

Hon Andrew Little
Minister for Treaty of Waitangi Negotiations

Proactive release – Whakatōhea: approval to initial a deed of settlement; Whakatōhea: request for an increase in total settlement value

Date of issue: 18 February 2022

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

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

No.	Document	Comments
1	Whakatōhea: approval to initial a deed of settlement <i>Cabinet minute CAB-21-MIN-0037</i> Cabinet Office <i>Meeting date: 01/03/2021</i>	Some information has been withheld because it is out of scope.
2	Whakatōhea: approval to initial a deed of settlement <i>Cabinet Māori Crown Relations – Te Arawhiti committee minute MCR-21-MIN-0003</i> Cabinet Office <i>Meeting date: 23/02/21</i>	Some information has been withheld in accordance with section 9(2)(j) of the OIA to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).
3	Whakatōhea: approval to initial a deed of settlement <i>Cabinet paper</i> Office for Māori Crown Relations – Te Arawhiti	Some information has been withheld in accordance with section 9(2)(h) of the OIA to maintain legal professional privilege. Some information has been withheld in accordance with section 9(2)(j) of the OIA to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).
4	Whakatōhea: request for an increase in total settlement value <i>Cabinet minute CAB-21-MIN-0216</i> Cabinet Office <i>Meeting date: 14/06/2021</i>	Some information has been withheld because it is out of scope.
5	Whakatōhea: request for an increase in total settlement value <i>Cabinet Māori Crown Relations – Te Arawhiti committee minute MCR-21-MIN-0011</i> Cabinet Office <i>Meeting date: 08/06/21</i>	Some information has been withheld in accordance with section 9(2)(j) of the OIA to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).
6	Whakatōhea: request for an increase in total settlement value <i>Cabinet paper</i> Office for Māori Crown Relations – Te Arawhiti	Some information has been withheld in accordance with section 9(2)(j) of the OIA to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, negotiations (including commercial and industrial 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 26 February 2021

On 1 March 2021, Cabinet made the following decisions on the work of the Cabinet Māori Crown Relations: Te Arawhiti Committee for the period ended 26 February 2021.

[REDACTED]	[REDACTED]	[REDACTED]
out of scope	[REDACTED]	
MCR-21-MIN-0003	Whakatōhea: Approval to Initial Deed of Settlement Portfolio: Treaty of Waitangi Negotiations	CONFIRMED
[REDACTED]	[REDACTED]	[REDACTED]
out of scope		
[REDACTED]	[REDACTED]	[REDACTED]
out of scope		

Martin Bell
for Secretary of the Cabinet



Cabinet Māori Crown Relations: Te Arawhiti Committee

Minute of Decision

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

Whakatōhea: Approval to Initial Deed of Settlement

Portfolio Treaty of Waitangi Negotiations

On 23 February 2021, the Cabinet Māori Crown Relations: Te Arawhiti Committee:

Background

- 1 **noted** that after a six-year process the Crown recognised the mandate of the Whakatōhea Pre-Settlement Claims Trust to negotiate a Treaty settlement on behalf of Whakatōhea in December 2016;
- 2 **noted** that the Minister for Treaty of Waitangi Negotiations signed an Agreement in Principle with Whakatōhea in August 2017;
- 3 **noted** that in April 2018, the Waitangi Tribunal found the Crown breached the Treaty of Waitangi in recognising the Whakatōhea Pre-Settlement Claims Trust's mandate and recommended Whakatōhea vote on how they wished to proceed;
- 4 **noted** that the 2018 vote showed a slim majority in favour of continuing direct negotiations with the Crown and a large minority sought a Waitangi Tribunal District Inquiry;
- 5 **noted** that in June 2019, the Waitangi Tribunal initiated the Wai 1750 North-Eastern Bay of Plenty District Inquiry, primarily focussing on Whakatōhea claims and in September 2019 the former Minister for Māori Development and the Minister for Treaty of Waitangi Negotiations conditionally resumed Treaty settlement negotiations with Whakatōhea;
- 6 **noted** that the Minister for Treaty of Waitangi Negotiations considers the best way to respect the outcome of the 2018 Tribunal-directed vote is to enable the Wai 1750 North-Eastern Bay of Plenty District Inquiry to occur alongside or after the settlement of historical claims;

Mandate and decision to initial a deed

- 7 **noted** that, since the resumption of negotiations, the Whakatōhea Pre-Settlement Claims Trust and Crown officials have engaged extensively with members of the claimant community, including those who opposed settlement negotiations in 2017;
- 8 **noted** that, notwithstanding this engagement, a decision to initial a deed of settlement is likely to result in further applications for urgent hearing in the Waitangi Tribunal;
- 9 **agreed** that the Crown proceed to initial a deed of settlement with the Whakatōhea Pre-Settlement Claims Trust and put it to the people of Whakatōhea for ratification;

Amendment to the ouster clause in settlement legislation

- 10 **noted** that the Wai 1750 North-Eastern Bay of Plenty District Inquiry is likely to take five to ten years to complete;
- 11 **agreed** to facilitate the Wai 1750 North-Eastern Bay of Plenty District Inquiry by amending the standard ouster clause in the Whakatōhea settlement legislation to allow the Waitangi Tribunal to continue the Wai 1750 North-Eastern Bay of Plenty District Inquiry and make findings on historical claims, but not to make recommendations under sections 6(3), 8A or 8HB of the Treaty of Waitangi Act 1975 in relation to historical claims;

Variations to the redress package

- 12 **noted** that the proposed final Whakatōhea settlement package is detailed at Appendix 2 to the paper under MCR-21-SUB-0003, is largely consistent with the package agreed by Cabinet in 2017 [CAB-17-MIN-0268 and CAB-17-MIN-0400 refer] and variations in this paper have no impact on the total settlement value;

Natural Resource Arrangements

- 13 **noted** that, rather than enhancing the Ōhiwa Harbour Implementation Forum as agreed by Cabinet in 2017 [CAB-17-MIN-0268 and CAB-17-MIN-0400], Whakatōhea sought arrangements to support their exercise of kaitiakitanga over river catchments in their rohe;
- 14 **noted** that the proposed arrangements are consistent with Cabinet's guidelines for the design and scope of natural resources arrangements [CAB Min (10) 25/3];
- 15 **agreed** that the deed of settlement and settlement legislation will establish a rivers forum which will operate as a permanent joint committee of the Bay of Plenty Regional Council under the Local Government Act 2002;
- 16 **noted** that the rivers forum will:
- 16.1 support Whakatōhea and local authorities to work together in a collaborative framework that recognises the kaitiaki role and obligations of Whakatōhea over rivers and their catchments in their rohe;
 - 16.2 enable Whakatōhea to express their interests in, and the promote health and sustainable management of, rivers and their catchments across the Whakatōhea area of interest, as shown in the map at Appendix 3 to the paper under MCR-21-SUB-0003;
 - 16.3 be a non-regulatory body without legal weighting;
- 17 **agreed** that the Whakatōhea settlement legislation include enabling provisions for Whakatōhea to enter into one or more Joint Management Agreement:
- 17.1 with the Bay of Plenty Regional Council and/or Ōpōtiki District Council under the Resource Management Act 1991 related to rivers and their catchments within the Whakatōhea rohe shown in the map at Appendix 3 to the paper under MCR-21-SUB-0003;
 - 17.2 which, once triggered by written notice from Whakatōhea, must be negotiated and entered into between the Bay of Plenty Regional Council and/or Ōpōtiki District Council and Whakatōhea within a specified timeframe;

Conservation Management Strategy Chapter

- 18 **noted** that in June 2017 Cabinet approved an offer for Whakatōhea and the Department of Conservation to co-author a Place in the Bay of Plenty Conservation Management Strategy consisting of up to 84,000 hectares of Public Conservation Land [CAB-17-MIN-0268];
- 19 **noted** that the Crown offer included, in error, land within the East Coast/Hawkes Bay Conservation Board area;
- 20 **agreed** to confirm an amendment to the scope of the co-authored chapter in the Bay of Plenty Conservation Management Strategy so it will now cover up to 138,000 hectares, including non-Public Conservation Land, within the Bay of Plenty Conservation Board area only, as shown on the map at Appendix 5 to the paper under MCR-21-SUB-0003;
- 21 **noted** that, following discussions with neighbouring iwi, the Minister of Treaty of Waitangi Negotiations and the Minister of Conservation will make final decisions about the area covered by the co-authored chapter in the Bay of Plenty Conservation Management Strategy under existing delegations [CAB-17-MIN-0268];

Geographic Name Changes

- 22 **agreed** to the geographic name changes for Whakatōhea in the table below:

Existing name	Proposed name	Feature type
Waioeka River	Waioweka River	River
Waioeka	Waioweka	Locality
Waioeka River (local use name Ōpōtiki Harbour)	Pakihikura Harbour	Harbour
Waioeka Gorge Scenic Reserve	Waioweka Gorge Scenic Reserve	Crown Protected Area

Ministry of Education Deferred Selection Properties

- 23 **noted** the inclusion in the deed of settlement of deferred sale and leaseback properties Ōpōtiki College (land only), Ōpōtiki School (land only) and Woodlands School (land only), subject to standard Ministry of Education policies for sale and leaseback redress;

Overlapping interests

- 24 **noted** the Crown is offering redress to Whakatōhea in areas where five other iwi also have interests and the Minister for Treaty of Waitangi Negotiations will only initial a deed of settlement if overlapping interests have been addressed to the satisfaction of the Crown;
- 25 **noted** that Whakatōhea and Ngāi Tai Iwi have requested the Crown facilitate co ownership and co-management of Oroī Scenic Reserve and an initial proposal would allow for the Whakatōhea post-settlement governance entity to on-transfer a half share of their interest in Oroī Scenic Reserve to the Ngāi Tai Iwi post-settlement governance entity;
- 26 **noted** that these provisions would not be settlement redress for Ngāi Tai Iwi, and while they may form a precedent for on-transfer to a group that has yet to settle, officials are confident that any risk can be mitigated;

Conditions of settlement

- 27 **noted** that settlement is conditional on ratification of the deed of settlement by Whakatōhea and the enactment of settlement legislation to implement aspects of the deed;

Next steps

28 **noted** that, subject to Cabinet agreement to the recommendations in the paper under MCR-21-SUB-0003, finalisation of the deed of settlement and addressing overlapping interests, the Minister for Treaty of Waitangi Negotiations intends to initial the deed of settlement in March 2021;

Financial implications

29

section 9(2)(j)

[Redacted]

30

section 9(2)(j)

[Redacted]

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

31

section 9(2)(j)

[Redacted]

Crown Contribution To Local Authority Costs for Natural Resource Arrangements

32 **noted** that Cabinet has agreed guidelines determining the level of one-off Crown contributions toward local government costs for new arrangements to involve iwi in natural resource management [CAB MIN (11) 29/9];

33

section 9(2)(j)

[Redacted]

34

section 9(2)(j)

[Redacted]

35

[Redacted]

35.1

section 9(2)(j)

[Redacted]

35.2

[Redacted]

36

section 9(2)(j)

[Redacted]

Department of Conservation Implementation and Impairment Costs

37

section 9(2)(j)

[Redacted]

38

section 9(2)(j)

[Redacted]

39

section 9(2)(j)

[Redacted]

40

section 9(2)(j)

[Redacted]

Delegation to act

41 **authorised** the Minister for Treaty of Waitangi Negotiations to:

- 41.1 determine whether overlapping interests are addressed to the Crown's satisfaction before initialling the deed of settlement;
- 41.2 finalise or vary the redress in consultation with relevant portfolio Ministers, consistent with the intent of Cabinet's decisions and the financial parameters set by Cabinet;
- 41.3 decide, jointly with the Minister for Māori Development, whether the ratification results demonstrate enough support from Whakatōhea to proceed;
- 41.4 sign the deed of settlement on behalf of the Crown should ratification results demonstrate sufficient support from Whakatōhea.

