

Hon Andrew Little

Minister for Treaty of Waitangi Negotiations

Proactive release – Ngāti Paoa Claims Settlement Bill: Approval for introduction

Date of issue: 21 February 2023

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	Ngāti Paoa Claims Settlement Bill: Approval for introduction Cabinet paper Office of the Minister for Treaty of Waitangi Negotiations 8 December 2022	Released in full
2	Ngāti Paoa Claims Settlement Bill: Approval for introduction <i>Minute of Decision LEG-22-MIN-0226</i> Cabinet Legislation Committee Meeting date: 8 December 2022	Released in full
3.	Report of the Cabinet Legislation Committee: Period Ended 9 December 2022 <i>Cabinet minute CAB-22-MIN-0570</i> Cabinet Office Meeting date: 12 December 2022	Redacted in part because out of scope

In Confidence

Office of the Minister for Treaty of Waitangi Negotiations

Cabinet Legislation Committee

Ngāti Paoa Claims Settlement Bill: Approval for introduction

Proposal

- 1 I propose Cabinet approve the Ngāti Paoa Claims Settlement Bill (the bill) for introduction to the House of Representatives. The bill will give effect to aspects of the Ngāti Paoa Deed of Settlement (the deed), signed by Ngāti Paoa and the Crown on 20 March 2021.

Policy

- 2 The Crown has accepted an obligation to resolve the historical grievances of Māori arising from Crown actions or omissions before 21 September 1992 in accordance with the principles of the Treaty of Waitangi. The Crown negotiates settlements with large natural groups of tribal interests. Settlements are intended to remove the sense of grievance and include a Crown apology in addition to cultural, financial and commercial redress.
- 3 The policy given effect by this bill directly relates to the Government's commitment to honour Te Tiriti o Waitangi, strengthen the Māori-Crown relationship and work in true partnership with Māori.

Ngāti Paoa Treaty negotiations and deed of settlement

- 4 Ngāti Paoa is an iwi of approximately 4,803 people (2018 census) whose area includes Mahurangi, Tāmaki Makaurau, the Hauraki Plains and Gulf islands, and parts of Waikato. The Ngāti Paoa area of interest is attached at **Appendix One**.
- 5 In 2009, the Crown proposed a regional approach to Treaty settlements in the Kaipara, Tāmaki Makaurau and Hauraki regions. The Tāmaki and Hauraki collectives were established for the purpose of negotiating collective redress for shared interests in Tāmaki Makaurau and Hauraki respectively. A third collective, the Marutūāhu Collective, was also established to negotiate collective redress in Tāmaki Makaurau for the shared interests of five of the twelve iwi of Hauraki. Ngāti Paoa is a member of all three collectives.
- 6 Ngāti Paoa is a party to Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 and the Pare Hauraki Collective Redress Deed (August 2018), which will have a separate collective redress deed and draft bill. In 2018, the Crown and four of the five Marutūāhu iwi initialled the Marutūāhu Iwi Collective Redress Deed. Ngāti Paoa is yet to initial the Marutūāhu deed due to concerns over the collective governance structures and apportionment of commercial redress agreed between the iwi (the Crown's offers

have been made on a collective basis, any apportionment is an internal matter for the five Marutūāhu iwi). Ngāti Paoa has the option to initial and ratify the Marutūāhu deed now, or accede later. The Marutūāhu deed also will have a separate draft bill.

