NGAI TĀMANUHIRI

and

TRUSTEES OF THE TĀMANUHIRI TUTU POROPORO TRUST

and

THE CROWN

DEED OF SETTLEMENT OF HISTORICAL CLAIMS

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5 March 2011

PURPOSE OF THIS DEED

This deed –

- sets out an account of the acts and omissions of the Crown before 21 September 1992 that affected Ngai Tāmanuhiri and breached the Treaty of Waitangi and its principles; and
- provides acknowledgments by the Crown of the Treaty breaches and an apology; and
- settles the historical claims of Ngai Tāmanuhiri; and
- specifies the cultural redress, and the financial and commercial redress, to be provided in settlement to the governance entity that has been approved by Ngai Tāmanuhiri to receive the redress; and
- includes definitions of –
  - the historical claims; and
  - Ngai Tāmanuhiri; and
- provides for other relevant matters; and
- is conditional upon settlement legislation coming into force.

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DEED OF SETTLEMENT

THIS DEED is made between

NGAI TĀMANUHIRI

and

TRUSTEES OF THE TĀMANUHIRI TUTU POROPORO TRUST

and

THE CROWN

1 BACKGROUND

NGAI TĀMANUHIRI

1.1 Ngai Tāmanuhiri is named after Tāmanuhiri, a direct descendant of Tahupōtiki, the eponymous ancestor of Ngāi Tahu. Tāmanuhiri was born five generations after Tahupōtiki according to Ngai Tāmanuhiri whakapapa:

Matua kore,
Te Pū, Te Weu, Te More, Te Aka,
Te Ao Hunga, Te Ao Punga,
Te Kune e Tuki, Te Kune e Rahi,
Popoko-nui, Popoko-nā,
Ranginui rāua ko Papatūānuku,
Tāne-nui-a-Rangi,
Hine-Ahuone, Hine Tītama, Hine-nui-i-te-pō,
Muri-rangawhenua, Makere Tūtara,
Māui-mua, Māui-roto, Māui-pae, Māui-taha, Māui-tikitiki-a-Taranga,
Papa-Tirau-Maewa, Tiwakawaka,
Tara-nui, Tara-roa,
Rangi-nui, Rangi-roa,
Ngāi Wharekiki, Ngāi Wharekaka,
Ngāi-roki, Ngāi-reka,
Ngāi-peha, Ngāi taketake, Ngāi te-huru-manu,
Toi Te Huatahi, Rauru Kītahi,
Whatonga, Apakawhio,
Rongotewhaiao, Rongo Te Ao Mārama,
Tūhia Te Tai, Te Whironui,
Huturangi, Pouheni, Tarawhakatū, Nanaia,
Tahupōtiki, Rakaroa, Tāhumurihape, Uenuku, Raikaitotorewa,
Tāmanuhiri!

(Na Warena Pohatu tēnei kāwai heke i tana kauwhau mo te mana whenua a Ngai Tāmanuhiri ki Tūranganui-a-Kiwa kei mua o te Taraipiunara o Waitangi ki te marae o Muriwai i te marama o Aperira i te tau 2002).

1.2 Tahupōtiki was the younger brother of Porou-Ariki Te Matatara-a-Whare-Te-Tuhi-Mareikura-a-Rauru (Porourangi), from whom the iwi, Ngāti Porou take their name. Ngai Tāmanuhiri thus has strong links to Ngāti Porou while also representing the distinct ancestral line of Tahupōtiki within the Tūranga district.

1.3 Ngai Tāmanuhiri followed their tradition of marking their tribal area by tracing one landmark to another. A description of the area where they have ancestral and customary connections is captured in the following moteatea:

1: BACKGROUND

'Ka Titiro Atu Au'

Ka titiro atu au ki te aumoana, ka rongo ra i te hauwaho
Ka titiro ki nga pari e ma mai ra ki te Kuri-a-Paoa
Ki te mana o Rangihaua e...
Ka titiro whakararo ki Te Wherowhero
te takotoranga, te okiokitanga o te waka Horouta
Ka huri atu au ki Pāpātewhai ki a Hinehākirirangi
Nāna a Oneroa, nāna a Onepoto
Nāna i tanu tana kete kumara ki Manawaru e...
Ka tahuri atu au ki Pāporoporo
Ki Taurangakoau, ki Te Akakāhia
Ki Moremore e tieki nei i ngā takutai o Te Muriwai
Ka huri, ka titiro ki Te Matamata, ki Te Waihi, Ki Te Ihukaukōhea
Ki Ōrongo, ki te Waiwhero
Ki Te Hou, ki Te Ruakoura, ki tauporo
Ki Te Umukehe, Ki Taikawakawa e...
Ka huri atu au ki te Te Pou-ā-Kahutia
Ki a Māpere, ki Papa-āio
Ki Te Waitakahutia, ki Te Kōpua, ki te Takanga-ā-Ripeka,
Ki Ori, ki te Taunga-ā-Tara
Ki Whareongaonga ki a Hinepūariari e ...
Ka huri atu au ki Ōpouahu, Ki te Ana-ā-Tamaraukura
Ki Papatiro te wāhi tuku kōrero ki Nukutaurua
Ka huri atu au ki Wharekākaho, ki Te Puna, ki Tikiwhata
Ki Te Waiparapara, ki Paritū e...
Kātahi ka huri, ka rere whakarunga ki Mātiti
Ki te taumata tirotiro o Tāmanuhiri
Nāna nei i whakararu i a Hinenui
"...no muri Te Huauri..."
Ka hoki mai nei ki te haukainga ki te Muriwai
Ki Tāmanuhiri ki taku mana e...

Na Wi Tamehana Pohatu tēnei waiata i tito.

1.4 Within their turangawaewae is the site of significance known as Te Wherowhero, widely understood by Tūranga tradition to be the resting place of the waka, Horouta.

1.5 Ngai Tāmanuhiri had many hapū and pā sites throughout their tribal area, but in the 21st century, five principle hapū are recognised: Ngāti Rangiwaho, Ngāti Rangiwaho Matua, Ngai Tāwehi, Ngāti Kahutia and Ngāti Rangitauwhiwhia. Ka tika ra te korero e whai nei:

"Ko te mana o te tangata kei ōna uri"

Na Te Mariri enei kupu i tana reta ki tona tuakana a Nolan Raihania.

1: BACKGROUND

THE TREATY CLAIM OF NGAI TĀMANUHIRI

1.6 The first Treaty claim for Ngai Tāmanuhiri was filed with the Waitangi Tribunal in 1992, in the names of Eric John Tupai Ruru, Tutekawa Wyllie and Peter Gordon, on behalf of Te Aitanga a Mahaki, Ngai Tāmanuhiri and Rongowhakaata. Their collective claim was given the reference number Wai 283.

1.7 Almost a decade later, the claimant groups were assigned separate claim numbers to represent their individual issues. Ngai Tāmanuhiri was assigned Wai 917 for the exclusive interests of Ngai Tāmanuhiri. The claimants were: Reweti Ropiha, George Pohatu, Angus Ngarangioue, Ihipera Kerr, Wayne West, Jody Toroa, and Onyx Neill Winitana – (then) trustees for and on behalf of Ngai Tāmanuhiri Whānui Trust, the mandated iwi organisation for Ngai Tāmanuhiri.

1.8 Ngai Tāmanuhiri agreed to engage with their Tūranga whanaunga in collective negotiations and Wai 917 was consolidated with Wai 814 (Turanga Inquiry) together with Rongowhakaata and Te Pou a Hao Kai.

THE WAITANGI TRIBUNAL

1.9 The Waitangi Tribunal established an inquiry district in Tūranga with a boundary that included the core tribal interests of the Tūranga claimant groups. The hearings for the Tūranga Inquiry were held from November 2001 to June 2002 and Ngai Tāmanuhiri claim was heard by the Tribunal at Muriwai from 2 to 6 April 2002.

1.10 The Tribunal acknowledged that the Tūranga inquiry boundary did not include all Tūranga interests. This meant that some Ngai Tāmanuhiri interests lay in another inquiry district. Ngai Tāmanuhiri and Ngāti Rakaipaaka have signed an accord as the basis for ongoing negotiations concerning the Wharerata Forest which is outside the Tribunal's Tūranga inquiry district.

1.11 The Tribunal's report concluded that the Crown breached the Treaty in a number of ways, and that some of the Crown actions which breached the Treaty were illegal. Among these breaches the Tribunal found that the detention without charge and trial of some Ngai Tāmanuhiri on the Chatham Islands in harsh conditions for two years between 1866 and 1868 was unlawful.

1.12 The Tribunal also concluded that the Crown breached the Treaty in a number of ways it described as insidious. Its report stated that these breaches arose from policies and laws the Crown applied in Tūranga that contributed to the extinguishment of Ngai Tāmanuhiri land title, thus hindering their economic, social and cultural development and the near destruction of Ngai Tāmanuhiri as a society.