Gerrard Carter
Committee Secretary

Hard-copy distribution: (see over)

Present:

Hon Kelvin Davis (Chair)
Hon David Parker
Hon Peeni Henare
Hon Willie Jackson
Hon Kiri Allan

Officials present from:

Officials Committee for CMR

Hard-copy distribution:

Minister for Treaty of Waitangi Negotiations

PROACTIVELY RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS

In Confidence

The Minister for Treaty of Waitangi Negotiations

Cabinet Māori Crown Relations: Te Arawhiti Committee

WHAKATŌHEA: APPROVAL TO INITIAL A DEED OF SETTLEMENT

Proposal

- 1 This paper seeks Cabinet agreement to the final redress package for the comprehensive settlement of the historical Treaty of Waitangi claims of Whakatōhea, and to initial a deed of settlement (**deed**). Subject to your agreement, finalising the deed and addressing outstanding overlapping interests, I intend to initial the deed with Whakatōhea in March 2021.

Relation to government priorities

- 2 This proposal relates directly to the Government's priority: Making New Zealand Proud: Build closer partnerships with Māori: Working to settle all historical Treaty settlements. This priority was emphasised in the Labour Party's 2020 Election Manifesto and the speech from the throne.

Executive Summary

- 3 The Whakatōhea Pre-Settlement Claims Trust (**the Claims Trust**) and I have agreed a settlement package for the historical claims of Whakatōhea. Whakatōhea are an iwi based in the eastern Bay of Plenty. The most serious of their grievances against the Crown arise from the invasion and confiscation (raupatu) of their land.
- 4 The Crown signed an Agreement in Principle (**AIP**) with Whakatōhea in August 2017. In April 2018, the Waitangi Tribunal (**Tribunal**) found the Crown breached the Treaty in recognising the Claims Trust's mandate. The Tribunal recommended Whakatōhea vote on how they wished to proceed – either for settlement negotiations to continue, or to stop negotiations in favour of a Tribunal inquiry into their historical claims. The vote showed support for both options, with a slim majority in favour of continuing negotiations and a large minority seeking a Tribunal District Inquiry.
- 5 In June 2019, the Tribunal initiated the Wai 1750 North-Eastern Bay of Plenty District Inquiry (**the District Inquiry**), primarily focussing on Whakatōhea claims. In September 2019 the previous Minister for Māori Development and I agreed to explore the potential for the District Inquiry to occur alongside or after the settlement of the historical claims. We considered that enabling both a Tribunal inquiry and settlement negotiations was the best way to respect the outcome of the vote.
- 6 There is now a clear pathway for Whakatōhea to benefit from both the settlement and the District Inquiry. I consider it appropriate to conclude negotiations, initial the deed, and enable Whakatōhea to make the decision to accept the settlement, or not, through the ratification process.
- 7 To facilitate the District Inquiry, I seek your agreement to modify the standard provision in the settlement legislation that removes the jurisdiction of courts and tribunals over historical claims. The modified provision would allow the Tribunal to retain its ability to inquire into, report on and make findings on the historical claims of Whakatōhea once the settlement legislation comes into force. The Tribunal would not be able to

recommend remedies in relation to historical claims. This modified provision has precedent in previous settlement legislation.

- 8 I seek agreement to variations to parts of the settlement package. All proposed variations are within the financial parameters agreed by Cabinet and have no impact on the total settlement value. The settlement package is summarised at **Appendix 2**.
- 9 The most significant variation is the inclusion of new natural resources arrangements over rivers and their catchments in the Whakatōhea rohe. I propose to establish a rivers forum, which would operate as a permanent joint committee of the Bay of Plenty Regional Council, and to provide Whakatōhea the opportunity to enter into one or more joint management agreements (**JMA**) with Bay of Plenty Regional Council and/or Ōpōtiki District Council. The proposed natural resources are within Cabinet guidelines [CAB Min (10) 25/3 refers].
- 10 Cabinet has agreed the Crown will consider on a case by case basis contributions towards costs incurred by local bodies when establishing new arrangements which better involve iwi in managing natural resources [CAB MIN (11) 29/9 refers]. I will work with the Ministers of Finance and for the Environment to provide a contribution to the rivers forum costs in March 2021. I will seek agreement from Cabinet to make Crown contributions to JMAs once the costs are known.
- 11 I seek delegated authority for myself and any relevant Ministers to finalise or vary redress consistent with the intent of Cabinet's decisions and within the financial parameters set by Cabinet, including in relation to the resolution of overlapping interests, before initialling the deed.

Background

Whakatōhea's Treaty claims and grievances are significant

- 12 Whakatōhea are an iwi of over 12,000 people, according to 2013 Census data. Their area of interest covers 192,158 hectares (**ha**) in the eastern Bay of Plenty and is shown in the map at **Appendix 1**.
- 13 The most serious Whakatōhea grievances relate to, and arise from, the invasion and confiscation of Whakatōhea land. In 1865, following the murder of the missionary Carl Volkner, the Government declared Whakatōhea rebels against the Crown. The Crown imposed martial law in the eastern Bay of Plenty and Crown troops invaded Ōpōtiki.
- 14 In 1866 the Crown confiscated around 58,000 ha of Whakatōhea land, encompassing most of the fertile and productive land in the district. The Crown forced hapū onto insufficient reserves which led to intra-iwi conflict. Later Crown purchases alienated Whakatōhea from much of their land in the inland hill country, most of which was ultimately designated public conservation land.

Previous Whakatōhea settlement offer did not result in a settlement

- 15 The Crown initialled a deed of settlement with Whakatōhea in 1996. Whakatōhea negotiators and iwi members had significant concerns about the sufficiency of the settlement package and the deed was never put to Whakatōhea for ratification. The Crown terminated the deed in 1998 [CAB (98) M 12/3B refers].

Whakatōhea Pre-Settlement Claims Trust mandate and 2017 Agreement in Principle

- 16 Between 2010 and 2016 officials worked with Whakatōhea to facilitate the establishment of an entity to represent the iwi in negotiations with the Crown. Between May and June 2016 Whakatōhea voted 92% in favour of the Claims Trust as a representative entity.
- 17 In October 2016 Cabinet approved the 'broadening the reach of Treaty settlements' strategy, which included accelerated processes to reach milestones before the 2017 election [CAB-16-MIN-0525 refers]. The Crown recognised the mandate of the Claims Trust in December 2016. Negotiations began in January 2017 and in August 2017 an AIP was signed.

Waitangi Tribunal inquiries and pause in negotiations

The Tribunal found the Crown breached the Treaty in recognising the Claims Trust's mandate and Whakatōhea voted on how to proceed in 2018

- 18 In 2016 and 2017, 16 applicants, on behalf of various groups, filed claims and applications in the Tribunal asking for an urgent inquiry into the Crown's recognition of the Claims Trust mandate. After the AIP was signed, the Tribunal held an urgent inquiry into the mandate process.
- 19 The Tribunal's 2018 *Whakatōhea Mandate Inquiry Report* found that by including Whakatōhea in the 'broadening the reach of Treaty settlements' strategy, the Crown prioritised its political objective of concluding Treaty settlements over a process that was fair to Whakatōhea. The Tribunal also found fault with the process by which the Crown recognised the Claims Trust's mandate.
- 20 Despite its findings, the Tribunal did not recommend the Crown withdraw its recognition of the mandate. Instead, the Tribunal recommended Whakatōhea vote on how to proceed. I agreed this was an appropriate way forward and, in April 2018, I paused negotiations with the Claims Trust so the vote could take place.
- 21 In October 2018, Whakatōhea voted on three propositions. Respondents were able to vote for more than one option:
- 21.1 53% (1,534 individuals) voted in favour of continuing direct negotiations with the Crown, represented by the Claims Trust;
- 21.2 48% (1,382 individuals) voted in favour of halting negotiations to participate in a District Inquiry; and
- 21.3 12% (337 individuals) voted in favour of beginning a process to mandate a new entity for direct negotiations.

The Tribunal began the Wai 1750 North-Eastern Bay of Plenty District Inquiry and the Crown resumed negotiations in 2019

- 22 The previous Minister for Māori Development and I supported a District Inquiry in principle. However, District Inquiries usually take between five and ten years. We considered that halting negotiations until a District Inquiry had concluded would unfairly delay a settlement for the majority in Whakatōhea who support settlement. We considered the best way to respect the outcome of the 2018 vote would be to enable a District Inquiry alongside or after a settlement.

- 23 In June 2019 the Tribunal commenced the District Inquiry. The District Inquiry focusses on Whakatōhea claims and will cover both historical (pre-September 1992) and contemporary claims. The District Inquiry is currently in preliminary stages and hearings have not begun.
- 24 In September 2019, the former Minister for Māori Development and I conditionally resumed negotiations with the Claims Trust. The conditions included the Claims Trust undertaking comprehensive engagement among the claimant community and increased mandate maintenance reporting.

Mandate and decision to initial a deed

The Whakatōhea Pre-Settlement Claims Trust has engaged with the claimant community

- 25 Since negotiations resumed, the Claims Trust has provided comprehensive mandate maintenance reports outlining their engagement with the Whakatōhea community. The Claims Trust has held regular hui-a-iwi, hui-a-hapū and information hui. They have live-streamed hui and provide regular updates through social media and newsletters. The Claims Trust has provided opportunities for iwi members to have input into the design of the post-settlement governance entity (**PSGE**) and in finalising redress.
- 26 Crown officials have also engaged directly with groups within Whakatōhea to discuss the settlement, including hapū representatives and Wai claimants.
- 27 Some members of Whakatōhea who opposed negotiations in the 2017 mandate inquiry have worked productively with the Claims Trust and the Crown on elements of redress such as the historical account.

In October 2020 the Tribunal deferred deciding on an urgent inquiry into the Crown's decision to resume negotiations

- 28 Some members of, and groups within, Whakatōhea remain opposed to settlement. In June 2020 five applicants filed applications in the Tribunal for an urgent inquiry into the Crown's decision to continue negotiations after the 2018 vote. On 20 October 2020 the Tribunal adjourned the application, stating that it was not appropriate for the Tribunal to intervene at that time and that parties should settle the issues in good faith.
- 29 Following the Tribunal's decision, applicants indicated a willingness to meet with the Claims Trust and Crown officials. They also indicated an intention to revive their urgency applications. This is likely to follow announcement of a decision to initial the deed.

I want to measure support for settlement by putting an initialled deed to Whakatōhea for ratification

- 30 I am of the view that while some opposition to a Whakatōhea Treaty settlement is entrenched, significant progress has been made towards addressing the concerns raised in the Tribunal's 2018 *Whakatōhea Mandate Inquiry Report*.
- 31 I consider the best way forward is to conclude negotiations, initial the deed, and enable Whakatōhea to accept the settlement, or not, through a ratification vote. I seek delegated authority, with the Minister for Māori Development, to decide whether the ratification results demonstrate enough support by Whakatōhea for the deed and PSGE.

- 32 In these circumstances, the ratification process will be critically important. The Claims Trust has produced a comprehensive ratification strategy alongside an extensive pre-ratification outreach and communication plan to provide Whakatōhea katoa with accurate and clear information about the settlement.

Scope of the Whakatōhea settlement

All historical claims of Whakatōhea will be settled

- 33 The Whakatōhea settlement will settle all the historical (pre-21 September 1992) Treaty of Waitangi claims of Whakatōhea. Except as provided in the deed, the settlement will not affect any ongoing rights which Whakatōhea may have under common law (including existing aboriginal title), legislation or the Treaty of Waitangi.