- 7 The Crown also entered individual negotiations with the member iwi of the collectives, including Ngāti Paoa.
- 8 On 2 December 2013, 6 July 2015, 27 October 2015, 15 August 2016, 12 April 2019 and 16 December 2019, Cabinet made decisions on settlement redress for Ngāti Paoa. The redress included acknowledgements and an apology for Crown breaches of the Treaty of Waitangi, the return of twelve sites of significance, \$23.5 million and other cultural and commercial redress. Cabinet authorised the Minister for Māori Development and the Minister for Treaty of Waitangi Negotiations to consider the outcome of ratification of the proposed deed containing the redress for Ngāti Paoa, and for the Minister for Treaty of Waitangi Negotiations to sign it on behalf of the Crown [CAB-MIN-13-42-12, CAB-MIN-15-23/2, CAB-15-MIN-0179, CAB-16-MIN-0399, CAB-19-MIN-0168 and CAB-19-MIN-0675.01 refer].
- 9 In mid-2013, the Ngāti Paoa claimant community ratified a post-settlement governance entity (PSGE) to receive the redress, the Ngāti Paoa Iwi Trust. The Ministers at the time considered the ratification process and results (22% participation; 96% in favour) and agreed they showed sufficient support for the governance entity to be established. Ngāti Paoa Iwi Trust received some redress on account of the settlement including the opportunity to purchase 14 landbank properties in Tāmaki Makaurau and the purchase of shares in an ex-Landcorp farm (Pouarua) along with other Hauraki iwi.
- 10 In early-2020, the Ngāti Paoa claimant community ratified the settlement redress. Two ratification processes were run: one by the late Mandated Negotiator, Morehu Wilson, and another by the PSGE. The results were: 40% participation and 86% in favour of the deed in the Mandated Negotiator's process; 46% participation and 91% in favour of the deed in the PSGE's process. Special resolutions to transfer a farm on Waiheke Island from an interim trust to the PSGE and to accept an alternative redress offer to replace a housing development opportunity at Point England Reserve (discussed further below) were also voted on as part of both ratification processes and were supported (76% and 84% in favour of transferring the farm; 85% and 86% in favour of the Point England alternative offer). The Minister for Māori Development at the time, Hon Nanaia Mahuta, and I considered the ratification processes and results and agreed they showed sufficient support for the Crown and Ngāti Paoa to enter into the settlement.
- 11 On 20 March 2021, following the conclusion of overlapping interests engagement and resolution of final technical matters, I signed the deed with Ngāti Paoa.

Contentious issues

- 12 There are two issues that may be raised at select committee.

Waiheke farm and the Ngāti Paoa Trust Board

- 13 The trustees of the entity mandated for negotiations, the Ngāti Paoa Trust Board, oppose the transfer of Waiheke farm to the PSGE. The Trust Board is currently the responsible trustee of the interim trust that holds the farm.

- 14 In July 2020, the Trust Board applied for an urgent hearing in the Waitangi Tribunal challenging the ratification processes and Ministers' acceptance of the results. The Crown provided evidence and made submissions to assist the Tribunal's consideration of the application. In January 2021, the Tribunal declined the application for an urgent hearing, stating that "the evidence before the Tribunal creates little or no possibility that the Tribunal would find that the Crown was acting in breach of the principles of the Treaty in the sense that applicant proposes."
- 15 The Trust Board and affiliated members of one hapū have since applied for judicial review of Ministers' acceptance of the ratification results, the decision to sign the deed and the decision of the Tribunal to decline their application for an urgent hearing. While the judicial review proceedings have the potential to find error in the decision-making process of Ministers or the decision reached by Tribunal, that remains speculative, and in my opinion is a low risk. There have already been long delays for Ngāti Paoa to reach a settlement, and there will likely be years more delay for court or Tribunal hearings as the Trust Board attempt to relitigate aspects of the settlement. The wishes of the Trust Board must therefore be balanced against those of the claimant community.
- 16 The Trust Board's position is inconsistent with the demonstrable view of the Ngāti Paoa claimant community, who through ratification have clearly indicated they wish to proceed to settlement and consolidate their assets in the PSGE. In balancing multiple good faith obligations, the Crown's obligations to the claimant community – who have accepted and wish to advance the settlement – should prevail. That said, I intend to hold the bill for introduction until the High Court has released its judgment, if that will not unreasonably delay the balance of the Hauraki settlement legislation.

Repeal of the Point England Housing Development Enabling Act 2017

- 17 During the course of negotiations, Ngāti Paoa were offered a housing development opportunity on reserve land in the Auckland suburb of Point England. The 11.7 hectares of reserve land was made available for development via the Point England Development Enabling Act 2017 (the Point England Act). The housing development was opposed by the local community, council and opposition parties at the time.
- 18 In 2019, Ngāti Paoa accepted an alternative offer from the Crown, where 9.7 hectares of the land proposed for development will be returned to reserve and vested in Ngāti Paoa, and the remaining two hectares will be available to Ngāti Paoa for a papakāinga to complement a marae site they are also receiving as redress at the location. As part of the alternative offer, Ngāti Paoa will receive commercial redress elsewhere in Tāmaki Makaurau through the potential opportunity to purchase school sites on a deferred selection basis.
- 19 The bill will give effect to the alternative offer, which has been accepted and incorporated into the Ngāti Paoa settlement. It will also repeal the Point England Act returning the arrangements for the reserve largely to what they were before, with the exception of the papakāinga. The Parliamentary Counsel Office and the Office of the Clerk have provided advice on the legislative implications of the proposal and consider the repeal of the Point England Act via the bill appropriate.