NEGOTIATIONS

1.13 The trustees of the Ngai Tāmanuhiri Whānui Charitable Trust received a mandate to negotiate on behalf of Ngai Tāmanuhiri an offer for the settlement of their historical claims.

1.14 The Crown recognised the mandate on 17 August 2005.

1.15 Ngai Tāmanuhiri, Te Pou a Haokai, Rongowhakaata and the Crown, by terms of negotiation dated 29 May 2007, agreed the scope, objectives, and general procedures for the negotiations.

1.16 Ngai Tāmanuhiri, Te Pou a Haokai and Rongowhakaata agreed to negotiate collectively as Tūranga Manu Whiriwhiri.

1.17 Tūranga Manu Whiriwhiri and the Crown by agreement dated 29 August 2008, agreed, in principle, that Te Pou a Haokai, Rongowhakaata, Ngai Tāmanuhiri and the Crown were willing to enter into a deed of settlement or deeds of settlement on the basis set out in the agreement.

1.18 Since the agreement in principle, –

1.18.1 the redress in the agreement in principle has, by letter from the Minister for Treaty of Waitangi Negotiations dated 8 September 2010, been allocated between Ngai Tāmanuhiri, Te Whakarau (formerly known as Te Pou a Haokai) and Rongowhakaata; and

1.18.2 Ngai Tāmanuhiri and the Crown have –

(a) had extensive negotiations conducted in good faith; and

(b) negotiated and initialled a deed of settlement.

RATIFICATION AND APPROVALS

1.19 Ngai Tāmanuhiri have, since the initialling of the deed of settlement, by a majority of –

1.19.1 99%, ratified this deed and approved its signing on their behalf by the governance entity; and

1.19.2 97%, approved the governance entity receiving the redress.

1.20 Each majority referred to in clause 1.19 is of valid votes cast in a ballot by eligible members of Ngai Tāmanuhiri.

1.21 The governance entity approved entering into, and complying with, this deed by resolution of trustees on 2 March 2011.

1.22 The Crown is satisfied –

1.22.1 with the ratification and approvals of Ngai Tāmanuhiri referred to in clause 1.19; and

1.22.2 with the governance entity's approval referred to in clause 1.21; and

1.22.3 the governance entity is appropriate to receive the redress.

AGREEMENT

1.23 Therefore, the parties –

1.23.1 in a spirit of co-operation and compromise wish to enter, in good faith, into this deed settling the historical claims; and

1.23.2 agree and acknowledge as provided in this deed.

2 HISTORICAL ACCOUNT

E rere taku manu	Fly my bird
Ki te kawe i te rau	To take hither my leaf
He tohu nō nehe	Tis a symbol of old
No nga rā o mua hoki	Also from days of yore
He mau pare kawakawa	The wearing of the wreath of kawakawa
He tohu no te aroha	Was a symbol of aroha
Haere rā e hika	Farewell dear one
Ki te iti, ki te rahi	To the meek, to the host
E tīraha ana mai	That lay resting
I te wahangūtanga	In silence
Waiho mai mātou	Leave us
Ngā mahuetanga a rātou mā	The forsaken of those (who has passed on)
Kawea hoki taku rau	Also carry my leaf
Taku rau aroha e ... ii!	My leaf as a symbol of my love ... ii!

* Waiata tangi composed by Wi Tamihana Pohatu

2.1. The Crown's acknowledgements and apology to Ngai Tāmanuhiri in part 3 are based on this historical account.

Introduction

2.2. Ngai Tāmanuhiri is one of three principal iwi of the rohe Tūranganui a Kiwa (sometimes referred to as Tūranga). The history of Ngai Tāmanuhiri began at least 20 generations ago with the arrival of Tahu Pōtiki. The core whakapapa that serves as the foundation of Ngai Tāmanuhiri (including Ngai Tahupō) records the birth of Tāmanuhiri five generations after Tahu Pōtiki.

2.3 Their neighbouring iwi and hapū to which Ngai Tāmanuhiri have close kin ties are Rongowhakaata (including Nga Uri o Te Kooti Rikirangi) and Te Whakarau comprising Te Aitanga ā Mahaki, Te Whānau ā Kai, Nga Ariki Kaiputahi, Te Whānau a Wi Pere and Te Whānau a Rangiwhakataetaea.

2.4 Ngai Tāmanuhiri and their Tūranga whanaunga followed the tradition of marking their takiwa by tracing one landmark to another. They describe the areas where they have ancestral and customary connections as including from Paritū in the south to Pouawa in the north, and inland to Tutamoe and onto the headwaters of the Mōtū, Waipāoa and

Waiōeka rivers, stretching towards Lake Waikaremoana. The area through which Ngai Tamanuhiri hold customary interests extends to the south at Te Ngakau-o-Paritū, to the north at Kopututea, west to Te Ruanui and up to Taumatapoupou, down to Whakaongaonga, to Pukorenui and back to Te Ngakau-o-Paritu.

2.5 Ngai Tāmanuhiri and their Tūranga whanaunga trace descent from a number of common ancestors, including Kiwa, after whom the district is named, Paoa (or Pawa), who explored the hinterland, and Ruapani, from whom many important lines of descent converge.

2.6 The fertile plains of Tūranga and ample supply of kai moana made it a place of great abundance. Some of the ancestral connections, richness and vitality of Tūranga is summed up in the local saying:

Ko Tūranga-a-Mua
Ko Tūranga Ararau
Ko Tūranga Makaurau
Ko Tūranga Tangata-rite
Ko Tūranganui a Kiwa

Tūranga the ancient
Tūranga the pathway of many
Tūranga of a thousand lovers
Tūranga the meeting place of people
The long waiting place of Kiwa.

2.7 I amokura atu ai e Tāmanuhiri tōnā whakapapa mai i ngā ārikitanga o Tūranga tangata-rite. I whai tonu a Ngai Tāmanuhiri i te kaitiekitanga o tōnā mana whenua, i tōnā taura kāwai, Tangata i Tūranga Makaurau. I te mutunga iho ko wai ka tohu, ko wai ka hua, he maringi kore tō Ngai Tāmanuhiri i tōnā kaitiekitanga o tōnā mata, o tōnā whenua. Ko te Muriwai te Pā i hua ake nā Tūranga-a Mua. He rauora mō ngā uri a Tāmanuhiri ake tonu atu.

Ngai Tāmanuhiri and their neighbouring Tūranga whanaunga traditionally held their land and resources in customary tenure under collective tribal and hapū custodianship. The kin groups of Tūranganui a Kiwa were linked through whakapapa and shared use and trade of resources, but also had their own independent mana born out of strong leadership, distinct whakapapa lines and resource use.

2.8 The first encounter between Europeans and the iwi, hapū and whānau of Tūranga was Captain Cook's visit to the area in October 1769 on board the Endeavour. The visit failed to achieve the desired result of a peaceful encounter. Cook's goal of replenishing supplies was not achieved and this led him to name the area Poverty Bay despite it being an area of great abundance. At the end of his two and a half day stay, nine Māori were left dead or wounded.

2.9 Sustained contact with Pākehā did not begin until the 1830s. From the 1830s onwards, Tūranganui a Kiwa iwi, hapū and whānau sought out trading relationships with Pākehā and hosted small numbers of shore-based whalers and traders on their lands. Initially European residents relied upon the patronage and protection of particular chiefs, who provided them with land to live upon, encouraged marriages between high ranking women and settlers and in return expected to reap various advantages from 'their' Pākehā.

2.10 Missionaries arrived in the Tūranganui a Kiwa area in the wake of the whalers and traders. A mission station was established at Tūranganui (the site of modern day Gisborne) in 1838 and schools were set up in kainga. Early Māori converts, played an important role in spreading the Christian faith. Interest in the new religion was already high, partly because of practical advantages including literacy, when William Williams of the Church Missionary Society arrived at Tūranga in 1840 to take up residency at the mission station.

2.11 In May 1840 William Williams discussed and presented a copy of the Treaty of Waitangi to some Tūranga Māori. Williams had previously warned Tūranga Māori that private land purchasers would try to buy all their district. Approximately 22 local rangatira signed the Treaty in which the Crown promised that it would protect Māori in the possession of their lands, villages and treasures they wished to retain. There is no record of the discussion which took place prior to this signing.

2.12 By the late 1840s there were approximately 2400 Māori living in the Tūranga district and about 40 Pākehā traders and their wives, with some 50 children of Pākehā and dual descent. Ngai Tāmanuhiri and their neighbouring Tūranga iwi and hapū whanaunga took advantage of new trading opportunities created by Pākehā settlement in New Zealand. Produce exported from Tūranga reached as far as Auckland and Australia. One Tūranga based missionary described the 1850s as a "season of great material prosperity for the Māori population."'

2.13 The Crown made limited attempts to purchase land in the Tūranga district between the 1840s and 1860s. It only acquired a 57 acre block known as the 'Government paddock'. Tūranga iwi, hapū and whānau saw a strong connection between Crown purchases and the Crown's right to exercise substantive authority over them.