I seek an amendment to the ouster clause in the settlement legislation so the District Inquiry can proceed

- 34 Treaty settlement legislation usually contains a provision that removes the jurisdiction of the Tribunal to inquire into and make findings on historical breaches of the Treaty, and to make remedial recommendations for compensation or for removal of prejudice arising from historical Treaty breaches (the **ouster clause**).
- 35 I seek Cabinet agreement to include a modified ouster clause in the Whakatōhea Treaty settlement legislation that allows the Tribunal to inquire into, and make findings on, historical claims, but does not allow the Tribunal to make remedial recommendations. The Tribunal will not be able to make general ('non-binding') recommendations or binding recommendations that the Crown resume land for return to Māori ownership.
- 36 Modifying the standard ouster clause will allow the Tribunal to produce a report that provides a rich history of the relationship between Whakatōhea and the Crown since 1840 and to make independent findings on the Crown's breaches of the Treaty and its principles. As this is a settlement of historic claims, the Tribunal will retain its jurisdiction to make both findings and recommendations on contemporary (post-21 September 1992) claims, except those arising from the settlement negotiations.
- 37 Some previous settlement legislation has included this amended provision. In those cases, hearings had concluded before settlement negotiations began but the Tribunal's reports were not published until after the settlement legislation passed. In this case, hearings have not yet begun and are not expected to until 2022.

The risk that the District Inquiry findings will undermine the settlement are low

- 38 The District Inquiry will go into greater detail than the settlement regarding historical issues. If, when the District Inquiry is complete, the Tribunal makes findings on historical claims that appear inconsistent with the historical account and Crown acknowledgements included in the deed, it may present a risk to the durability of the settlement. I believe this risk is low.
- 39 It is unlikely major inconsistencies will arise regarding the significant historical grievances of Whakatōhea relating to invasion and raupatu. The settlement will include acknowledgements that these acts are among the worst breaches of the Treaty, and an apology from the Crown which reflects the seriousness of its acts.

40 The Tribunal will also make findings on contemporary claims. The settlement will provide a platform for Whakatōhea to discuss the District Inquiry's findings on contemporary claims directly with Crown agencies. Agencies who enter into relationship agreements through the settlement have made commitments to meet with Whakatōhea to discuss the District Inquiry findings on contemporary claims and develop a plan to address contemporary issues where appropriate.

41 The deed and ratification material will be clear that redress for historical claims will be full and final through the settlement, will not alter based on the Tribunal's future findings, and the Tribunal will not be able to make remedial recommendations regarding well-founded historical claims.

[Redacted]

42 [Redacted]

43 [Redacted]

Finalising the redress package

44 Most redress for Whakatōhea was approved by Cabinet in June and July 2017. Cabinet delegated authority to my predecessor and relevant Ministers to make changes to the Crown offer agreed by Cabinet consistent with the intent of Cabinet's decisions [CAB-17-MIN-0268 and CAB-17-MIN-0400 refer].

45 I seek approval to amend and finalise the settlement package within the financial parameters agreed to by Cabinet. The Whakatōhea settlement package, incorporating proposed variations, is summarised at **Appendix 2**.

Natural resource arrangements over river catchments

46 In June and July 2017 Cabinet agreed to enter discussions with Whakatōhea and the Ōhiwa Harbour Implementation Forum (OHIF) to explore options for enhancing the OHIF through the settlement [CAB-17-MIN-0268 and CAB-17-MIN-0400 refer]. When negotiations resumed in 2019, Whakatōhea noted the OHIF was working well and instead sought arrangements to support their exercise of kaitiakitanga over river catchments within their rohe.

47 I seek your approval to use the Whakatōhea settlement legislation to establish a Kaitiaki Forum and to enable Whakatōhea to enter one or more JMA with Bay of Plenty

Regional Council and/or Ōpōtiki District Council. The proposed arrangements fit within Cabinet guidelines for the design and scope of natural resource redress [CAB Min (10) 25/3 refers]. Bay of Plenty Regional Council and Ōpōtiki District Council support the proposed arrangements.

- 48 The proposed natural resources arrangements are non-exclusive instruments that would not diminish the interests of neighbouring iwi with interests in the rivers and catchments covered.

KAITIAKI FORUM

- 49 The proposed Kaitiaki Forum is based on the successful OHIF model. It would enable Whakatōhea and local authorities to work together in a collaborative framework that recognises the kaitiaki role and obligations of Whakatōhea over rivers and their catchments. It would:

49.1 enable Whakatōhea to express their interests in, and promote the health and sustainable management of, rivers and their catchments across the Whakatōhea area of interest, as shown in the map at **Appendix 3**;

49.2 operate as a permanent joint committee of Bay of Plenty Regional Council and Ōpōtiki District Council under the Local Government Act 2002; and

49.3 be a non-regulatory body: forum strategies would not have legal weighting and would not have any regulatory impact on landowners.

- 50 Further detail on the proposed Kaitiaki Forum is provided at **Appendix 4**.

ENABLING PROVISIONS FOR JOINT MANAGEMENT AGREEMENTS

- 51 The proposed provisions would enable Whakatōhea to enter one or more JMA with Bay of Plenty Regional Council and/or Ōpōtiki District Council under the Resource Management Act 1991 (**RMA**) regarding rivers and their catchments in their area of interest as shown at **Appendix 3**. Entering into a JMA with BORPC and/or Ōpōtiki District Council would allow Whakatōhea to jointly exercise specific functions normally held by local authorities under the Resource Management Act 1991, such as planning, consenting and water quality monitoring.

- 52 Whakatōhea and local authorities agree that JMAs should be established as clear issues arise regarding specific matters under the RMA. Settlement legislation would provide that, once triggered by written notice, Bay of Plenty Regional Council or Ōpōtiki District Council must enter a JMA with Whakatōhea.

Amended area of co-authored Place in the Bay of Plenty Conservation Management Strategy

- 53 In June 2017 Cabinet approved an offer for Whakatōhea and the Department of Conservation (**DOC**) to co-author a Place (**Whakatōhea Place**) in the Bay of Plenty Conservation Management Strategy (**CMS**). Cabinet delegated authority to the Minister of Conservation and myself to confirm the details of this redress within parameters agreed by Cabinet [CAB-17-MIN-0268 refers].

- 54 The Minister of Conservation and I seek your agreement to confirm an amendment to the scope of the initial Crown offer. Amendment is necessary to correct a boundary error in the initial Crown offer. The initial Crown offer covered up to 84,000 ha of

Public Conservation Land (**PCL**). Approximately 24,000 ha was in the East Coast/Hawkes Bay Conservation Board area. Due to the complexity inherent in creating a CMS Place, it is not possible for the Whakatōhea Place to cover land in two Conservation Board areas.

- 55 Under the proposed amendment, the Whakatōhea Place would cover up to 138,000 ha of land, within the Bay of Plenty Conservation Board area only as shown in the map at **Appendix 5**. The area includes an additional 10,000 ha of PCL and would provide influence over up to 68,000 ha of non-PCL, including private land. Influence over non-PCL is provided for through DOC's advocacy role for the protection of wildlife, wildlife habitats, freshwater quality and freshwater indigenous species management. The proposed Whakatōhea Place does not cover the marine and coastal environment.
- 56 CMS Chapter redress is complex to implement. The inclusion of land in which neighbouring iwi have an interest is conditional on the Crown being satisfied that iwi have agreed a process to ensure the interests of neighbouring iwi are appropriately considered by Whakatōhea during the co-authoring process. The Minister of Conservation and I will agree the final area covered by the Whakatōhea Place under existing delegations to reflect the outcome of discussions between Whakatōhea and neighbouring iwi [CAB-17-MIN-0268 refers].

Geographic name changes

- 57 The Crown offered Whakatōhea the opportunity to change significant geographic names through their Treaty settlement following consideration by the New Zealand Geographic Board – Ngā Pou Taunaha o Aotearoa (**NZGB**). The NZGB may also recommend changes to names of Crown Protected Areas. On the recommendation of the NZGB, I seek Cabinet approval for the name changes in Table 1 below:

Table 1: Geographic name changes

Existing name	Proposed name	Feature type
Waioeka River	Waioweka River	River
Waioeka	Waioweka	Locality
Waioeka River (local use name Ōpōtiki Harbour)	Pakihikura Harbour	Harbour
Waioeka Gorge Scenic Reserve	Waioweka Gorge Scenic Reserve	Crown Protected Area

Relationship instruments

- 58 In June 2017 Cabinet agreed to offer Whakatōhea the opportunity to enter relationship instruments with Crown agencies [CAB-17-MIN-0268 refers]. Following discussions between Whakatōhea and Crown agencies, some relationship instruments included in the AIP have been altered. For example, a letter of introduction to the Minister of Education has become a relationship agreement with the Ministry of Education. New relationship instruments have also been negotiated and added. The list of relationship instruments can be found in **Appendix 2**.

Ministry of Education deferred selection properties

- 59 In June 2017 Cabinet noted that redress was still in development for the purchase and leaseback of Ministry of Education (**MOE**) sites [CAB-17-MIN-0268 refers]. I ask Cabinet note that the deed of settlement will provide for deferred selection sale and leaseback of Opotiki College (land only), Opotiki School (land only) and Woodlands School (land only).

- 60 School site redress is subject to standard MOE policies providing for sale and leaseback redress. Board of Trustee houses are located on two of the school sites and inclusion of the house land is subject to specific conditions in the deed. A school site will cease to be a deferred selection property if, before Whakatōhea gives notice of interest in respect of the site, MOE notifies that the site has become surplus to its requirements. Should the sites cease to be deferred selection properties, Whakatōhea will be offered a right of first refusal over the sites as they fall within the right of first refusal area shown in the map at **Appendix 5**.

Overlapping interests

- 61 The Crown is offering redress to Whakatōhea in areas where Ngāi Tūhoe, Ngāti Awa, Ngāi Tai Iwi, Te Whānau a Kai and Te Aitanga a Māhaki have interests. Whakatōhea negotiators have led productive engagement with neighbouring groups. Where neighbouring iwi have raised concerns, Whakatōhea has sought to accommodate them through, for example, requesting the removal from the settlement package of rights of first refusal over specific properties.
- 62 Whakatōhea and Ngāi Tai Iwi requested that the Crown facilitate co-ownership and co-management of Oroī Scenic Reserve, which is currently proposed to transfer to Whakatōhea. An initial proposal has been made to include provisions in the Whakatōhea settlement legislation to allow for the Whakatōhea PSGE to transfer a half share of their interest in Oroī Scenic Reserve to the Ngāi Tai Iwi PSGE after that entity is established and create a joint administering body.
- 63 All recent settlements contain provisions allowing for on-transfer of reserve properties within a claimant group. This would be the first time where an on-transfer is proposed to a group that has yet to settle, has not yet established a PSGE, and is not in active negotiations with the Crown. Officials consider the precedent risk could be mitigated by providing for on-transfer to be triggered by notice from the Ngāi Tai Iwi PSGE. These provisions would not be settlement redress for Ngāi Tai Iwi. The Minister of Conservation and I will consider a final proposal under delegations sought in this paper.
- 64 As discussions with neighbouring iwi progress, officials will write to representatives of the overlapped groups outlining the Crown's understanding of agreements reached through these discussions. I seek delegated authority to make a final determination that overlapping interests have been addressed to the Crown's satisfaction prior to initialling the deed.

Final matters

- 65 As negotiations with Whakatōhea end, final details of the redress may require minor variation. I seek delegated authority to finalise or vary the redress in consultation with the relevant portfolio Ministers and within the financial parameters agreed by Cabinet.