Ngāti Paoa Claims Settlement Bill

- 20 The deed, and the settlement, are conditional on the settlement legislation coming into force. Clause 9 of the deed requires the Crown to propose the draft settlement bill for introduction to the House of Representatives and for the Ngāti Paoa governance entity to support the passage of the bill through Parliament.
- 21 The bill (attached at **Appendix Two**) is required to ensure the finality of the settlement by removing the ability of the courts and Tribunal to re-open the historical claims of Ngāti Paoa, to provide for statutory instruments to be applied, remove statutory memorials from land titles in the claim area and to vest land in the governance entity where normal administrative land transfer processes are significantly complex (such as reserves and public conservation land).
- 22 Where public conservation land is being returned through the settlement, where required, measures have been put in place to ensure the conservation values of those sites is protected and public access, where appropriate, is maintained.
- 23 Parts of the bill relate to the Resource Management Act 1991 (RMA) which will be replaced by the Spatial Planning Act (SPA) and Natural and Built Environments Act (NBA) as part of the resource management reforms. Officials are engaging with the Hauraki Collective, of which Ngāti Paoa are a member, to discuss and agree how redress affected by the reforms will be upheld. Agreement with Ngāti Paoa will be recorded through a deed to amend. The necessary legislative amendments could be implemented through a supplementary order paper to amend the bill (if the SPA and NBA have been enacted) or through an amendment bill to amend the settlement legislation (if it is enacted before the SPA and NBA).
- 24 The bill uses the standard clauses for Treaty settlement bills, agreed by the Attorney-General and Minister for Treaty of Waitangi Negotiations in 2013 and last updated in 2021.
- 25 The structure of the bill is:
 - 25.1. Part 1: Preliminary matters, historical account, acknowledgements and apology, and settlement of historical claims;
 - 25.2. Part 2: Cultural redress, including the transfer of public conservation land, statutory acknowledgements, protocols redress and classification of specified areas;
 - 25.3. Part 3: Commercial redress: transfer of commercial property and non-nationalised Crown-owned minerals in property transferring through the settlement;
 - 25.4. Part 4: Provisions for governance reorganisation and a transitional taxation arrangement including the transfer of Waiheke farm to the PSGE and winding up of the interim trust;
 - 25.5. Part 5: Repeal amendments and savings including the repeal of the Point England Act

25.6. Schedules: Describes the cultural redress and statutory areas.

Impact analysis

- 26 The regulatory assessment for the Point England Act has been addressed by existing analysis (refer the Regulatory Impact Statement produced by the Ministry for Business, Innovation and Employment “Point England Development Enabling Bill: <https://treasury.govt.nz/publications/risa/regulatory-impact-statement-point-england-development-enabling-bill>”). The Regulatory Quality Team at The Treasury has assessed that the alternative offer is exempt from further Regulatory Impact Analysis requirements.
- 27 The bill does not otherwise have any regulatory making powers and does not alter the regulatory regime. As a result, a regulatory impact assessment is not required

Compliance

- 28 The bill complies with the:
- 28.1. principles of the Treaty of Waitangi;
 - 28.2. rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 28.3. disclosure statement requirements;
 - 28.4. principles and guidelines set out in the Privacy Act 2020;
 - 28.5. Legislation Design and Advisory Committee Guidelines (2021 edition); and
 - 28.6. relevant international standards and obligations.

Consultation

- 29 The following departments were consulted in the development of the policy implemented in the bill: The Treasury, Ministry for the Environment, Department of Conservation, Ministry of Primary Industries, Department of Inland Revenue, Ministry for Culture and Heritage, Ministry of Housing and Urban Development, Ministry of Education, Department of Internal Affairs, Ministry of Business, Innovation and Employment, Te Puni Kōkiri, Toitū Te Whenua Land Information New Zealand and Ngā Pou Taunaha o Aotearoa New Zealand Geographic Board. The Crown Law Office and the Parliamentary Counsel Office (PCO) also provided advice in the preparation of the bill and this paper.
- 30 PCO are undertaking final quality assurance processes to ensure the bill is ready for introduction. I propose PCO be authorised to make any necessary minor changes to the bill before final consideration by Cabinet.

Binding on the Crown

- 31 The resulting Act will be binding on the Crown.

Commencement of legislation

- 32 The resulting Act will come into force on the day after the date on which it receives Royal Assent. Many of the actions or matters occurring under the bill will occur or take effect on settlement date, which is 60 working days after the date on which the Act comes into force.