2.14 From the early 1850s a movement had emerged among some Tūranga Māori to reclaim or 'redeem' lands that settlers claimed to have purchased before the Treaty. Following the petitions of some settlers to have their claims to own land in the Tūranga region investigated, the Crown sent a Land Claim Commissioner to the area in 1859. The claims amounted to only 2,200 acres, but all were repudiated by Tūranga chiefs who said they wanted to repossess the land in question. Following this repudiation most settlers withdrew their claims. The Commissioner reported to the Governor that most of the settlers' claims related to land transactions were entered into after the Crown prohibited private land dealings between settlers and Māori. He pointed out the 'absurdity' of the settlers expecting the Governor to protect them when they had violated the law. The Commissioner did not make any recommendations. Although some Tūranga Māori continued to press for these lands to be returned, the settlers remained in possession of many of the disputed lands.

2.15 In 1865 Tūranga iwi, hapū and whānau remained largely in control of their own affairs. Early in the 1850s they had formed a rūnanga to develop policies for administering their affairs and by the late 1850s it was playing an important part in the administration of the district. The only Crown official stationed in the area before 1865 was a Resident Magistrate who was present between 1855 and 1860. He was withdrawn following an 1860 visit to the district by Governor Thomas Gore Browne. The Governor reported that the Māori he met in Tūranga objected to the hoisting of the British flag during his visit, and refused to recognise the Queen. He also informed the Colonial Office that 'unless I visited them for the purpose of restoring the lands which the Europeans had cheated them... out of, they did not wish to see me'. After being withdrawn from the district the former Resident Magistrate commented that Māori there 'denied the right of the Government to send a Magistrate amongst them, on the ground that, as they had not sold their land to the Queen, the Government had no authority over them'. Nevertheless, Tūranga iwi, hapū and whānau wrote to government officials at times seeking advice and loans for commercial projects.

Waerenga a Hika, 1865

2.16 When the New Zealand land wars broke out in the 1860s, Ngai Tāmanuhiri and their Tūranga whanaunga preferred to remain neutral. They decided not to get involved in the fighting, declaring at the outbreak of war in Taranaki that it was 'necessary for them to remain at home and take care of their own land'.

2.17 In July 1861 the Tūranga rangatira Raharuhi Rukupo wrote to the Superintendent of Hawke's Bay Province on behalf of the Tūranga Rūnanga, to express their concern at reports soldiers were being sent to Napier. They predicted that the Crown would attack them for possession of their land, stating that 'we have the land in possession from which flows fatness, and from the fatness of our land we derive what we now are possessed of namely money. This will be the cause or the reason for which he will fight against us.' The Rūnanga also called for the fighting elsewhere to cease and for lands wrongly taken from them to be restored so that they could again have confidence in the government's intentions. They adopted a similar stance of non-intervention in outside conflicts when Imperial troops invaded the Waikato district in 1863.

2.18 The Tūranga Rūnanga remained firmly in control of the affairs of the district at this time, though some settlers resented 'living under the rule of the rūnanga' and hoped to see an end to this situation if the opportunity arose.

2.19 In 1862 the Taranaki prophet Te Ua Haumene founded the Pai Mārire (Good and Peaceful) religion. Based on the Christian bible, Pai Mārire promised the achievement of Māori autonomy. A number of North Island Māori had converted to the new faith by the end of 1864, when Te Ua Haumene sent a group of Pai Mārire teachers to Tūranga. Some of their party were implicated in the murder of the missionary Carl Volkner in Opotiki early in March 1865. Unconfirmed rumours spread to Tūranga that the emissaries intended to kill all the settlers. However, a few weeks after the emissaries arrival in Tūranga, Williams received a copy of the emissaries' instructions from Te Ua, and noted that they contained "no sanction . . . to murder."

2.20 Upon receiving news of the events at Opotiki, many Tūranga Māori assured the Reverend William Williams and the other settlers that they would protect them. They

rejected a proposal to seize the Pai Mārire party upon their arrival at Tūranga, telling Williams that 'they had not had any shedding of blood here and they did not wish to have any.'

2.21 The Tūranga chiefs were initially wary of the new religion, but once the Pai Mārire emissaries arrived in March 1865 their teachings won a large number of new converts from Tūranga iwi and hapu including some Ngai Tāmanuhiri. One of the emissaries' two leaders threatened to kill all settlers, but this threat was disavowed by the other leader. Leading Tūranga chiefs continued to assure the settlers of their protection and their desire for peace. The settlers remained concerned however, and some began leaving the area.

2.22 The spread of Pai Mārire and the killing of Volkner alarmed the Government and it responded in an unequivocal fashion. Donald McLean, the Superintendent of the Hawke's Bay Province was appointed to co-ordinate the Government's response. In April 1865 Governor Grey issued a proclamation condemning the 'fanatical sect, commonly called Pai Mārire and declaring the Government's intention to resist and suppress movements such as Pai Mārire, if necessary by force of arms.' The Government's capacity to enforce this proclamation was limited, and it called on all 'well-disposed' people to aid this effort to the best of their ability. McLean was instructed to capture the Pai Mārire leaders if this was practical.

2.23 In April 1865 a group of Tūranga iwi, hapū and whānau leaders visited McLean in Napier to assure him they would protect the settlers in Tūranga and not interfere in any war in Opotiki. They urged McLean not to send any soldiers to Tūranga. McLean noted the friendly reception Pai Mārire had received from many Tūranga iwi, hapū and whānau and doubted the sincerity of the promise to protect the settlers. He also reported the chiefs were apprehensive that the welcome the Pai Mārire emissaries received in Tūranga would be used as a basis upon which to take military possession of their district. In early May McLean informed the Colonial Secretary that Tūranga chiefs appeared apprehensive that the Crown might take military possession of the area because of the reception they had given the Pai Mārire emissaries.

2.24 In May 1865 Governor Grey's representative, Captain Luce, brought to Tūranga a rangatira from a neighbouring iwi who planted a Union Jack on disputed lands at the mouth of the Tūranga River. This resulted in much tension in the district. However, the local Pai Mārire party were reportedly 'afraid to bring on a disturbance for fear of embroiling themselves with the Govt', and the flagstaff was left standing.

2.25 Pai Mārire emissaries carried the religion to the East Coast north of Tūranga in June 1865. From June until October fighting took place between the Pai Mārire and other East Coast Māori. The Crown sent ammunition and soldiers to support those fighting the Pai Mārire. Some Tūranga Māori travelled north to the fighting. A Crown officer, Major Reginald Biggs, was responsible for the summary execution of the Tūranga rangatira Pita Tamaturi.

2.26 The Pai Mārire adherents were defeated, and some sought refuge with their Tūranga whanaunga from whom they had received some assistance during the fighting. Some East Coast rangatira were in consequence willing to fight against Pai Mārire adherents at

Tūranga. Tūranga iwi, hapū and whānau, including those who adhered to Pai Mārire, wanted to avoid fighting in Tūranga.

2.27 In September 1865 the Tūranga rangatira Hirini Te Kani asked the Government to send soldiers and weapons. He assured Pai Mārire adherents that the soldiers would remain on the defensive. The Crown force was strengthened the following month. At the end of October 1865 tensions were greatly exacerbated when a small number of East Coast Māori arrived in pursuit of Pai Mārire refugees from the East Coast fighting. Tūranga iwi, hapū and whānau urged them to return home and 'not to bring fighting and bloodshed into this district'.

2.28 On 1 November 1865 the Crown ordered its troops who had been engaged in the East Coast conflict to Tūranga. On 3 November 1865 the Premier Edward Stafford said 'it appeared to be the best thing to do to put down Hauhauism [Pai Mārire] in Poverty Bay while our forces are flushed with success and the rebels correspondingly dispirited'.

2.29 In Tūranga the Crown warned all "loyal" Māori to cease their dialogue with Pai Mārire adherents. It was widely assumed that war was imminent. Some outlying settlers abandoned their homesteads, and in some cases property was plundered from the abandoned properties. Raharuhi Rukupo, one of the most senior Pai Mārire rangatira, quickly promised to make good the settlers' losses, and Pai Mārire followers were soon collecting up the stolen property for these purposes. However Crown officers in Tūranga rejected Raharuhi's attempts to meet with them until McLean arrived in the district.

2.30 British law provided that the Crown could only use force against its own subjects if they were in rebellion. In November 1865 the Crown believed there were rebels among Tūranga Māori following the support some had given to Pai Mārire fighting on the East Coast. However Tūranga Māori were keen to avoid conflict with the Crown in Tūranga, and made unsuccessful efforts to engage the Crown in dialogue.

