – increase/(decrease)			
	2020/21	2021/22	2022/23	2023/24 and Outyears
Board costs (e.g. fees, travel)	0.300	0.550	0.600	0.600
Fund management costs (e.g. managers, analysts, back-office)	0.600	1.250	1.250	1.100
Social disbursement costs (e.g. cost of running/outsourcing social disbursement activity)	0.100	0.200	0.200	0.200
Total	1.000	2.000	2.050	1.900

82. There is an additional \$0.6 million one-off cost of establishing the Fund, due to the need for specialist legal and investment expertise. Te Arawhiti will continue to fund these establishment costs through internal reprioritisation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Recommendations

86. The Minister for Treaty of Waitangi Negotiations recommends that Cabinet:
1. **note** Cabinet authorised Ministers to scope, develop, and submit for Cabinet approval, a proposal for a Ngāpuhi sovereign fund including investment objectives of the fund, options for delivery and associated risks of establishment [CAB-19-MIN-0629 refers];
 2. **note** on 10 March 2020, the Cabinet Māori Crown Relations - Te Arawhiti Committee noted that:
 - a. government parties have agreed funding of \$150 million for the proposed sovereign fund
 - b. a paper outlining the recommendations as a result of the work in recommendation 1 above would be developed
 - c. the sovereign fund would be intended to move Treaty settlement negotiations with Ngāpuhi forward, and
 - d. there is an expectation that existing funding in the Treaty of Waitangi Negotiations Multi-Year Appropriation will be used for the sovereign fund [MCR-20-MIN-0008 refers];
 3. **agree** to establish a sovereign fund for Ngāpuhi;
 4. **agree** the following broad parameters for the Ngāpuhi Sovereign Fund (the Fund), subject to further technical refinement:
 - a. the Fund will be established as soon as possible, [REDACTED]
[REDACTED]

- b. the Fund's performance will be reviewed after two years to inform Cabinet on whether further capital contributions should be made,
 - c. the Fund's investment purpose will be to:
 - i. acquire and develop diverse assets for the Crown to offer as redress in a Ngāpuhi settlement, and
 - ii. grow the financial value of the Fund; and
 - d. the Fund will hold two portfolios: one with an objective of acquiring settlement assets that generate a positive revenue return across the portfolio, and one with a standard commercial objective of achieving benchmark returns;
5. **agree** that the Crown contribution to the Ngāpuhi Sovereign Fund be \$150 million;
6. **agree** that the entity managing the Fund will be established as a Crown company in Schedule 4A of the Public Finance Act 1989 and governed by Crown-appointed directors;
7. **agree** investment principles be developed and incorporated into the proposed company's constitution;
8. **agree** the Fund's shareholding Ministers will be the Minister of Finance and the Minister for Treaty of Waitangi Negotiations, each with a 50 percent shareholding;
9. **agree** the Fund director candidates will be assessed principally on their business and investment expertise, and need not be of Ngāpuhi descent;
10. **agree** the Fund's earnings will be used to make disbursements to Ngāpuhi uri, from late 2021, for social development purposes and to mandated Ngāpuhi entities to support the development of governance capability, subject to Cabinet decisions, and with corresponding fiscal impacts;

11.  s.9(2)(f)(iv)

12.  s.9(2)(f)(iv)

13. **agree** that the proper level of Ngāpuhi involvement in the design and establishment of the Fund is limited to being informed as Cabinet decisions are taken;

14.  s.9(2)(f)(iv)

15. **authorise** the Minister of Finance to issue drafting instructions to the Parliamentary Counsel Office to draft an Order in Council to add the entity managing the Ngāpuhi Sovereign Fund to Schedule 4A of the Public Finance Act 1989;
16. **authorise** the Minister of Finance and the Minister for Treaty of Waitangi Negotiations to determine whether any of sections 161-165 of the Crown Entities Act 2004 (regarding financial restraints) do not apply to the Fund prior to drafting instructions being issued;
17. **agree** to establish the following new appropriations:

Vote	Appropriation Minister	Title	Type	Scope
Treaty Negotiations	Minister for Treaty of Waitangi Negotiations	Operations of the Ngāpuhi Sovereign Fund Entity	Non-Departmental Output Expense	This appropriation is limited to the administration and management of the Ngāpuhi Sovereign Fund
Treaty Negotiations	Minister for Treaty of Waitangi Negotiations	Capital Investment in the Ngāpuhi Sovereign Fund Entity	Non-Departmental Capital Expenditure	This appropriation is limited to the Crown's capital investment in the Ngāpuhi Sovereign Fund

18. **approve** the following changes to appropriations to give effect to the policy decision in recommendation 3 - 5 above, with a corresponding impact on the operating balance and debt:

Vote Treaty Negotiations Minister for Treaty of Waitangi Negotiations	\$m – increase/(decrease)			
	2020/21	2021/22	2022/23	2023/24 & Outyears
Non-Departmental Capital Expenditure: Capital Investment in the Ngāpuhi Sovereign Fund Entity	150.000	-	-	-
Non-Departmental Output Expense: Operations of the Ngāpuhi Sovereign Fund Entity	1.000	2.000	2.050	1.900
Total Operating Balance Impact	1.000	2.000	2.050	1.900
Total Debt Impact	150.000	-	-	-

19. **agree** that the proposed change to appropriations for 2020/21 above be included in the 2020/21 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;
20. **agree** that the output expenses under recommendation 18 above be charged against the Budget 2020 between-Budget operating contingency;
21. **agree** that the capital expenditure will be offset through a corresponding reduction in the charge against the Treaty settlement multi-year appropriation

at the time of the finalisation of the agreement of the Ngāpuhi mandated entity to accept the Fund as redress;

22. **note** that this will not affect the quantum forecast for Ngāpuhi, though funding will ultimately need to be returned to the fiscal forecast ahead of settlement to provide for the settlement expense, and any loss in the value of the Fund will require additional funding to meet the expense;
23. **agree** that the capital expenditure will not be a charge against the Budget 2021 multi-year capital allowance on the basis that the cost will be fiscally neutral as it will be offset by a future reduction in the Treaty settlement multi-year appropriation;
24. **note** that in preparing the Pre-Election Economic and Fiscal Update Treasury will need to consider the certainty that the \$150 million capitalisation of the fund will be offset by an equivalent reduction in the Treaty settlement multi-year appropriation within the ten-year forecasting period;
25. **note** that the Pre-Election Economic and Fiscal Update fiscal forecasts prepared by Treasury are likely to incorporate the \$150 million capitalisation cost in the debt track without a corresponding reduction within the ten-year period, but include a Specific Fiscal Risk that the cost might be offset within the ten-year forecasting period; and
26. **note** the Minister for Treaty of Waitangi Negotiations, in consultation with the Ministers of Finance, Māori Development and Regional Economic Development, will report back to the Cabinet Māori Crown Relations: Te Arawhiti Committee by the end of the year seeking final decisions on the design of the Ngāpuhi Sovereign Fund including investment principles, monitoring arrangements, [REDACTED] how the Fund will be managed, and final establishment timeframes. **s.9(2)(f)(iv)**

Authorised for lodgement

Hon Andrew Little
Minister for Treaty of Waitangi Negotiations