Tax indemnity

- 66 An indemnity will be sought from the Minister of Finance for income tax and Goods and Services Tax (**GST**) upon transfer of settlement redress. The Inland Revenue Department has published interpretation statements that support the view that the transfer of settlement redress does not give rise to either income tax or GST consequences. To ensure Whakatōhea 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.

Conditions of settlement

67 The settlement will be conditional on ratification of the deed by Whakatōhea and the enactment of settlement legislation to implement certain aspects of the deed.

Next steps

68 If Cabinet approves the proposed settlement package detailed in this paper, I intend to initial the deed with Whakatōhea in March 2021 and put the deed to Whakatōhea for ratification. Should the ratification results demonstrate enough support from Whakatōhea, I seek delegated authority to sign the deed on behalf of the Crown.

Financial Implications

69 [Redacted]

section 9(2)(j)

[Redacted]

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

70 [Redacted]

section 9(2)(j)

Establishment costs for natural resources arrangements

71 The proposed natural resource arrangements will impose additional costs on the effected local authorities. In the short term these costs will not be provided for in local authority annual plans.

72 Cabinet has previously agreed the Crown will consider on a case by case basis contributions towards costs incurred by local bodies when establishing new arrangements which better involve iwi in managing natural resources [CAB MIN (11) 29/9 refers]. In February 2020 the Ministers of Finance, for the Environment, of Local Government and I approved a methodology for consistent application of this policy.

73 [Redacted]

section 9(2)(j)

74

section 9(2)(j)

75

section 9(2)(j)

76

section 9(2)(j)

76.1

76.2

77

section 9(2)(j)

78

section 9(2)(j)

Department of Conservation implementation costs

79

section 9(2)(j)

80

80.1

section 9(2)(j)

80.2 [Redacted]

81 [Redacted]
section 9(2)(j)

82 [Redacted]
section 9(2)(j)

Department of Conservation impairment costs

83 [Redacted]
section 9(2)(j)

84 [Redacted]
section 9(2)(j)

85 [Redacted]
section 9(2)(j)

86 [Redacted]
section 9(2)(j)

Legislative Implications

87 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.

Impact Analysis

Regulatory Impact Statement

88 The Regulatory Quality Team at the Treasury has determined that the regulatory proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement on the basis that it implements deeds of settlement for Treaty of Waitangi claims, other than those that would amend or affect existing regulatory arrangements.

Climate Implications of Policy Assessment

89 An assessment of climate implications is not required as the proposal is not likely to have direct emission impacts.

Population Implications

90 No negative impact on population groups is likely to arise as a result of the proposal.

Human Rights

- 91 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.

Consultation

- 92 The Office for Māori Crown Relations – Te Arawhiti has consulted with and incorporated the views of the Treasury, DOC, Ministry for the Environment, MOE, Ministry of Business, Innovation and Employment, Department of Internal Affairs, Ministry for Culture and Heritage, Heritage New Zealand, New Zealand Police, Ara Poutama – Department of Corrections, Ministry of Health, Oranga Tamariki, Te Puni Kōkiri, Land Information New Zealand and Crown Law Office.

Communications

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

Proactive Release

- 94 I intend to release this paper proactively, making any necessary redactions, within 30 business days of final Cabinet decisions if a deed has been initialled within that timeframe. If a deed has not been initialled I intend to defer proactive release of this paper as the content will remain confidential to negotiations until that time

Recommendations

The Minister for Treaty of Waitangi Negotiations recommends the Committee:

- 1 **note** that after a six-year process the Crown recognised the mandate of the Whakatōhea Pre-Settlement Claims Trust to negotiate a Treaty settlement on behalf of Whakatōhea in December 2016;
- 2 **note** that the Minister for Treaty of Waitangi Negotiations signed an Agreement in Principle with Whakatōhea in August 2017;
- 3 **note** that in April 2018 the Waitangi Tribunal found the Crown breached the Treaty of Waitangi in recognising the Whakatōhea Pre-Settlement Claims Trust's mandate and recommended Whakatōhea vote on how they wished to proceed;
- 4 **note** that the 2018 vote showed a slim majority in favour of continuing direct negotiations with the Crown and a large minority sought a Waitangi Tribunal District Inquiry;
- 5 **note** that in June 2019 the Waitangi Tribunal initiated the Wai 1750 North-Eastern Bay of Plenty District Inquiry, primarily focussing on Whakatōhea claims and in September 2019 the former Minister for Māori Development and the Minister for Treaty of Waitangi Negotiations conditionally resumed Treaty settlement negotiations with Whakatōhea;
- 6 **note** that the Minister for Treaty of Waitangi Negotiations considers the best way to respect the outcome of the 2018 Tribunal-directed vote is to enable the Wai 1750 North-Eastern Bay of Plenty District Inquiry to occur alongside or after the settlement of historical claims;

Mandate and decision to initial a deed

- 7 **note** that, since the resumption of negotiations, the Whakatōhea Pre-Settlement Claims Trust and Crown officials have engaged extensively with members of the claimant community, including those who opposed settlement negotiations in 2017;
- 8 **note** that, notwithstanding this engagement, a decision to initial a deed of settlement is likely to result in further applications for urgent hearing in the Waitangi Tribunal;
- 9 **agree** that the Crown proceed to initial a deed of settlement with the Whakatōhea Pre-Settlement Claims Trust and put it to the people of Whakatōhea for ratification;

Amendment to the ouster clause in settlement legislation

- 10 **note** that the Wai 1750 North-Eastern Bay of Plenty District Inquiry is likely to take five to ten years to complete;
- 11 **agree** to facilitate the Wai 1750 North-Eastern Bay of Plenty District Inquiry by amending the standard ouster clause in the Whakatōhea settlement legislation to allow the Waitangi Tribunal to continue the Wai 1750 North-Eastern Bay of Plenty District Inquiry and make findings on historical claims, but not to make recommendations under sections 6(3), 8A or 8HB of the Treaty of Waitangi Act 1975 in relation to historical claims;

Variations to the redress package

- 12 **note** that the proposed final Whakatōhea settlement package is detailed at **Appendix 2**, is largely consistent with the package agreed by Cabinet in 2017 [CAB-17-MIN-0268 and CAB-17-MIN-0400 refer] and variations in this paper have no impact on the total settlement value;

NATURAL RESOURCE ARRANGEMENTS

- 13 **note** that, rather than enhancing the Ōhiwa Harbour Implementation Forum as agreed by Cabinet in 2017 [CAB-17-MIN-0268 and CAB-17-MIN-0400 refer], Whakatōhea sought arrangements to support their exercise of kaitiakitanga over river catchments in their rohe;
- 14 **note** that the proposed arrangements are consistent with Cabinet's guidelines for the design and scope of natural resources arrangements [CAB Min (10) 25/3 refers];
- 15 **agree** that the deed of settlement and settlement legislation will establish a rivers forum which will operate as a permanent joint committee of the Bay of Plenty Regional Council under the Local Government Act 2002;
- 16 **note** that the rivers forum will:
- 16.1 support Whakatōhea and local authorities to work together in a collaborative framework that recognises the kaitiaki role and obligations of Whakatōhea over rivers and their catchments in their rohe;
 - 16.2 enable Whakatōhea to express their interests in, and the promote health and sustainable management of, rivers and their catchments across the Whakatōhea area of interest, as shown in the map at **Appendix 3**;

- 16.3 be a non-regulatory body without legal weighting; and
- 17 **agree** that the Whakatōhea settlement legislation include enabling provisions for Whakatōhea to enter into one or more Joint Management Agreement:
- 17.1 with the Bay of Plenty Regional Council and/or Ōpōtiki District Council under the Resource Management Act 1991 related to rivers and their catchments within the Whakatōhea rohe shown in the map at **Appendix 3**;
- 17.2 which, once triggered by written notice from Whakatōhea, must be negotiated and entered into between the Bay of Plenty Regional Council and/or Ōpōtiki District Council and Whakatōhea within a specified timeframe;

CONSERVATION MANAGEMENT STRATEGY CHAPTER

- 18 **note** in June 2017 Cabinet approved an offer for Whakatōhea and the Department of Conservation to co-author a Place in the Bay of Plenty Conservation Management Strategy consisting of up to 84,000 hectares of Public Conservation Land [CAB-17-MIN-0268 refers];
- 19 **note** that the Crown offer included, in error, land within the East Coast/Hawkes Bay Conservation Board area;
- 20 **agree** to confirm an amendment to the scope of the co-authored chapter in the Bay of Plenty Conservation Management Strategy so it will now cover up to 138,000 hectares, including non-Public Conservation Land, within the Bay of Plenty Conservation Board area only, as shown on the map at **Appendix 5**;
- 21 **note** that, following discussions with neighbouring iwi, the Minister of Treaty of Waitangi Negotiations and the Minister of Conservation will make final decisions about the area covered by the co-authored chapter in the Bay of Plenty Conservation Management Strategy under existing delegations [CAB-17-MIN-0268 refers];

GEOGRAPHIC NAME CHANGES

- 22 **agree** to the geographic name changes for Whakatōhea in the table below:

Existing name	Proposed name	Feature type
Waioeka River	Waioweka River	River
Waioeka	Waioweka	Locality
Waioeka River (local use name Ōpōtiki Harbour)	Pakihikura Harbour	Harbour
Waioeka Gorge Scenic Reserve	Waioweka Gorge Scenic Reserve	Crown Protected Area

MINISTRY OF EDUCATION DEFERRED SELECTION PROPERTIES

- 23 **note** the inclusion in the deed of settlement of deferred sale and leaseback properties Ōpōtiki College (land only), Ōpōtiki School (land only) and Woodlands School (land only), subject to standard Ministry of Education policies for sale and leaseback redress;

Overlapping interests

- 24 **note** the Crown is offering redress to Whakatōhea in areas where five other iwi also have interests and the Minister for Treaty of Waitangi Negotiations will only initial a

deed of settlement if overlapping interests have been addressed to the satisfaction of the Crown;

25 **note** that Whakatōhea and Ngāi Tai Iwi have requested the Crown facilitate co-ownership and co-management of Oroī Scenic Reserve and an initial proposal would allow for the Whakatōhea post-settlement governance entity to on-transfer a half share of their interest in Oroī Scenic Reserve to the Ngāi Tai Iwi post-settlement governance entity;

26 **note** that these provisions would not be settlement redress for Ngāi Tai Iwi, and while they may form a precedent for on-transfer to a group that has yet to settle, officials are confident that any risk can be mitigated;

Conditions of settlement

27 **note** that settlement is conditional on ratification of the deed of settlement by Whakatōhea and the enactment of settlement legislation to implement aspects of the deed;

Next steps

28 **note** that, subject to Cabinet agreement to the recommendations in this paper, finalisation of the deed of settlement and addressing overlapping interests, the Minister for Treaty of Waitangi Negotiations intends to initial the deed of settlement in March 2021;

Financial implications

29 [REDACTED]

section 9(2)(j)

30 [REDACTED]

section 9(2)(j)

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

section 9(2)(j)

31 [REDACTED]

CROWN CONTRIBUTION TO LOCAL AUTHORITY COSTS FOR NATURAL RESOURCE ARRANGEMENTS

32 **note** that Cabinet has agreed guidelines determining the level of one-off Crown contributions toward local government costs for new arrangements to involve iwi in natural resource management [CAB MIN (11) 29/9 refers];

33 [REDACTED]
section 9(2)(j) [REDACTED]

34 [REDACTED]
section 9(2)(j) [REDACTED]

35 [REDACTED]
section 9(2)(j) [REDACTED]

35.1 [REDACTED]

35.2 [REDACTED]

36 [REDACTED]
section 9(2)(j) [REDACTED]

DEPARTMENT OF CONSERVATION IMPLEMENTATION AND IMPAIRMENT COSTS

37 [REDACTED]
section 9(2)(j) [REDACTED]

38 [REDACTED]
section 9(2)(j) [REDACTED]

39 [REDACTED]
section 9(2)(j) [REDACTED]

40 [REDACTED]
section 9(2)(j) [REDACTED]

Delegation to act

41 **authorise** the Minister for Treaty of Waitangi Negotiations to:

41.1 determine whether overlapping interests are addressed to the Crown's satisfaction before initialling the deed of settlement;

41.2 finalise or vary the redress in consultation with relevant portfolio Ministers, consistent with the intent of Cabinet's decisions and the financial parameters set by Cabinet;

- 41.3 decide, jointly with the Minister for Māori Development, whether the ratification results demonstrate enough support from Whakatōhea to proceed; and
- 41.4 sign the deed of settlement on behalf of the Crown should ratification results demonstrate sufficient support from Whakatōhea.