2.31 On 9 November 1865 McLean arrived in Tūranga with a large military force to require the submission of Tūranga Pai Mārire to the Crown. The next day the Crown issued an ultimatum threatening Tūranga Pai Mārire to surrender into Crown custody anyone who had been involved in murder or other serious crime, or who had fought against the Crown in other districts. The Crown also required Tūranga Pai Mārire to give up their arms, swear the oath of allegiance, submit to the rule of British law, compensate settlers for their losses and immediately expel Pai Mārire emissaries. The Crown threatened to confiscate land and establish military settlements in Tūranga if these terms were not met.

2.32 McLean rebuffed the attempts of Tūranga Pai Mārire to negotiate a peaceful settlement. Those Pai Mārire from other areas who had fled the conflict on the East Coast quickly departed Tūranga, and Raharuhi Rukupo and the other Pai Mārire leaders sought a meeting with McLean to negotiate a peaceful resolution of the crisis. However McLean refused to meet them.

2.33 The ultimatum expired on 16 November 1865. McLean's only concession had been to extend the deadline for compliance with the Crown's terms upon being told that some Pai Mārire might be willing to comply.

2.34 On 17 November 1865 Crown forces marched on the Tūranga pā at Waerenga a Hika. This was a defensive position, and there were approximately 200 women and children among its occupants. The Crown attacked Waerenga a Hika notwithstanding the fact that the Taranaki emissaries, who first introduced the Pai Mārire religion to the district, had been at Pukeamionga pā and had left in May. Some 200 Rongowhakaata and Te Whānau a Kai reinforcements from Pukeamionga pā soon joined the pā's defenders. They advanced on the Crown line but lost some 34 in close range battle before withdrawing inside the pā. On 22 November some 400 inhabitants of Waerenga a Hika surrendered requesting that their lives be spared and they not be sent to jail. They were told they would not be imprisoned, but that the worst characters would be sent out of the district. Another group, numbering up to several hundred, escaped to Lake Waikaremoana. At least 71 of the pā's occupants were killed during the five-day siege.

Imprisonment on the Chatham Islands, 1865-68

2.35 In the immediate aftermath of the conflict some of the Government's allies from a neighbouring iwi proceeded to indiscriminately loot and raid settler and Māori homes and property in the district with no intervention from the Crown. One settler wrote that this looting did far more damage than the earlier Pai Mārire looting. Looting, neglect of crops during the fighting and people being removed from the district resulted in acute food shortages for Tūranga iwi, hapū and whānau, some of whom were reported to have died of starvation as a consequence.

2.36 In the first six months of 1866 approximately 116 Tūranga men, including some of Ngai Tāmanuhiri descent, who had been arrested at Waerenga a Hika, or were considered to be Pai Mārire sympathisers were taken to the Chatham Islands, where the Crown imprisoned them for taking up arms against it. In December 1867 the premier Edward Stafford referred to the prisoners as 'native political offenders'. These men were never tried for any offence.

2.37 Approximately 49 women and 38 children accompanied the men to the Chatham Islands. The removal of over 200 Māori from Tūranga, including some of the leaders, had a severe impact on the iwi, hapū and whānau who remained in Tūranga. Other Māori prisoners from Hawke's Bay were sent to the Chatham Islands later in 1866.

2.38 Ngai Tāmanuhiri consider that the unreasonably lengthy detention of these prisoners without trial was unlawful. In 1866 Parliament enacted legislation to indemnify any actions taken to suppress what the Crown considered to be a rebellion. The British Government disallowed this Act, but the New Zealand Parliament enacted similar indemnity legislation in 1867 and 1868.

2.39 Crown officials advised chiefs in Tūranga in March 1866 that the length of the prisoners' detention would be determined by their behaviour on the Chatham Islands. When the prisoners later asked to be sent home they were told they would be held until peace had been securely established in Tūranga. Another important factor influenced the Government's detention of the prisoners. The Defence Minister wanted 'to have them out of the way until the question of the confiscation of land should be settled'. In June 1867 the prisoners were told that some of them would be released as soon as the arrangements for the confiscation in Tūranga were completed. The behaviour of the detainees while on the Chatham Islands was considered generally good, but the

Government released only a handful of prisoners prior to the return of the main body in July 1868.

2.40 Te Kooti Arikirangi Te Turuki was one of the Tūranga people taken to the Chatham Islands. Te Kooti was among the Government's allies at Waerenga a Hika but was accused of spying and supplying Pai Mārire forces with ammunition. He was detained, questioned and then released for lack of evidence. In March or April 1866, Te Kooti was again arrested and detained before being sent to the Chatham Islands. There are various accounts of Te Kooti's arrest. Many Tūranga Māori believed influential Tūranga traders had urged the Crown to arrest him because his successful independent trading activities were seen as a threat. On 4 June 1866, Te Kooti wrote to McLean requesting that he be brought to trial. Te Kooti questioned why he was being held without charge. He made a number of other requests to be tried and these were ignored.

2.41 The detention of the prisoners became entwined with the Government's attempts to confiscate land in Tūranga after its attack on Waerenga a Hika. The Government's inability to complete confiscation arrangements at Tūranga caused the detention of the prisoners to drag on into 1868. The Government required the detainees and their whānau to live in miserable conditions. The Chatham Islands could get much colder than what the prisoners were used to and they did not have adequate clothing. The detainees were expected to build their own accommodation and provide at least part of their own food. As many as twenty-eight died while at the Chathams including some of the women and children who had accompanied them. It is likely that there were more deaths which went unrecorded. Some of the guards sent to accompany the prisoners were physically and verbally abusive to them, and the prisoners had to endure petty insults and tyranny. The Crown had to rebuke the doctor appointed to look after them for inappropriate behaviour.

The Pursuit of Te Kooti and the Whakarau, 1868-1869

2.42 In June 1867 the Crown informed the prisoners being held on the Chatham Islands that they would not be allowed to leave until all arrangements for the confiscation of their lands had been finalised. This came as a severe blow and the new Ringatu faith founded by Te Kooti gained in strength as the mood began to change. Plans were thereafter hatched for their escape. Te Kooti led 298 Māori in a successful escape in July 1868. They seized a ship, and reached the mainland south of Tūranga at Whareongaonga. Te Kooti wished to lead his followers, who became known as the Whakarau, peacefully to Taupo.

2.43 However a Crown force was soon assembled against them. The Crown sent messages to the Whakarau asking them to surrender their arms, and offering to allow them to return peacefully to Tūranga. Yet after being detained without trial for more than two years, and being aware that the Crown was taking steps during their detention to confiscate their land, the Whakarau had reason to distrust the Crown's intentions. The assembled Crown force, supported by Māori allies soon set out to apprehend them. Once the Whakarau's intention to head inland was clear, Crown troops lead by Captain Biggs sought to block their only route of escape towards Waikaremoana, thus ensuring a confrontation would take place. Faced with a choice between fighting or unconditional surrender, involving likely further imprisonment without trial, Te Kooti and his followers opted for the former. Te Kooti defeated the Government forces and their Māori allies at

several engagements in July and early August 1868. Following this the Whakarau remained at Puketapu for several months while Te Kooti considered his options. Some people came from Tūranga to join the Whakarau as did parties from several other iwi.

2.44 In September 1868 the Government offered terms to be conveyed to the Whakarau, on the basis that no further action would be taken against them if they laid down their arms and surrendered. The Government also promised to find them land to live on. Some kind of offer reached the Whakarau but it is unclear whether the full extent of the Government's terms were communicated.

War: The Battle of Ngatapa, December 1868 - January 1869, and its Aftermath

2.45 The Whakarau led by Te Kooti, attacked Matawhero in the early hours of 10 November 1868. Over the next month they also raided Patutahi and Oweta. They killed Captain Biggs and more than 50 men, women and children, both Māori and Pākehā. Some of those killed were either members of the militia, military volunteers, who occupied disputed lands or Māori who had been involved in land dealings or the exile of Te Kooti. Many houses were stripped and burnt or ransacked, but churches and schools were spared. Following these attacks several hundred Tūranga iwi, hapū and whānau were taken prisoner by the Whakarau.

2.46 The Government quickly responded to the attack on Matawhero by assembling a force from Tūranga and neighbouring iwi to apprehend the Whakarau. They fought several engagements, and killed many of the Whakarau in November and December 1868. The Whakarau suffered significant casualties, including women and children, under attack from the Crown's Māori allies at Makaretū. By early December the Whakarau had retreated to Ngatapa, a pa located in a strong defensive position at the top of a steep hill.

2.47 Colonel Whitmore and a force of armed constabulary arrived in Tūranga in December 1868 to reinforce the troops already there. In early January they besieged Ngatapa in conjunction with Māori allies. On 5 January 1869, having lost their water supply, Te Kooti and some of his followers escaped down an unguarded cliff. They were pursued for several days by the Government's Māori allies. The Crown offered a £1,000 bounty for Te Kooti dead or alive, and £5 for each member of the Whakarau captured alive.