Parliamentary stages

- 33 I propose the bill be introduced following Cabinet approval.
- 34 The bill has a priority 4 classification in the 2022 Legislative Programme to be referred to a select committee this year. However, the Parliamentary Business Committee has agreed Hauraki settlement bills will proceed in cognate through the legislative process to ensure the resulting Acts have the same settlement date. Upon introduction, the bill will await the introduction of the remaining Hauraki bills, before proceeding to first reading. Depending on the progress of the other Hauraki bills, it may not be possible for the bill to progress to first reading this year.
- 35 Once first reading occurs and the bill is referred to the Māori Affairs Select Committee, the Ngāti Paoa Trust Board and members of the affiliated hapū may choose to submit on the bill to the Māori Affairs Select Committee and those submissions will be for the committee to consider as part of normal parliamentary process.

Proactive release

- 36 I intend to release this paper proactively, subject to redaction as appropriate under the principles of the Official Information Act 1982, within 30 business days.

Recommendations

The Minister for Treaty of Waitangi Negotiations recommends the Committee:

- 1 **note** the Ngāti Paoa Claims Settlement Bill gives effect to aspects of the Ngāti Paoa Deed of Settlement signed by Ngāti Paoa and the Crown on 20 March 2021;
- 2 **note** the Ngāti Paoa Claims Settlement Bill holds a category 4 priority in the 2022 Legislation Programme to be referred to a select committee in the year;
- 3 **note** the Parliamentary Counsel Office is undertaking final quality assurance to ensure the Ngāti Paoa Claims Settlement Bill is ready for introduction;
- 4 **authorise** the Parliamentary Counsel Office to make any necessary minor changes to the Ngāti Paoa Claims Settlement Bill before final consideration by Cabinet;
- 5 **approve** the Ngāti Paoa Claims Settlement Bill for introduction subject to the final approval of the Government caucus and sufficient support in the House of Representatives;

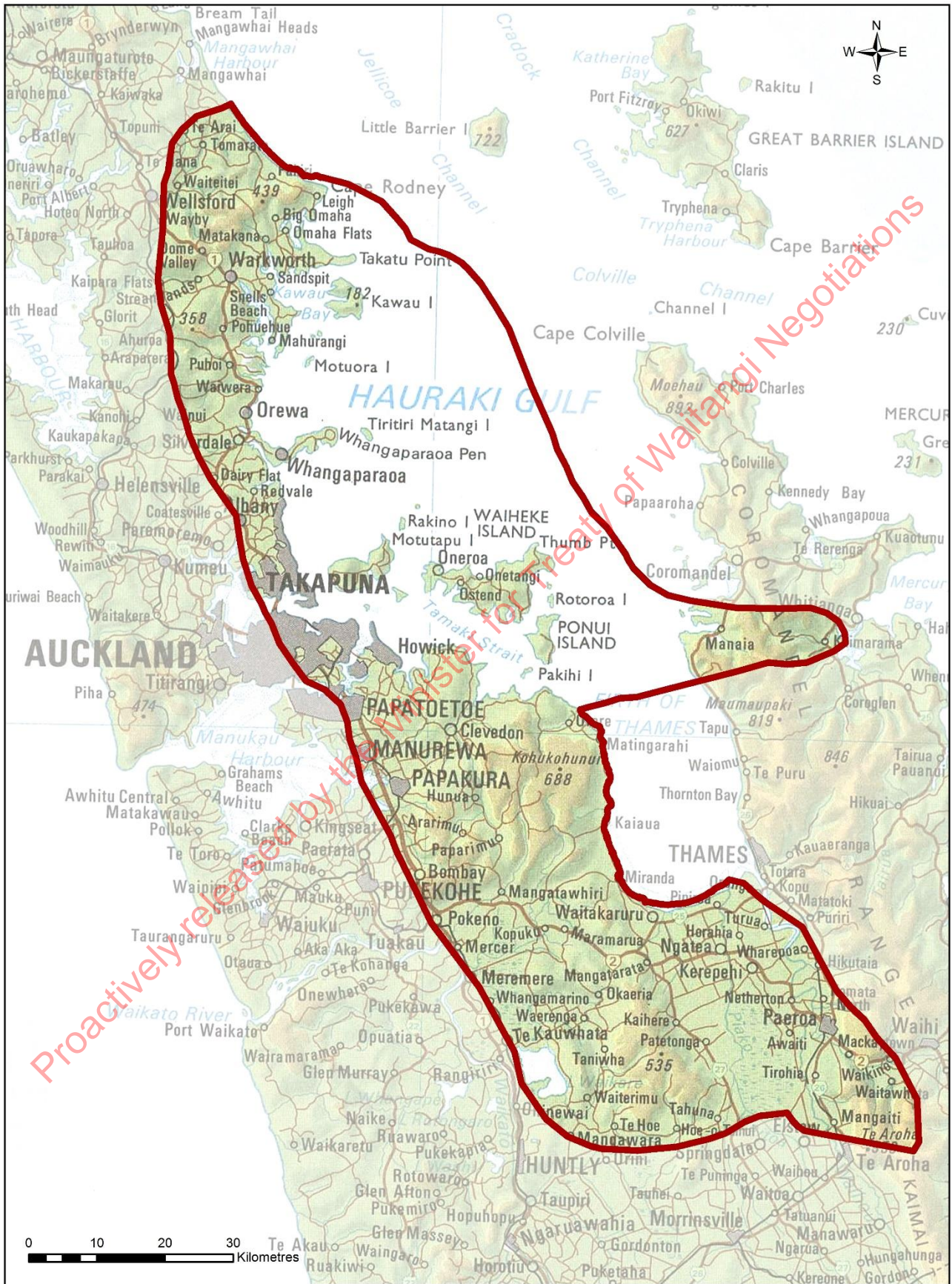
- 6 **agree** the bill be introduced after Cabinet has approved the Ngāti Paoa Claims Settlement Bill for introduction;
- 7 **note** the Minister for Treaty of Waitangi Negotiations proposes the Ngāti Paoa Claims Settlement Bill await the introduction of the remaining Hauraki bills, before proceeding to first reading;
- 8 **agree** the Ngāti Paoa Claims Settlement Bill:
 - 8.1 be referred to the Māori Affairs committee for consideration; and
 - 8.2 be enacted, if possible, in the first half of 2024.