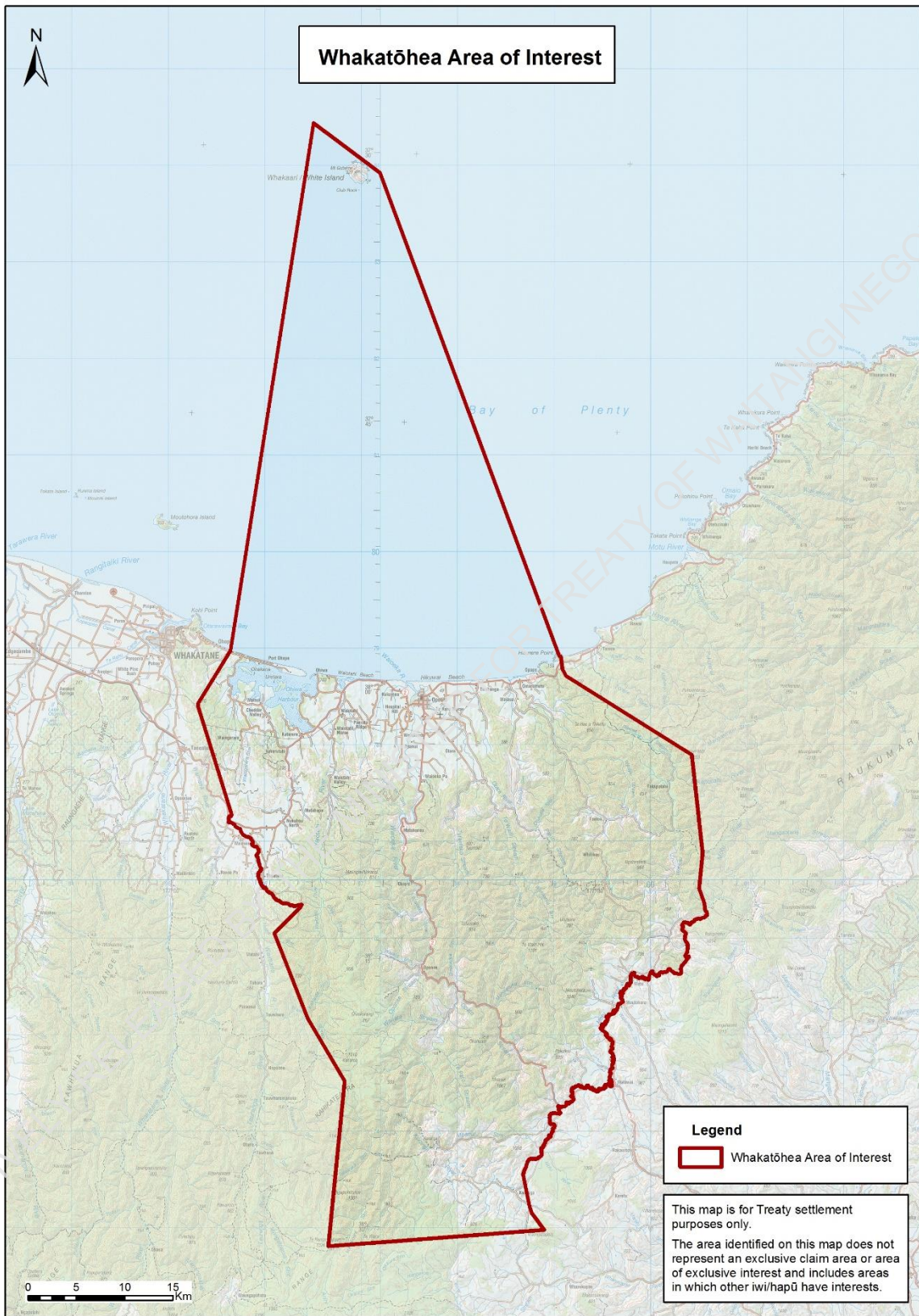
Authorised for lodgement

Hon Andrew Little

Minister for Treaty of Waitangi Negotiations

PROACTIVELY RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS

Appendix 1: Whakatōhea area of interest



Appendix 2: Proposed Whakatōhea settlement package

* indicates new redress

^ indicates variations to previously agreed redress

Table 1: Apology redress
Historical account
Crown acknowledgements
Crown apology

Table 2: Financial and commercial redress		
Financial redress of \$85.000 million		
Commercial redress properties		
Property	Landholding agency	Approx size (ha)
Corner St John Street/Elliott Street (SH 35), Ōpōtiki (PF 483)	LINZ (Treaty Settlements Landbank)	0.40
115 Church Street, Ōpōtiki (PF 489)	LINZ (Treaty Settlements Landbank)	0.11
153 Duke Street, Ōpōtiki (PF 1026)	LINZ (Treaty Settlements Landbank)	0.16
8 Wairata Road, Wairata (PF 1552)	LINZ (Treaty Settlements Landbank)	2.07
116A Goring Street/Elliott Street, Ōpōtiki (PF 1042)	LINZ (Treaty Settlements Landbank)	0.52
Flats 1, 2, 3 and 4, 72 Richard St, Ōpōtiki (PF 1048 and PF 1819)	LINZ (Treaty Settlements Landbank)	0.20
86 Ford Street, Ōpōtiki (PF 1377)	LINZ (Treaty Settlements Landbank)	0.10
16 Sedgewick Road, Ōpōtiki (PF 1600)	LINZ (Treaty Settlements Landbank)	0.09
29 Windsor Street, Ōpōtiki (PF 1884)	LINZ (Treaty Settlements Landbank)	0.08
27 Windsor Street, Ōpōtiki (PF 1883)	LINZ (Treaty Settlements Landbank)	0.08
65 Buchanan Street, Ōpōtiki (PF 1049)	LINZ (Treaty Settlements Landbank)	0.08
Hukutaia Conservation Area	Department of Conservation	6.00
Part Old Town of Ōhiwa Conservation Area site A	Department of Conservation	0.41
Part Old Town of Ōhiwa Conservation Area site B	Department of Conservation	0.08
Pakihi Stream Conservation Area	Department of Conservation	6.38
Part Tukainuka Scenic Reserve	Department of Conservation	5.99
Part Waioeka Gorge Roadside Reserve	Department of Conservation	1.10
Part Waiotahi Conservation Area	Department of Conservation	0.86

Deferred Selection properties			
Property	Landholding agency	Approx size (ha)	Deferred selection period and conditions
Opotiki District Court (land only)	Ministry of Justice	0.07	2 year deferred selection period Sale and leaseback (lease terms to be agreed with Ministry of Justice)
10 Elliott Street, Ōpōtiki (land only)	New Zealand Police	0.08	2 year deferred selection period Sale and leaseback (lease terms to be agreed with New Zealand Police)
Opotiki Police Station (land only)	New Zealand Police	0.08	2 year deferred selection period Sale and leaseback (lease terms to be agreed with New Zealand Police)
18 Potts Avenue, Ōpōtiki (land only)	New Zealand Police	0.06	2 year deferred selection period Sale and leaseback (lease terms to be agreed with New Zealand Police)
Opotiki College (land only)	Ministry of Education	8.41	2 year deferred selection period Sale and leaseback (lease terms to be agreed with Ministry of Education)
Opotiki School (land only)	Ministry of Education	3.53	2 year deferred selection period Sale and leaseback (lease terms to be agreed with Ministry of Education)
Woodlands School (land only)	Ministry of Education	2.02	2 year deferred selection period Sale and leaseback (lease terms to be agreed with Ministry of Education)
30 Waioeka Rd (SH 2), Ōpōtiki (PF 740)	LINZ (Treaty Settlements Landbank)	1.39	^ 2 year deferred selection period

Right of first refusal in relation to a disposal by the Crown of any land within the area shown on the map in **Appendix 5** or any land listed in **Appendix 6** that on the settlement date is owned by the Crown or the specified entity.

A right of first refusal within Whakatōhea's area of interest over species that are managed under the Fisheries Act 1996 and are introduced into the quota management system in the future.

A reserve of up to 5000 hectares of marine space within the Whakatōhea marine area of interest to provide Whakatōhea the opportunity to make appropriate resource consent applications for aquaculture

\$5 million for the purpose of a reserve land development fund

Up to \$2 million for marine and harbour development, up to \$1 million of which may be used for costs associated with resource consent processes.

Table 3: Cultural redress

\$5 million for a cultural revitalisation fund

\$1 million for a Te Reo revitalisation fund

\$2 million for an education endowment fund

Cultural redress properties			
Sites for transfer	Landholding agency	Approx size (ha)	Conditions of transfer
Dunes Conservation Area	Department of Conservation	3.80	Vest in fee simple
Part Huntress Creek Conservation Area, Huntress Creek Burial Area	Department of Conservation	19.20	Vest in fee simple
Kiwikiwi and Te Tawa Flats (being part of Waioeka Gorge Scenic Reserve)	Department of Conservation	10.00	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Kotare Scenic Reserve	Department of Conservation	18.15	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Kutarere Recreation Reserve	Department of Conservation	7.81	Vest in fee simple
Marawaiwai Scenic Reserve	Department of Conservation	70.52	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Matekerepu Historic Reserve	Department of Conservation	23.58	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Matepuritaka/Titiwa (part of Urutawa Conservation Area)	Department of Conservation	5.00	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Part Meremere Hill Scenic Reserve	Department of Conservation	1000.00	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Part Old Town of Ohiwa Conservation Area	Department of Conservation	0.75	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Part Oroi Scenic Reserve	Department of Conservation	19.68	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Pakihi Conservation Area site A	Department of Conservation	0.25	^ [Vest in fee simple]
Pakihi Conservation Area site B	Department of Conservation	99.96	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Part Pataua Island Scientific Reserve	Department of Conservation	11.43	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Raetakohia (being part of Waioeka Gorge Scenic Reserve)	Department of Conservation	5.00	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body