2.48 Colonel Whitmore reported that at least 136 of Ngatapa's defenders were killed during the battle before he returned to Tūranga. Some accounts state that more were killed. Other evidence suggests that Whitmore's estimate of the losses the Crown inflicted was too great. Many of the men taken prisoner were executed without trial, with the acquiescence of the senior Crown military and civilian representatives present. The exact number of executions is unclear and has been heavily debated amongst historians. Despite descriptions of such killings appearing in newspapers, there was never any official inquiry into the events at Ngatapa. It is likely that some of those killed in the fighting at Ngatapa may have been captured by Te Kooti during his raid on Tūranga and some of these prisoners were probably amongst those summarily executed.

2.49 In September 1869, five Tūranga men captured at Ngatapa were convicted of offences relating to the attacks carried out by Te Kooti and the Whakarau in the Tūranga area in

1868. Three were convicted and sentenced to death, but later had their sentences commuted to imprisonment. A fourth committed suicide. The other prisoner was executed.

2.50 Following the fall of Ngatapa the surviving members of the Whakarau made their way to the Urewera district. Crown forces continued to pursue them throughout much of the central North Island until 1872. In that year Te Kooti sought shelter in the King Country, where he advocated peace and adherence to the law. In 1883 the Crown included him in a general pardon of those who had fought against it during the New Zealand Wars.

2.51 Te Kooti was invited to return to Tūranga in 1888, but an armed force from Tūranga and the East Coast threatened to confront him if he went any further than Waiotahi. The Crown arrested Te Kooti, and jailed him when he could not pay the surety of £1,500 to achieve bail. He was convicted of unlawful assembly after a trial at which he was denied legal representation, and a translation of the evidence until the end of the trial. Te Kooti successfully appealed his conviction to the Supreme Court, but this decision was overturned by the Court of Appeal.

2.52 Te Kooti was promised land by the Crown on two occasions. One block was not provided because it was unsuitable for living on. Te Kooti lived on the second block at Ohiwa. Te Kooti died in April 1893 as a result of an accident while travelling to Ohiwa. The land at Ohiwa was subsequently granted to the Ringatu Church.

Confiscation and Cession in Tūranganui a Kiwa, 1866-1868

2.53 The Crown decided to carry out its earlier threat to confiscate land. It wanted land it could dispose of to European settlers and to recover some of the costs of its military actions.

2.54 In December 1865 the Crown decided to apply the New Zealand Settlements Act 1863 to Tūranga. This Act, which had been used elsewhere in the North Island, provided for all the land within a defined area to be confiscated. Any Māori with interests in the confiscated land who could prove they had not been what the Crown considered rebels could receive financial compensation for their confiscated land.

2.55 However the Crown hesitated before carrying out a confiscation in Tūranga because of interprovincial rivalry. Hawke's Bay leaders were keen to ensure that they rather than Auckland leaders oversaw the colonisation of the confiscated land. Early in 1866 the discovery of oil springs in the Waipaoa Valley intensified the provincial rivalry between Hawke's Bay and Auckland for control of Tūranga. Some Tūranga Māori sought to protect their interests by a strategy of leasing and buying land before it could be confiscated. In May 1866 the Crown warned settlers against dealing with the land liable to be confiscated.

2.56 In 1866 the Crown began to develop alternative ways of confiscating Māori land. This was after the British Government renewed earlier criticism of the indiscriminate manner in which Māori considered loyalists by the Crown had their lands confiscated under the Settlements Act. The British Government wanted the New Zealand Government to attempt the negotiation of "cessions" before resorting to arbitrary confiscations.

2.57 The Auckland provincial government proposed new legislation to facilitate its plans to acquire oil fields which the Crown supported. The East Coast Land Titles Investigation Act 1866 was enacted to empower the Native Land Court to determine who the Māori owners of the land were before any was confiscated. If the government could then demonstrate to the court that Māori had been in "rebellion" their customary interests (including the lands on which the oil fields were located) would be forfeited to the Crown. The Crown appointed the settler and soldier, Captain Reginald Biggs, to represent it in Court hearings under the 1866 Act.

2.58 Biggs attempted to negotiate the cession of a defined block of land before any application was made to the Native Land Court. The Government proposed to pay compensation to any loyal Māori whose land was included in the block to be ceded. However, negotiations stalled because the Crown's representative, Biggs, wanted the cession of more land than Māori were willing to give up. The Crown, at different times, threatened Tūranga iwi, hapū and whānau that it would revert to using the New Zealand Settlements Act or the Native Land Court operating under the East Coast Native Land Titles Investigation Act (sometimes described as the 'land taking court'), if they did not readily comply with the Crown's demands.

2.59 The Crown's plans to confiscate land in Tūranga were also frustrated by a drafting error in the East Coast Native Land Titles Investigation Act which made it doubtful if the Court had the power to confiscate the land of those it considered rebels. The Crown had to request an adjournment of a Native Land Court hearing which began in Tūranga in July 1867, in order to correct this defect in the drafting. Amending legislation was enacted later in 1867.

2.60 The July 1867 Court hearing, and the Crown's request for an adjournment, caused great inconvenience and expense to the large numbers of Māori who assembled for the hearing. Shortly after the hearing 256 Tūranga iwi, hapū and whānau signed a petition complaining of the intimidating tactics used by the Crown to secure all the flat land in the district. In light of the short duration of the fighting in 1865 and the length of time since it ended, they argued they should not have to give up any land.

2.61 The Crown renewed its efforts to secure land in Tūranga in February 1868 when Donald McLean joined the negotiations to help Biggs secure a cession of land. McLean once more threatened Tūranga iwi, hapū and whānau that if they left it to the Native Land Court sitting under the East Coast Land Titles Investigation Act to decide matters 'there will be no land left for you, it will all be taken by that court'. However, Biggs and McLean were largely unsuccessful, and only secured agreement to the purchase of the 741 acre Tūranganui No.2 block, which was later surveyed as the site of the Gisborne township.

2.62 In March 1868 the Crown asked the Native Land Court to investigate title to all the land in the East Coast region under the East Coast Native Land Titles Investigation Act. However the Court dismissed the Crown's application because Māori had insufficient notice of it. Local Māori withdrew most of their claims on the basis that they did not have confidence in the Native Land Court operating under the East Coast Land Titles Investigation Act. The Crown took steps to replace this Act with the new East Coast Act 1868. This gave the Native Land Court a discretion to award the interests of those it considered rebels to either the Crown or those the Court considered loyal Māori.

Crown's Acquisition of Te Hau ki Tūranga, 1867

2.63 Early in 1867 the Cabinet Minister responsible for Native Affairs, J. C. Richmond, arrived at Tūranga to oversee Bigg's negotiations to secure a cession of land in lieu of the Crown confiscating a large quantity of land. While in Tūranga he arranged for the Government to take possession of Te Hau ki Tūranga, an elaborately carved meeting house of the Ngāti Kaipoho hapū of Rongowhakaata, constructed in the 1840s under master carver Raharuhi Rukupo's instruction in memory of his older brother. Rukupo, a descendent of Tāmanuhiri, later wrote that both Richmond and Biggs asked him to give Te Hau ki Tūranga to the Crown, but that he refused on both occasions. Despite this, Te Hau ki Tūranga was disassembled by Crown troops on Richmond's instructions and taken to Wellington.

2.64 The sum of £100 was paid to some unidentified Māori. However the house was removed without the consent of Rukupo. According to a later recollection of Captain Fairchild, who oversaw the taking, the people assembled on the site 'stood there and objected to every stick that was touched'. In April 1867 Richmond described, in a private letter, the taking of Te Hau ki Tūranga as "the confiscation and carrying off of a beautiful carved house with a military promptitude that will be recorded to my glory". Following criticism of his actions in removing the whare, and in response to a petition on the subject, Richmond later publicly stated that a large gathering of Tūranga iwi, hapū and whānau had agreed to gift the house to the government so that it could be repaired and preserved. This statement is refuted by other evidence.

2.65 In July 1867, Rukupo and others petitioned the Crown about the removal of the house. The petition stated it had been taken away, without their consent. Evidence was presented that Tūranga iwi, hapū and whānau had made lengthy protests as the meeting house was being forcibly removed. However, the Native Affairs Committee relied on J. C. Richmond's evidence in reaching a conclusion that no redress was required. It concluded that the house had been forfeited to the government by virtue of its ownership by 'rebels', notwithstanding which a 'considerable' sum of money had been paid. In 1864 a private party had offered £300 for the meeting house, while in 1878 Captain Fairchild estimated he could get £1,000 for it if he sold it on the London market. At the time the whare was taken an agent of the Melbourne Museum was also attempting its purchase.

2.66 In 1878 Wi Pere and others petitioned for the return of Te Hau ki Tūranga or for additional compensation to be paid for it. Captain Fairchild told the Native Affairs Committee that Māori had objected the entire time it was being removed and that he 'had to take the house by force'. The Native Affairs Select Committee recommended, on the basis of the inadequacy of the £100 payment, that the Crown pay £300 to the owners, once established, to settle all claims about the meeting house. The money was subsequently paid to the petitioners, but there was no inquiry into whether they were the customary owners. The money did not, therefore, constitute payment for the whare.