Authorised for lodgement

Hon Andrew Little
Minister for Treaty of Waitangi Negotiations

Proactively released by the Minister for Treaty of Waitangi Negotiations

Appendix One: Ngāti Paoa area of Interest



Appendix Two: Ngāti Paoa Claims Settlement Bill

Proactively released by the Minister for Treaty of Waitangi Negotiations



Cabinet Legislation 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.

Ngāti Paoa Claims Settlement Bill: Approval for introduction

Portfolio **Treaty of Waitangi Negotiations**

On 8 December 2022, the Cabinet Legislation Committee:

- 1 **noted** that the Ngāti Paoa Claims Settlement Bill (the Bill) gives effect to aspects of the Ngāti Paoa Deed of Settlement signed by Ngāti Paoa and the Crown on 20 March 2021;
- 2 **noted** that the Bill holds a category 4 priority in the 2022 Legislation Programme (to be referred to a select committee in 2022);
- 3 **noted** that the Parliamentary Counsel Office is undertaking final quality assurance to ensure the Bill is ready for introduction;
- 4 **authorised** the Parliamentary Counsel Office to make any necessary minor changes to the Bill before introduction;
- 5 **approved** the Ngāti Paoa Claims Settlement Bill [PCO 18990/6.0] for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 6 **agreed** that the bill be introduced after Cabinet approval;
- 7 **noted** that the Minister for Treaty of Waitangi Negotiations proposes that the Ngāti Paoa Claims Settlement Bill await the introduction of the remaining Hauraki bills, before proceeding to first reading;
- 8 **agreed** the Ngāti Paoa Claims Settlement Bill be:
 - 8.1 referred to the Māori Affairs committee for consideration;
 - 8.2 enacted, if possible, in the first half of 2024.

Rebecca Davies
Committee Secretary

Attendance: see over

Present:

Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon David Parker
Hon Michael Wood
Hon Dr David Clark
Hon Dr Ayesha Verrall
Dr Duncan Webb, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

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Cabinet

Minute of Decision

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Report of the Cabinet Legislation Committee: Period Ended 9 December 2022

On 12 December 2022, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 9 December 2022:

[REDACTED]	[REDACTED]	[REDACTED]	Out of scope
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	
LEG-22-MIN-0226	Ngāti Paoa Claims Settlement Bill: Approval for Introduction Portfolio: Treaty of Waitangi Negotiations	CONFIRMED	
[REDACTED]	[REDACTED]	[REDACTED]	Out of scope
[REDACTED]	[REDACTED]	[REDACTED]	

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[REDACTED]

[REDACTED]

[REDACTED]

Out of scope

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Rachel Hayward
Secretary of the Cabinet

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