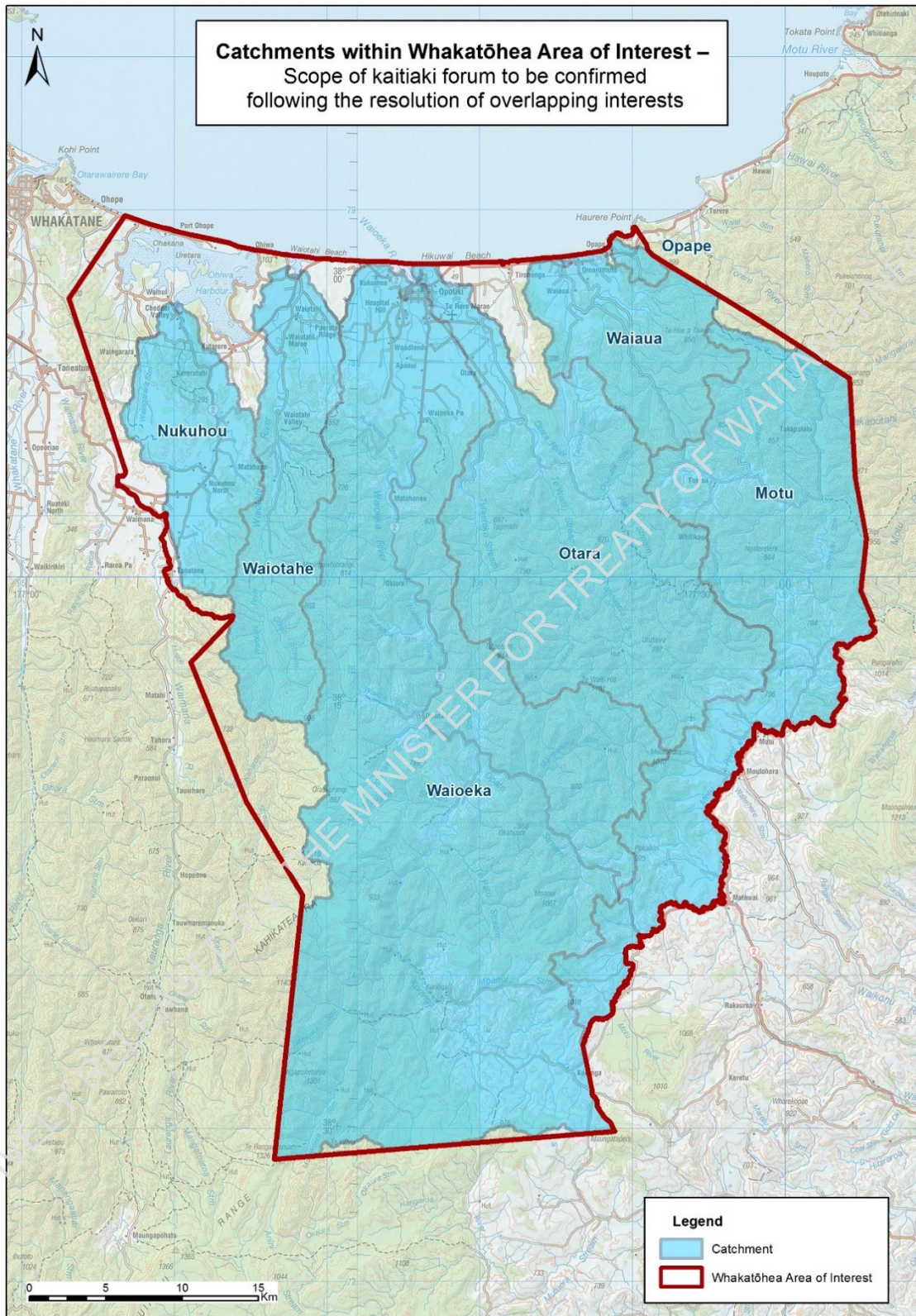
Tirohanga Dunes Conservation Area site A	Department of Conservation	0.03	^ [Vest in fee simple]
Tirohanga Dunes Conservation Area site B	Department of Conservation	54.00	Vest in fee simple as a scenic reserve with the Joint Management Body as administering body
Part Toatoa Scenic Reserve	Department of Conservation	920.81	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Part Tukainuka Scenic Reserve	Department of Conservation	27.80	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Waiaua Scenic Reserve	Department of Conservation	837.12	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Waioeka Conservation Area	Department of Conservation	362.12	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Part Waioeka Conservation Area	Department of Conservation	999.87	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Part Waioeka Gorge Scenic Reserve, Part Waioeka Gorge Roadside Reserve and Parts State highway	Department of Conservation and New Zealand Transport Agency	1000.00	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Waiotahe Scenic Reserve	Department of Conservation	261.84	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
Whitikau Scenic Reserve	Department of Conservation	872.24	Vest in fee simple as a scenic reserve with Whakatōhea PSGE as administering body
^ Te Roto	Department of Conservation	1.70	[Vest in fee simple]
Part Hospital Hill (35-79 Hukutaia Road) (F/F 1307)	LINZ (Treaty Settlements Landbank)	10.44	Vest in fee simple
^ Paerata Recreation Reserve	Ōpōtiki District Council	1.62	Vest in fee simple
^ Hukutaia Domain Recreation Reserve	Ōpōtiki District Council	4.61	Vest in fee simple as a recreation reserve with Ōpōtiki District Council as administering body
^ Ōhui Domain	Ōpōtiki District Council	4.11	Vest in fee simple as a recreation reserve with Ōpōtiki District Council as administering body
^ Te Ngaio / Ōpōtiki Recreation Reserve	Ōpōtiki District Council	13.85	Vest in fee simple as a recreation reserve with Joint Management Body as administering body

^ Part Volkners Recreation Reserve	Ōpōtiki District Council	7.46	* Vest in fee simple as a recreation reserve with Ōpōtiki District Council as administering body
Cultural redress instruments			
A chapter in the Bay of Plenty Conservation Management Strategy		A co-authored chapter in the Bay of Plenty Conservation Management Strategy	
* Natural resource arrangements		<ul style="list-style-type: none"> • a non-regulatory forum over rivers in the Whakatōhea area of interest which will operate as a permanent joint committee of Bay of Plenty Regional Council • enabling provisions to enter into Joint Management Agreements with Bay of Plenty Regional Council and/or Ōpōtiki District Council 	
Statutory acknowledgements and deeds of recognition		Statutory acknowledgements and deeds of recognition over: <ul style="list-style-type: none"> • Ōtara River and its tributaries • Waioweka River and its tributaries within the area of interest • Waiaua River and its tributaries within the area of interest • Opape Stream and its tributaries • * Waioatahe River and its tributaries within the area of interest • * Nukuhou River and its tributaries within the area of interest 	
Decision making framework		A decision-making framework that applies to decisions under Part 3B (concessions) of the Conservation Act 1987	
Cultural Materials Plan with the Department of Conservation		A cultural materials plan covering: <ul style="list-style-type: none"> ○ the customary take of flora material in conservation protected areas within the Whakatōhea area of interest ○ the possession of dead protected fauna that is found within the area 	
Establishment of a Joint Management Body		A Joint Management Body involving Whakatōhea and the Ōpōtiki District Council to be the administering body of four coastal reserves, two of which are owned by Ōpōtiki District Council and two of which are to be vested in Whakatōhea	
Appointment as an advisory committee to the Minister for Primary Industries		The Whakatōhea PSGE to be appointed as an advisory committee on fisheries management in relation to areas of special significance to Whakatōhea	
Relationship instruments			
Agency		Form of agreement	
Department of Conservation		Relationship agreement	

Ministry of Justice	^ Justice Sector relationship agreement	
Department of Corrections		
New Zealand Police Department		
Ministry for the Environment	Relationship agreement	
* Oranga Tamariki	* Relationship agreement	
* Statistics New Zealand	* Relationship agreement	
Ministry of Business, Innovation and Employment	^ Relationship agreement Crown minerals protocol	
Ministry of Education	^ Relationship agreement	
* Tertiary Education Commission	* Relationship agreement	
Ministry of Social Development	^ Relationship agreement	
Ministry of Health	^ Relationship agreement	
Bay of Plenty District Health Board		
Te Tari Tai Whenua- Department of Internal Affairs (responsible for Te Puna Mātauranga o Aotearoa - the National Library and Te Rua Mahara o Te Kāwanatanga - Archives New Zealand)	^ Whakaaetanga Tiaki Taonga - Relationship Agreement between the Culture and Heritage Agencies	
Manatū Taonga – Ministry for Culture and Heritage		
Te Papa Tongarewa – Museum of New Zealand		
Heritage New Zealand Pouhere Taonga		
* Te Arawhiti – Office for Māori Crown Relations	* Letter of commitment	
Te Puni Kōkiri	Letter of introduction	
* Ngā Taonga Sound and Vision	* Letter of introduction	
* New Zealand Trade and Enterprise	* [Letter of commitment]	
Ministry for Primary Industries	Letter of introduction Primary industries protocol	
New Zealand Transport Agency	Letter of introduction	
* Ministry of Housing and Urban Development	* Letter of introduction	
Auckland War Memorial Museum	^ Letter of introduction	
^ Geographic name changes		
Existing name	Proposed name	Feature type
Waioeka River	Waioweka River	River
Waioeka	Waioweka	Locality
Waioeka River (local use name Ōpōtiki Harbour)	Pakihikura Harbour	Harbour
Waioeka Gorge Scenic Reserve	Waioweka Gorge Scenic Reserve	Crown Protected Area

PROACTIVELY RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS

Appendix 3: Map of rivers and their catchments affected by Whakatōhea natural resources arrangements