2.67 Te Hau ki Tūranga has been held in various national museums since 1867. Since the Crown took possession of it the surviving carved pieces from Te Hau ki Tūranga have been altered, restored and maintained, while some have been lost or replaced. Such work has been carried out without any consultation with, or involvement by, Rongowhakaata until very recent times. Te Hau ki Tūranga is currently on display at Te

Papa Tongarewa. It is the oldest extant meeting house in New Zealand and is considered the finest example of the Tūranga school of carving.

Deed of Cession, November-December 1868

2.68 In the second half of 1868 the Crown sought to exploit the fear many Tūranga Māori had of the Whakarau. The Crown again sought the agreement of Tūranga Māori to a cession of land in lieu of enforcing an outright confiscation. Captain Biggs had advised his superiors on the eve of the attacks on Tūranga in November 1868 that he expected to be offered 10,000-15,000 acres of flat land by Tūranga iwi, hapū and whānau and recommended that the Crown accept this offer. The Crown sought much more land than this after these attacks.

2.69 In December 1868 Cabinet Minister J. C. Richmond warned Tūranga Māori that the Government was prepared to withdraw its protection from Tūranga if it could not secure all the land it wanted. He threatened Tūranga Māori that they had to choose between Government by the Crown, Te Kooti, or the Crown's Māori allies from another district. From 18 December 1868 this threat resulted in 279 Tūranga Māori reluctantly signing a deed ceding about 1.195 million acres to the Crown. The Crown effectively confiscated the land of the many Tūranga Māori who were not present to sign the deed, and were assumed by the Crown to be rebels.

2.70 The Crown intended to retain ownership of a portion of the ceded land for use as a military settlement, but the deed did not define how much land this would be. The deed provided that Māori with interests in the area retained by the Crown who it considered to be loyal were to be compensated for these interests, but this did not occur. Most of the ceded land was to be returned to Māori ownership after a commission (later to be the Poverty Bay Commission) had determined who the owners were. However the commission was to punish those it considered rebels by excluding them from the lists of owners it awarded land to.

2.71 In February 1869 the Crown issued a proclamation which proclaimed that Ngai Tāmanuhiri's customary title in the land subject to the deed of cession had been extinguished.

2.72 The Crown negotiated an agreement with Tūranga Māori in 1869 over the amount of land it would retain, but failed to ensure that this agreement was accurately recorded in writing. In 1873 the Crown surveyed the Patutahi and Te Arai blocks which it intended to retain. These blocks were found to comprise 31,301 acres. Crown officials, though, considered this inadequate. They added a further 19,445 acres to the area the Crown would retain by extending the boundaries of these blocks to the Hangaroa River.

2.73 The Crown finally retained more than 50,000 acres of land in the Patutahi, Te Muhunga and Te Ārai blocks, located near modern-day Gisborne. However Tūranga Māori consistently maintained that they had only agreed for the Crown to retain 15,000 acres, and that the Crown retained significantly more land at Patutahi and Te Muhunga than they had agreed to give up.

2.74 In 1920, after many years of protests and petitions by Tūranga Māori, a Commission of Inquiry concluded that Māori had only consented for the Crown to retain 30,000 acres. It

recommended that the Crown pay compensation. However the Crown did not agree to pay compensation until 1950 when the Crown finally paid £38,000 to mostly Rongowhakaata. This payment was contested by Te Whānau a Kai, who received 58 pounds for their interests in the block. No compensation was ever paid in respect of the Te Muhunga block.

The Poverty Bay Commission

2.75 In 1869 the Crown established the Poverty Bay Commission to determine the ownership of the land affected by the 1868 deed of cession which was to be returned to Māori ownership. The Commission was to punish those it considered rebels by excluding them from the titles it recommended be awarded. The Chief Judge of the Native Land Court, Francis Fenton, argued the Commission had no legal authority to exercise this punitive power which he said was contrary to principles of the English constitution that had been in place since the Magna Carta.

2.76 The Crown also empowered the Commission to investigate settler land transactions entered into with Māori over previous decades, despite officials having privately acknowledged that these transactions contravened the legislation governing old land claims. The Crown pressured Māori into agreeing to the deed of cession which included a clause stating they had requested such an investigation.

2.77 The Crown appointed two Native Land Court judges to the Commission. In 1869 the Commission sat at Tūranga for 33 days and heard 75 Māori claims covering 101,000 acres. These hearings led to Ngai Tāmanuhiri being awarded 15,000 acres in the Maraetaha, Te Kuri, Wherowhero, Pakowhai, Wharetunoa and Tangotete blocks. By the time the Native Lands Act 1873 came into force, all this had been sold, leased, or mortgaged. Settlers were awarded 1,230 acres across Tūranga.

2.78 The Commission effectively confiscated the interests of some Tūranga Māori who it excluded from the titles it awarded because it considered them to be rebels. There were also many informal exclusions from title, in which cases the question of participation in rebellion was not investigated. No provision was made for 'rebels' who may have been rendered landless as a consequence.

2.79 In 1873 the Poverty Bay Commission briefly reconvened, but faced significant opposition. The Commission declined a request by Wi Pere to vest the unadjudicated lands in the ownership of twelve trustees to act on behalf of the tribes. Instead all the unadjudicated lands were returned to customary Māori ownership. These lands included more than 50,000 acres in which Ngai Tāmanuhiri claim interests. The Poverty Bay Lands Act 1874 provided that all future title investigations for land in the ceded block were to be conducted under the Native Land Act 1873.

2.80 The Crown awarded Tūranga Māori joint tenancies for the land returned to them after the Poverty Bay Commission determined its ownership. This assumed all interests were equal rather than recognising potentially different levels. The award of joint tenancies meant owners were unable to leave their interests to their descendants. Instead, upon the death of an owner, their interests reverted to the remaining owners. In 1869 the Crown amended the native land legislation to provide for the Native Land Court to award Māori land owners tenancies in common which could be bequeathed.

2.81 In 1873 the Crown took steps to remedy the grievance Ngai Tāmanuhiri and other Tūranga Māori felt over these titles by introducing legislation which converted the joint tenancies to tenancies in common. However the Native Grantees Act 1873 did not apply to land already leased, sold or mortgaged or to the interests of those who had already passed away. All of the best flat land of Ngai Tāmanuhiri, some 15,000 acres, had already been alienated before this legislation was enacted.

Introduction of the Native Land Laws, 1860s and 1870s

2.82 Concern about perceived failures in the existing system of dealing with Māori land prompted the Crown to introduce a new system in the early 1860s. The Crown established the Native Land Court, under the Native Land Acts of 1862 and 1865, to determine the owners of Māori land "according to native custom", as well as to convert customary title into title derived from the Crown.

2.83 The Crown aimed to provide a means by which disputes over the ownership of lands could be settled and to facilitate the opening up of Māori customary lands to colonisation. The Crown's pre-emptive right to purchase land was set aside, giving individual Māori the same rights as Pākehā to lease and sell their lands to private parties and the Crown. Bringing customary lands under the British title system would also give adult male Māori landowners the right to vote. However, it was the perceived failure of the pre-emption purchase system that provided the immediate impetus for Parliamentary action in 1862.

2.84 The native land laws introduced a significant change to the Māori land tenure system. Customary tenure among Tūranga iwi, hapū and whānau was able to accommodate multiple and overlapping interests to the same land. The Native Land Court was not designed to accommodate the complex and fluid customary land usages of Māori within its processes, because it assigned permanent ownership. In addition, land rights under customary tenure were generally communal but the new land laws gave rights to individuals. It was expected that land title reform would eventually lead Māori to abandon the tribal and communal structures of traditional land holdings.

2.85 Māori were not represented in Parliament when the 1862 and 1865 Native Land Acts were enacted. Property qualifications based on European land tenure denied most Māori men the right to vote until the establishment of four Māori seats in the House of Representatives in 1868. The Crown had generally canvassed views on land issues at the 1860 Kohimārama Conference, but did not consult with Tūranga whānau and hapū on the legislation before its enactment.

2.86 Māori had no alternative but to use the Court if they wanted a title that would be recognised by the Pākehā legal system and that would enable them to integrate the land in question to the modern economy. A freehold title from the Court was necessary if they wanted to sell or legally lease land, or to use it as security to enable development of the land. However, the nature of the titles issued by the Court meant these were not widely accepted as security. The Court's investigation of title for land could be initiated with an application to the Court in writing from any individual Māori. There was no requirement to obtain wider consent before an application was lodged, but once it had been accepted by the Court all those with customary interests were obliged to participate in the investigation of title, or lose their interests. In some instances surveys or

investigations of title proceeded without the support of all of the hapū who claimed interests in the lands.

Ngai Tāmanuhiri experience of the Native Land Court, 1875-1894

2.87 The first Native Land Court hearings in Tūranga took place in 1867 and 1868, but no titles were determined. In 1870 the Court, sitting in place of the Poverty Bay Commission, and operating under the East Coast Act 1868, adjudicated upon titles to approximately 758 acres in fourteen blocks, mostly located in the Manutuke area. The East Coast Act does not appear to have been applied within the Tūranga district after 1873, but was not repealed until 1891.

2.88 The Court did not begin sustained work in Tūranga until 1875. The majority of Tūranga land that passed through the Court was investigated under the Native Land Act 1873. The Act required all owners be listed on a memorial of ownership. No owner could independently sell their interest unless all the owners consented. If the owners were not unanimous the block would be subdivided between sellers and non sellers. The portion of the block awarded to the sellers could then be sold. Later legislation weakened the requirement for majority support.

2.89 The Native Land Court held hearings and awarded individualised titles to nine land blocks in which Ngai Tāmanuhiri claimed interests including Whareongaonga, Takararoa, Paritu, Maraetaha 2, Puninga, Tarewauru, Rangiohinenau, Tiraotane and Ranginui. Court hearings could be disruptive and expensive for Ngai Tāmanuhiri to attend. Those for Maraetaha 2 and Puninga took several months to complete. Native Land Court hearings could require those attending court to travel into Gisborne, and stay for a considerable period of time, not knowing when their case would come up.

2.90 Although they used the Court in the absence of any legal alternative, many Tūranga iwi, hapū and whānau opposed the native land laws. In 1873 some Tūranga leaders supported a Hawke's Bay Repudiation Movement petition criticising the native land laws and the operation of the Court. A key criticism was that the laws took control away from Māori, who wanted to use their own processes to administer their own lands.

2.91 By the mid 1870s support was growing for the establishment of Māori institutions that would function in parallel with Pākehā institutions. Some Tūranga Māori began to form unofficial komiti after the final sitting of the Poverty Bay Commission. In 1877 Tūranga iwi, hapū and whānau joined together to form the Tūranganui a Kiwa komiti, which was intended to deal with civil and criminal cases as well as carry out land title determinations. Tūranga hapū and whānau sought legal empowerment to administer their own local affairs through komiti but this was not given. This lessened the effectiveness of komiti.

2.92 Survey charges and other costs involved in securing title through the Court were unavoidable. These costs varied, but could be a burden on Tūranga iwi, hapū and whānau. Each time a block was partitioned, the newly created block had to bear a share of the cost of surveying the parent block. Some survey charges were left unpaid for many years, and heavy interest costs were incurred. Whareongaonga C was surveyed for just over £23 in 1895, and later partitioned into a number of subsections. In 1920

some £60 of survey costs were paid off, but it was not until the 1960s that all the survey costs for this block were finally paid off.

Land Alienation – Crown and Private Purchasing to 1909

2.93 The Crown renewed efforts to purchase land in Tūranga after 1873. The Crown completed the purchase of 396 acres in Umuhaka in 1885, and 4,760 acres in Maraetaha 2 in 1896. Although a surveyor had valued Maraetaha at between five shillings and seven shillings sixpence per acre, the Crown paid only three shillings sixpence an acre. The Crown conducted its land purchase negotiations in monopoly conditions having enacted legislation which it used to prohibit private competition. The Crown's initial instructions to its agents were to negotiate openly and with tribal leaders. New legislation enacted in 1877 provided that the Crown could apply to the Native Land Court to award it any interests it had acquired. Negotiations with individuals became increasingly common after this point.

2.94 Crown agents entered into negotiations to purchase land from 1873. The Crown's instructions to its agents were to negotiate openly and with tribal leaders. New legislation enacted in 1877 provided that the Crown could apply to the Native Land Court to award it any interests it had acquired. Negotiations with individuals became increasingly common after this point. The first Crown purchase of land from Tūranga iwi, hapū and whānau was not completed until 1880. By 1897 the Crown had acquired well over 200,000 acres of land from Tūranga Māori.

2.95 The Crown enacted legislation which it used to prohibit private parties from also negotiating for the same blocks the Crown sought to purchase. It frequently made payments on blocks before the Native Land Court had determined ownership. The Native Minister ordered this practice to stop in 1879, though it continued in some cases. Sometimes these advances could bind the recipients into the sale of the land before a price had been agreed on.

2.96 Major private parties acquired around 20,000 acres from Ngai Tāmanuhiri during the nineteenth century. This was about 35% of the land Ngai Tāmanuhiri were awarded by the Poverty Bay Commission and Native Land Court. Many private purchasers leased land before its title was determined by the Native Land Court, as a preliminary step to purchase. It was also common for private purchasers to acquire individual interests over time. From the late 1870s onwards requirements for a majority of owners to agree to any partition were successively weakened. The major private party who acquired 1,200 acres in Tarewauru during the nineteenth century, did so through a number of small purchases. Some land sales continued to occur in the twentieth century. By the 1980s, 80 percent of the land awarded to Ngai Tāmanuhiri during the nineteenth century had been sold.

2.97 The native land laws required buyers and sellers to comply with a number of technical requirements before transactions for Māori land could be completed. For example, a certificate from the Trust Commissioner was required confirming that Māori owners understood the transaction and had received the consideration promised. Some of these requirements were intended to provide a limited protection of Māori interests but proved ineffectual. The native land laws were frequently amended and some facets of the laws were complex. By the 1890s, a number of land transactions that had been

entered into were incomplete due to their failure to comply with all technical requirements of the native land laws.

2.98 In 1893, the Government established a special court to validate such transactions. In 1896 the Validation Court validated a transaction for 11,000 acres in Maraetaha 2. This was done with the consent of the owners, but the Crown soon received correspondence that no written copy of the validated contract was presented to the Court. It is probable that the validated transaction never took place, and Tiemi Wirihana and 22 others soon petitioned the Crown to restore 7,000 acres in Maraetaha 2 to their control. However the Crown took no action in regard to this petition. In 1896 Hirini Nui and eleven others also petitioned the Crown about the allocation of Maraetaha 2's ownership by the Validation Court. The Crown rejected a recommendation based on this petition by a Parliamentary Select Committee that the Court should hold a re-hearing after receiving advice from the Judge who conducted the hearing.

2.99 The individualised titles issued by the Native Land Court created a number of problems for Māori over time, including the fragmentation of interests as a consequence of succession rules, the difficulty of obtaining development finance on the basis of the Court-awarded titles and the general inability to manage lands communally.

Attempts for community management of Māori owned land

2.100 Some Tūranga Māori sought a legal mechanism to deal with title issues by facilitating tribal control over the administration and alienation of Māori land in Tūranga. In 1878 the Tūranga leader Wi Pere and his lawyer, William Rees proposed a scheme to achieve this. They established trusts to manage and develop Māori-owned land. They intended to develop and dispose of some Māori land in order to bring more settlers to Tūranga. They envisaged that Māori would benefit from the profitable disposal of developed land and that tribal control of the alienation process would ensure that Māori derived benefit from economic activity generated by new settlers. The trust scheme would also have prevented some of the difficulties such as the fragmentation that would later plague Māori land tenure.

2.101 The Rees-Pere scheme attracted considerable support in Tūranga. Some 74,000 acres in Tūranga were vested in the trusts by 1881. However the trusts soon ran into insurmountable financial and legal difficulties. Heavy costs were incurred developing land, and purchasing land Māori had previously sold. The Supreme Court ruled in 1881 that land could not be vested in trust if the title to the land had been determined under the Native Land Act 1873. This had a major impact on the Rees-Pere scheme. Rees-Pere had been unable to secure political support for legislation that would have given legal recognition to their scheme, despite a number of petitions from Tūranga iwi, hapū and whānau supporting an 1880 Bill to this effect.

2.102 Pere and Rees reacted to these difficulties by forming a company as the vehicle to administer their scheme. However New Zealand was struck by an economic depression in the 1880s, and the company failed financially. Māori requested that the Government intervene but it was generally not government policy to intervene in the private debts of a company. In 1891 the Bank of New Zealand, which was the principal creditor, proceeded with the mortgagee sale of 36,300 acres of company lands.

2.103 A new trust was established in 1892 to redeem lands encumbered with debt as a consequence of the company's failure. This trust was also overwhelmed by debt, and in 1902 the Government established a statutory trust, the East Coast Maori Trust, to take over the indebted lands in order to avoid a further planned mortgagee sale of these.

2.104 The East Coast Māori Trust sold some land to pay off the debts it inherited. This included more than 6,000 acres in Maraetaha 2 that comprised 12% of the lands that had been awarded to Ngai Tāmanuhiri by the Native Land Court and the Poverty Bay Commission. The Trust developed a number of farms on the remaining lands. The Trust was economically successful, but the beneficiaries were only given a meaningful role in the Trust's administration in the late 1940s. Most of the Trust's assets were returned to Māori in 1955. This amounted to only about a quarter of the lands vested in trust in 1892.