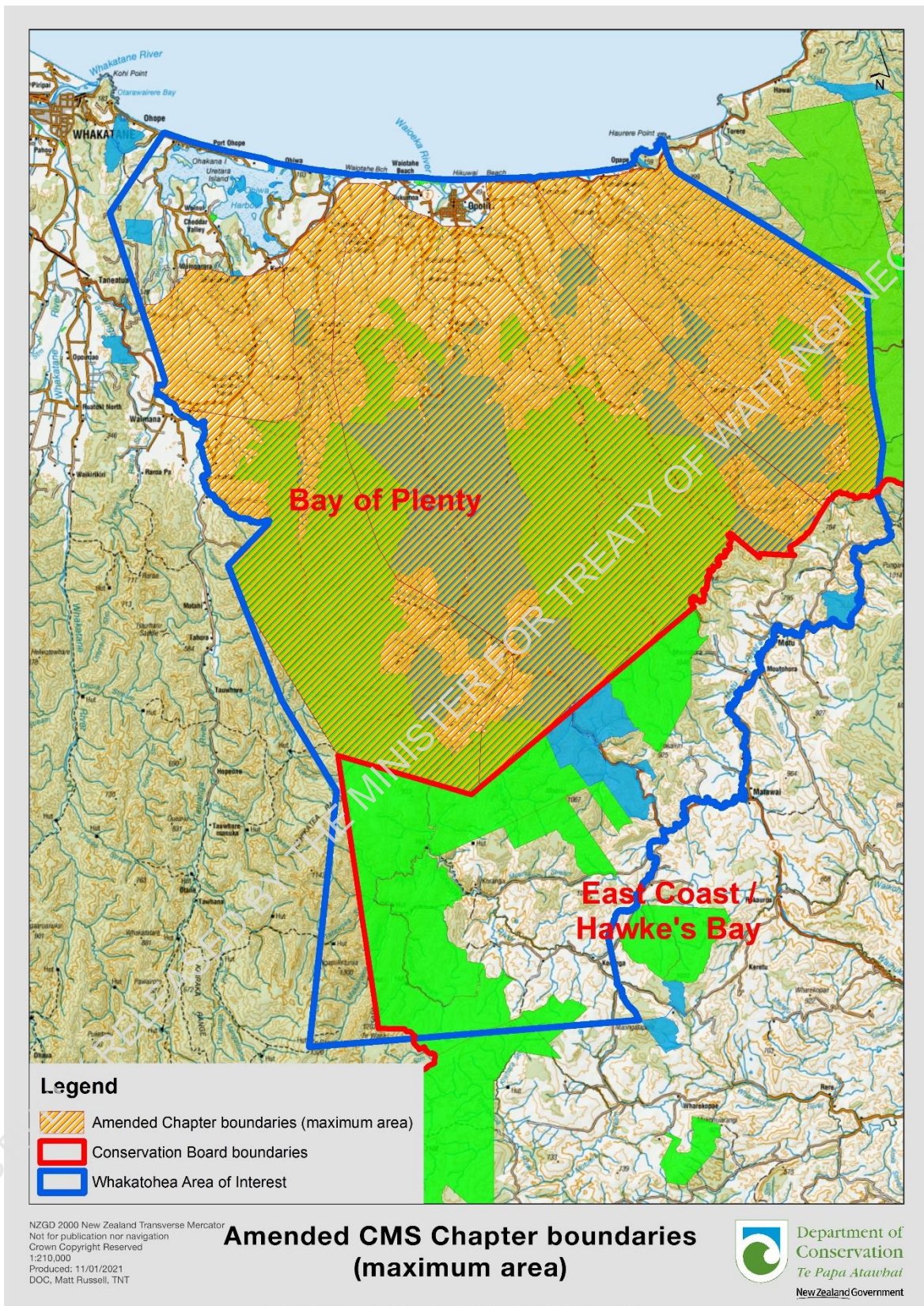


Appendix 4: Detail of rivers forum

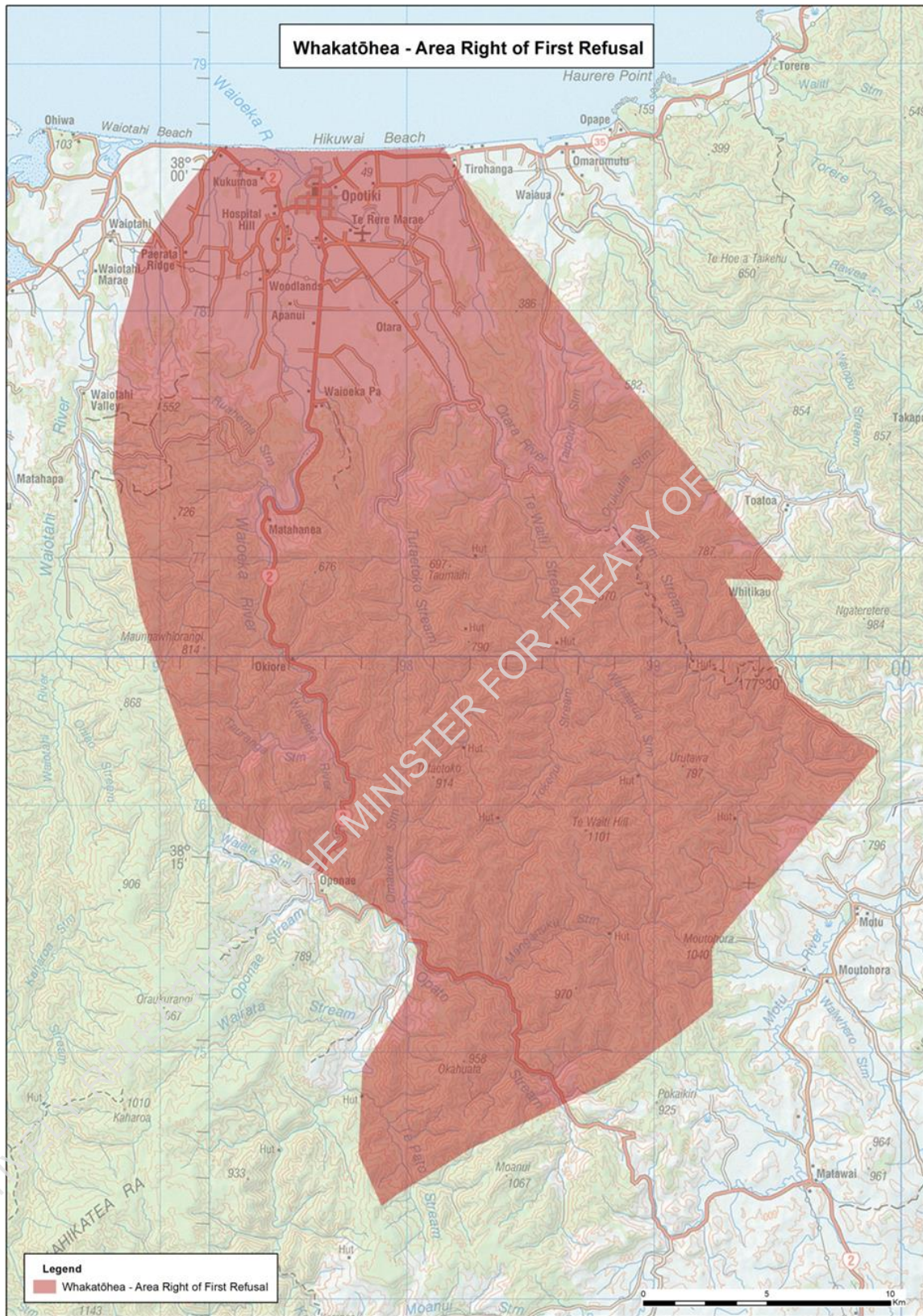
Key component	Proposal
Purpose	<p>The purpose of the Kaitiaki Forum is to:</p> <ul style="list-style-type: none"> • enable Whakatōhea to express and discuss their interests and views in relation to the rivers and their catchments in the Whakatōhea rohe with relevant councils and agencies; • assist relevant councils and agencies to better understand Whakatōhea's interests and views in relation to the rivers and their catchments in the Whakatōhea rohe; • support the kaitiakitanga and mana whakahaere of Whakatōhea hapū; • promote te mana o te wai - the protection and enhancement of the health and wellbeing of the rivers and their catchments in the Whakatōhea rohe; and • build strong relationships between Whakatōhea and relevant councils and agencies. • attend to such other matters that the forum considers to be relevant to the rivers and catchments in the Whakatōhea rohe and the principles outlined.
Function	<p>The primary function of the Whakatōhea Kaitiaki Forum will be to achieve its purpose. Other functions of the Whakatōhea Kaitiaki Forum are to:</p> <ul style="list-style-type: none"> • promote the ability of Whakatōhea to exercise kaitiakitanga and mana whakahaere; • work with local authorities, neighbouring iwi and other stakeholders on achieving integrated river and catchment management issues; • consider and promote the outcomes sought in the Whakatōhea iwi and hapū environmental management plans; • if the forum decides to do so, promote the development and implementation of a Whakatōhea catchment strategy document which would: <ul style="list-style-type: none"> ○ reflect the Whakatōhea kaitiakitanga and mana whakahaere; ○ outline the vision and aspirations for the rivers and their catchments and recommend actions for achieving those aspirations; ○ identify resource management issues; ○ identify projects and funding sources; ○ recommend actions for relevant local authorities to address identified issues; and ○ provide a monitoring framework for identified issues; and • oversee and monitor the implementation of any Whakatōhea strategy documents and Whakatōhea and Whakatōhea hapū environmental management plans.
Scope	<p>The forum will cover rivers and their catchments within the Whakatōhea area of interests as shown in the map at Appendix 4. This includes those parts of the Nukuhou, Waiotahe, Waioeka, Otara, Waiaua and Motu rivers and their catchments within the Whakatōhea area of interest. The common marine and coastal area is not included in the forum area.</p>

Membership	<ul style="list-style-type: none"> • 6 members appointed by Whakatōhea; and • 4 members identified by the Bay of Plenty Regional Council and Ōpōtiki District Council.
DOC attendance at the forum	<p>The Whakatōhea Kaitiaki Forum may invite the Department of Conservation to attend a forum meeting. The Whakatōhea Kaitiaki Forum will specify in the invitation the matters to be discussed with the Department.</p> <p>The Department will attend that meeting, where it is reasonably practicable to do so, where the matters to be discussed relate to:</p> <ul style="list-style-type: none"> • active management of freshwater species, riparian vegetation, or in-stream habitats undertaken by the Department; or • the relationship between rivers and their catchments in the forum area and active management activities undertaken by the Department in the common marine and coastal area. <p>In all other cases, the Department may choose to attend that meeting.</p>
Decision making	<p>The forum will seek to reach consensus on its decisions, but under the direction of the Chair, a decision may be made by vote.</p>
Funding	<p>Cabinet has previously agreed the Crown will consider contributing on a case by case basis towards the establishment costs to local bodies of new arrangements which better involve iwi in managing natural resources [CAB MIN (11) 29/9 refers]. In February 2020 the Minister of Finance, Minister for the Environment, the Minister of Local Government and Minister for Treaty of Waitangi Negotiations approved a new methodology for consistent application of this policy.</p> <p>The Minister of Finance, Minister for the Environment and Minister for Treaty of Waitangi Negotiations will approve contributions toward establishment of these arrangements once the costs are known.</p> <p>Members will meet their own on-going costs for participation; funding and support to come from parties at their own discretion.</p>
Form	<p>The forum will operate as a permanent joint committee of Bay of Plenty Regional Council and Ōpōtiki District Council as prescribed under schedule 7, clauses 30 and 30A of the Local Government Act 2002.</p>

Appendix 5: Proposed area of the Whakatōhea Place in the Bay of Plenty Conservation Management Strategy



Appendix 6: Map showing Whakatōhea Right of First Refusal area



Appendix 7: List of Right of First Refusal Properties [to be finalised]

Land Holding Agency	Property Name/Identifier	Approx size (ha)
TBC	Ohiwa Loop Road Parcel ID 4112092	1.52
TBC	Ohiwa Loop Road Parcel ID 4124168	2.04
TBC	Ruatuna Road Parcel ID 4118854	0.21
TBC	State Highway 2, Kutarere Parcel ID 4452763	0.08
TBC	State Highway 2, Nukuhou North Parcel ID 4552133	0.28
TBC	Waiotahi Valley Road Parcel ID 4124196	0.39
TBC	Waiotahi Valley Road Parcel ID 4130244	0.0048
TBC	Waiotahi Valley Road Parcel ID 4109348	1.13
Department of Conservation	Government Purpose (Estaurine Protection) Reserve – Rangitukehu Street	1.49
Department of Conservation	Koranga Stream Marginal Strip	1.22
Department of Conservation	Part Koranga Stream Marginal Strip (Parcel ID's 4126629, 4135916, 4133478, 4126636, 4117798)	49.37
Department of Conservation	Moanui Conservation Area	1503.58
Department of Conservation	Part Motu River Marginal Strip (Parcel ID's 4119021, 4143701, 4138508, 4147624, 4143702, 4119596, 4133506)	41.88
Department of Conservation	Motu Scenic Reserve	20.07
Department of Conservation	Motuore Point Conservation Area	0.65
Department of Conservation	Part Mutuera Stream Marginal Strip	6.31
Department of Conservation	Ngaupokotangata Stream Marginal Strip (Parcel ID's 4145322, 6694075, 4124872)	20.90
Department of Conservation	Nukuhou River Marginal Strip (Parcel ID's 4263164, 4442038)	1.23
Department of Conservation	Nukuhou Saltmarsh Conservation Area	14.50
Department of Conservation	Ohiwa Harbour Marginal Strip	0.71
Department of Conservation	Ohiwa Harbour Marginal Strip	0.50
Department of Conservation	Ohiwa Harbour Marginal Strip	3.50
Department of Conservation	Ohiwa Harbour Marginal Strip	0.32
Department of Conservation	Ohiwa Harbour Marginal Strip (Parcel ID's 4124784, 4145362)	3.50
Department of Conservation	Part Ohiwa Recreation Reserve	9.55
Department of Conservation	Ohiwa Scenic Reserve	4.37
Department of Conservation	Ohope Spit Wildlife Refuge Reserve	24.52
Department of Conservation	Opape Scenic Reserve	4.45
Department of Conservation	Opato Stream Marginal Strip	1.61
Department of Conservation	Oponae Stream Marginal Strip	5.01
Department of Conservation	Oscar Reeve Scenic Reserve	6.35
Department of Conservation	Paparoa Pa Historic Reserve	1.59
Department of Conservation	Petipeti Stream Marginal Strip (Parcel ID's 4119472, 4145323)	9.87
Department of Conservation	Port Ohope Recreation Reserve	13.84
Department of Conservation	Part Raukumara Conservation Park	1196.48
Department of Conservation	Soda Springs Reserve Crown Land	1.01
Department of Conservation	Takaputahi/Whitikau Conservation Area	446.13
Department of Conservation	Tauwhare Pa Scenic Reserve	14.00

Department of Conservation	Part Te Wera Bush Conservation Area	557.54
Department of Conservation	Tirohanga Recreation Reserve	0.64
Department of Conservation	Part Toatoa Scenic Reserve	1926.49
Department of Conservation	Tokitoki Historic Reserve	0.09
Department of Conservation	Unnamed Recreation Reserve	0.36
Department of Conservation	Unnamed Recreation Reserve	0.02
Department of Conservation	Waiata Stream Marginal Strip	10.00
Department of Conservation	Waiata Village Conservation Area	3.85
Department of Conservation	Part Waimana River Marginal Strip	1.64
Department of Conservation	Waingarara Stream Marginal Strip (Parcel ID's 4310862, 4344262, 4417689, 4491905, 4524046, 4548059)	6.60
Department of Conservation	Part Waioeka Conservation Area	32,712.54
Department of Conservation	Waioeka Gorge Scenic Reserve	2783.30
Department of Conservation	Part Waioeka River Marginal Strip	14.24
Department of Conservation	Waiotaha Estuary Scenic Reserve	3.58
Department of Conservation	Waiotaha Spit Historic Reserve	10.25
Department of Conservation	Waiotaha Spit Scenic Reserve	21.33
Department of Conservation	Part Waiotahi Conservation Area	0.94
Department of Conservation	Waiotahi River Conservation Area (Parcel ID's 4124030, 4139405, 4147866, 4127537, 4135394, 4123785, 4145588, 4110400, 4130962)	24.39
Department of Conservation	Waiotahi River Marginal Strip	33.21
Department of Conservation	Waiotahi River Marginal Strip (Parcel ID's 4114772, 4141055, 4138362)	8.35
Department of Conservation	Waiotane Scenic Reserve	254.84
Department of Conservation	Wairata Stream Marginal Strip	17.71
Department of Conservation	Waitukuaruhe Stream Marginal Strip	6.60
Department of Conservation	Whinray Scenic Reserve	428.54
Department of Conservation	Whitikau Conservation Area	400.53
Department of Conservation	Whitikau Conservation Area	4.22
Department of Conservation	Whitikau Stream Marginal Strip (Parcel ID's 4135090, 4129098, 4114482, 4123236, 4135095, 4135098, 4142354)	38.02
LINZ	Closed Road, Glenholme Road, Matahapa (16367)	2.13
LINZ	Crown Land – Pakihi Road, Te Urewera National Park (11286)	2.02
LINZ	Crown Land Waimana (11200)	10.68
LINZ	Stopped Road – 71a McCoy Road, Whakatane (17702)	0.53
Ministry of Education	Kutarere School	2.63
Ministry of Education	Nukuhou North School	1.21
Ministry of Education	Omarumutu School	2.29
Ministry of Education	Waiata Road property, Oponae	0.53
Ministry of Education	Waiotaha Valley School	2.0234



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 11 June 2021

On 14 June 2021, Cabinet made the following decisions on the work of the Cabinet Māori Crown Relations - Te Arawhiti Committee for the period ended 11 June 2021:

MCR-21-MIN-0011	Whakatōhea: Increase in Total Settlement Value Portfolio: Treaty of Waitangi Negotiations	CONFIRMED
-----------------	-----------------------------------------------------------------------------------------------------	-----------

[REDACTED]

[REDACTED]

[REDACTED]

out of scope

[REDACTED]

[REDACTED]

Michael Webster
Secretary of the Cabinet



Cabinet Māori Crown Relations - Te Arawhiti Committee

Minute of Decision

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

Whakatōhea: Increase in Total Settlement Value

Portfolio Treaty of Waitangi Negotiations

On 8 June 2021, the Cabinet Māori Crown Relations - Te Arawhiti Committee:

1 **noted** that:

1.1 in May 2017, Cabinet approved a total settlement value for Whakatōhea of [redacted] [TOW-17-MIN-0010];

1.2 an Agreement in Principle was signed in August 2017;

2 [redacted]

3 **noted** that should Cabinet agree to the proposal below, and subject to resolution of overlapping interests, the Crown and Whakatōhea can initial a deed of settlement;

4 [redacted]

5 [redacted]

section 9(2)(j)

[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

6 [redacted]

7

[REDACTED]

section 9(2)(j)

8

[REDACTED]

section 9(2)(j)

9

[REDACTED]

section 9(2)(j)

Gerrard Carter
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Peeni Henare

Officials present from:

Office of the Prime Minister
Officials Committee for MCR

PROACTIVELY RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS

In Confidence

Office of the Minister for Treaty of Waitangi Negotiations
Cabinet Māori Crown Relations Committee

WHAKATŌHEA: REQUEST FOR AN INCREASE IN TOTAL SETTLEMENT VALUE

Proposal

1 I seek your agreement to increase the Whakatōhea total settlement value by [REDACTED] to maintain the Crown offer recorded in the Whakatōhea Agreement in Principle (AIP) and enable a deed of settlement to be initialled.

section 9(2)(j)

2 [REDACTED]
[REDACTED]
[REDACTED]

section 9(2)(j)

Relation to government priorities

3 This proposal relates directly to the Government's priority, as set out in the 2020 Election Manifesto, to continue work to settle historical Treaty of Waitangi claims.

Background

Whakatōhea Treaty claims and previous negotiations

4 Whakatōhea are an iwi based around Ōpōtiki in the eastern Bay of Plenty. In 1865, following the murder of a missionary, the Crown declared Whakatōhea rebels and invaded Ōpōtiki. In 1866 the Crown confiscated around 58,000 hectares of Whakatōhea land, encompassing most of the fertile and productive land in the district. Later Crown purchases alienated much of the remaining Whakatōhea land in the inland hill country, most of which was ultimately designated public conservation land.

5 In 1996 the Crown initialled a deed of settlement with Whakatōhea, but due to concerns within the claimant community the deed was never put to Whakatōhea for ratification. The Crown terminated the deed in 1998 [CAB (98) M 12/3B refers].

6 The failed 1990s negotiation caused divisions within the iwi and fostered further distrust of the Crown.

[REDACTED]
7 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

section 9(2)(j)

The 2017 AIP included the return of 29 properties as cultural redress

8 The AIP, signed in August 2017, recorded the Crown's offer, including the return of 29 properties as cultural redress, most located on land confiscated by the Crown in 1866.

9 [REDACTED]

section 9(2)(j)

10 [REDACTED]

section 9(2)(j)

Negotiations have been delayed by around two years since the AIP was signed

11 Deed initialling was originally planned for early 2019. However, after the AIP was signed the Waitangi Tribunal held an inquiry into the Crown's recognition of the mandate of the Whakatōhea Pre-Settlement Claims Trust. On the Tribunal's direction, Whakatōhea voted on whether to proceed with negotiations or to have a Tribunal inquiry into their claims. No substantive negotiations took place for 19 months between April 2018 and September 2019.

12 The Covid-19 pandemic and postponement of the 2020 general election disrupted work programmes across Crown agencies. Technical work that was key to commissioning property valuations was delayed by a further six months during this period.

13 On 1 March 2021 Cabinet agreed it was appropriate to initial the deed and enable Whakatōhea to make the decision to accept the settlement or not through a ratification vote [CAB-21-MIN-0037 refers].

[REDACTED]

14 Following Cabinet's decision, the technical work regarding [REDACTED] was completed. [REDACTED]

section 9(2)(j)

15 [REDACTED]

section 9(2)(j)

16

section 9(2)(j)

[REDACTED]

17

section 9(2)(j)

Officials have worked with the Whakatōhea negotiators to identify ways the shortfall can be reduced. [REDACTED]

Seeking an increase in total settlement value

18

section 9(2)(j)

To deliver on the commitments made in the 2017 AIP, I seek an increase to the total settlement value of [REDACTED]

19

section 9(2)(j)

[REDACTED]

20

section 9(2)(j)

[REDACTED]

21

section 9(2)(j)

Negotiations with Whakatōhea are substantially complete. [REDACTED]

22

section 9(2)(j)

[REDACTED]

Financial Implications

23

section 9(2)(j)

[REDACTED]

section 9(2)(j)

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

24 Funding proposals submitted to Cabinet outside of the Budget process must demonstrate that the proposal cannot be funded through reprioritisation of lower-value activities from within existing baselines or deferred until the next Budget [Cabinet Office Circular CO (18) 2 refers].

25 Te Arawhiti has looked carefully at other sources of funding for this proposal, [REDACTED]

section 9(2)(j)

[REDACTED]

[REDACTED]

[REDACTED]

26 [REDACTED]

section 9(2)(j)

27 [REDACTED]

section 9(2)(j)

28 [REDACTED]

section 9(2)(j)

29

section 9(2)(j)

Next steps

30 I am currently working through final overlapping interests issues, which I expect will be resolved within the next month.

31 Should you agree to the proposal in this paper, subject to my satisfaction that overlapping interests are resolved, the deed of settlement can be initialled.

section 9(2)(j)

Legislative Implications

32 There are no specific legislative implications of this paper. Draft legislation will be attached to the deed. Once the deed is signed, I will seek Cabinet approval to introduce the settlement legislation.

Impact Analysis

Regulatory Impact Statement

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

Climate Implications of Policy Assessment

34 An assessment of climate implications is not required as the proposal is not likely to have direct emission impacts.

Population Implications

35 Whakatōhea are an iwi of over 16,000 people. Approximately 10% of Whakatōhea live within their rohe and 40% live in the Bay of Plenty region. The Whakatōhea rohe scores from 7 to 10 (most deprived) in the NZDep2018 Index of Deprivation.

36 This proposal supports the delivery of a Treaty settlement to Whakatōhea which will have a positive impact on its population.

Human Rights

37 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.

Consultation

38 Te Arawhiti has consulted with and incorporated the views of the Treasury and the Department of Conservation.

Proactive Release

39 I intend to release this paper proactively, making any necessary redactions, within 30 business days of final Cabinet decisions if a deed has been initialled within that timeframe. If a deed has not been initialled I intend to defer proactive release of this paper as the content will remain confidential to negotiations until that time.

Recommendations

The Minister for Treaty of Waitangi Negotiations recommends that the Committee:

1 [REDACTED] and an Agreement in Principle was signed in August 2017;

section 9(2)(j)

2 [REDACTED]

section 9(2)(j)

3 **note** that should Cabinet agree to the proposals in this paper, and subject to resolution of overlapping interests, the Crown and Whakatōhea can initial a deed of settlement;

4 [REDACTED]

section 9(2)(j)

5 [REDACTED]

section 9(2)(j)

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

6 [REDACTED]

section 9(2)(j)

7 [REDACTED]

section 9(2)(j)

8

section 9(2)(j)

[Redacted]

9

section 9(2)(j)

[Redacted]

Authorised for lodgement

Hon Andrew Little
Minister for Treaty of Waitangi Negotiations

PROACTIVELY RELEASED BY THE MINISTER FOR TREATY OF WAITANGI NEGOTIATIONS