2.105 As part of the process of winding up the trust, beneficial owners generously agreed to pay compensation of £96,751 to the descendants of owners of lands sold between 1892 and 1902 in order to reduce debt. They did not pay compensation for the blocks sold in the 1891 mortgagee sale.

Twentieth Century Land Administration

2.106 The Crown became concerned in the late nineteenth century that Māori land was often not being used profitably, due in part to multiple ownership resulting from the titles issued by the Native Land Court and a lack of access to development finance. The Crown accepted that existing procedures for managing Māori land were inadequate. It was also concerned that further alienation of Māori land might leave a reviving Māori population with insufficient land for their needs and requiring state support.

2.107 In response to these issues and increasing pressures from bodies such as the Kōtahitanga movement, which received significant support from Tūranga iwi, hapū and whānau, the Crown introduced Māori Land Councils with a mix of Crown-appointed members and elected Māori representation. The Councils were responsible for supervising all land alienation and could administer lands voluntarily placed under their authority by Māori landowners. The Crown aimed to enable Māori to retain land while ensuring that 'idle' land was leased and the income generated was used to develop it. The Councils were also given a role in determining the ownership of Māori land with the assistance of elected Māori committees, but by this time title to most Tūranga land had already been determined by the Court.

2.108 Only a small quantity of Tūranga land was vested in the Tairawhiti Māori Land Council before 1906. At this time the Councils became Government-appointed Boards. The Stout Ngata Commission set up to appraise Māori land in 1907 found that much of the Tūranga district and Cape Runaway had been purchased by the Crown and settlers, and that most of the land still owned by Tūranga Māori had already been leased. It recommended that no additional land be vested in the Tairawhiti Board for lease.

2.109 Tairawhiti was one of two land districts selected to test the efficacy of compulsory vesting of Māori land in a Land Board. By 1909, up to 7,500 acres in Tūranga had been vested in the Tairawhiti Māori Land Board which had jurisdiction over the East Coast

including Tūranga. The Board was authorised to lease or mortgage the lands vested in it.

2.110 In 1908 the Tairawhiti Māori Land Board was empowered to supervise alienations of other land held by Māori. The Native Land Act 1909 removed all existing restrictions on the sale of land. The Board could approve land sales that would leave Māori landless, if the land would not in any event provide sufficient income to support them, or where Māori had adequate alternative forms of income. In 1913 the requirement that there be elected Māori representation on the Board was abolished.

2.111 The Board was able to lease lands for terms of up to 50 years without consultation with the owners. Although this helped to ensure that such lands remained in Māori ownership, it also resulted in a substantial loss of control over these lands. As many of the leases expired in the 1950s owners wishing to resume control of these found in some cases that tenants had begun to neglect maintenance of such lands once it became clear their leases would not be renewed. The Māori owners of such properties therefore faced substantial and immediate costs before they could return the lands to full production.

2.112 From the early twentieth century Tūranga iwi, hapū and whānau took advantage of legislation enabling the establishment of incorporations to manage their lands. However, some of the incorporations continued to encounter problems accessing finance. In some cases such lands were among those leased by the Tairawhiti Māori Land Board. Other lands were sold and in some instances the incorporations appear to have remained largely dormant. However, some of the larger incorporations were successful over time.

Consolidation Schemes

2.113 In the twentieth century many Ngai Tāmanuhiri and their Tūranga iwi whanaunga owned small and fragmented interests in a number of scattered land blocks as a result of individualisation and partition of interests. Some of these shares were purchased by the government under measures introduced in 1953 allowing for the compulsory acquisition of 'uneconomic' interests in Māori lands, a policy greatly resented by some of those who it affected. The Crown also attempted to address the issue by introducing consolidation schemes. The process was to group close family interests into single, or contiguous areas to encourage further development of these lands for farming purposes.

2.114 The main consolidation scheme in Tūranga was at Manutuke and involved Ngai Tāmanuhiri and Rongowhakaata. It affected 539 land titles made up of 16,838 separate interests and was complex, time consuming and resource intensive. Between 1959 and 1969 interests in these small uneconomic land holdings covering 22,345 acres were rearranged and new blocks formed. The scheme could not have proceeded without community support but some Tūranga iwi, hapū and whānau did lose their ownership interests in land with which they had strong whakapapa associations because their interests were regrouped into other areas, causing great distress for some of those concerned.

2.115 The Crown compulsorily acquired a number of pieces of Māori-owned land from Tūranga whānau and hapū under public works legislation in the nineteenth and twentieth centuries. Land was acquired for a range of public purposes including roads, railways,

an aerodrome, harbour facilities, public sanitation, waterworks, and cemeteries. Between 1862 and 1927 various legislative enactments allowed for up to 5% of any Māori land block to be compulsorily acquired for roading purposes without compensation so long as the land was taken within ten years of the block in question having passed the Native Land Court. Nearly 400 acres were taken from Ngai Tāmanuhiri for roads, railways and other public works. This included land in the Puninga and Maraetaha blocks which was taken under Public Works legislation from 1947 for the purpose of supplying water to Gisborne. In 1983 the Crown acquired 99 acres at Maraetaha for this reason. The Crown generally did not consult with Māori before compulsorily acquiring their land for public works prior to the middle of the twentieth century.

2.116 There was insufficient justification for the Crown to acquire several of the blocks it took in Tūranga early in the twentieth century. The Crown did not return land to Māori that it had acquired for public works once it no longer needed those lands for the purpose for which they were taken. Much land taken in the Gisborne area was retained because the Government considered it would be needed for other public purposes connected with the city. In other cases where land was considered surplus the Crown was tardy in returning this to its former owners.

Māngatu Afforestation

2.117 Deforestation since the 1890s has contributed to increased erosion in Tūranga and flooding on the Gisborne flats. Flooding in the 1930s and 1940s resulted in significant damage to the coastal flats. In the 1950s the Crown commenced a program of reafforestation in hill country districts to address the problem of increased erosion. The Crown decided that as the costs of this program were too great for private parties to bear, it should purchase 16,000 acres for planting new forests. This included 8,500 acres of Māngatu Incorporation land. The Incorporation appreciated the need for reafforestation, but was distressed at the prospect of having to sell ancestral lands for this purpose. The Crown rejected alternative options that would have allowed Māori to retain ownership of the afforested land, and the owners reluctantly agreed to sell. The full amount of funds received by the Incorporation was paid as a dividend to the owners.

Environmental Issues

2.118 Increased soil erosion and flooding were among many environmental problems experienced by Tūranga iwi and hapū as a consequence of changes to the landscape and waterways of Tūranganui a Kiwa after 1840. The drainage of wetlands habitats such as Awapuni Moana deprived Tūranga iwi, hapū and whānau of important sources of food. The development of the port of Gisborne involved dramatic and irreversible changes to the Tūranganui River, including the blasting and destruction of deeply significant rocks, including Te Toka a Taiao, the deepening of the channel, reclamations and excavations, and the diversion of the river in order to widen the harbour. Tūranga iwi and hapū were usually not consulted about such changes, which significantly impacted on access to kai moana. The discharge of human waste into the rivers and sea at Tūranganui a Kiwa has also caused great distress to local Māori for cultural, environmental and public health reasons, as has the discharge of industrial effluent into the waterways. This has had ongoing impact on people's use of traditional resources such as food (shellfish and finfish) and the knowledge and practices associated with both the gathering and protection of those sources. The pollution has also restricted the recreational use of some areas for swimming and boating.

Social and Economic Impacts

2.119 Subsistence agriculture remained important to many Tūranga Māori until the mid 1930s. By the end of the 1920s, many Tūranga Māori were semi dependent on wage labour, and took up casual or seasonal employment in the rural sector. In the 1930s the depression hit hard, and a rising population added to the great stress on the rural economy. In 1933 nearly a quarter of Māori in the East Coast district were undernourished, leaving them open to increased risk of health problems. After the Second World War there was a significant movement of population from rural to urban districts as Tūranga Māori sought improved economic opportunities through employment. Many became wage labourers. For most families this initially involved migration to Gisborne, and later to areas outside the traditional rohe, to larger cities, causing them to be dislocated from their cultural support systems, traditions and practices.

2.120 Government reports have consistently identified gaps between Māori and non-Māori across a range of socio-economic indicators including housing, education, crime and health.

2.121 Tūranga Māori had their own system of learning prior to the arrival of Europeans in the district. New schools were established shortly after the arrival of Pākehā in the 1830s. The Crown first provided funding for schools in 1847 when it made funds available for mission schools. The Crown required the schools to teach in English if they were to receive state funds as the Crown believed it was necessary for Māori children to learn English. The Crown continued to support mission schools until the wars of the 1860s forced most to close. In 1867 the Crown established a system of native schools that were to be administered by the Crown. Schools were offered to Māori communities, who were required to provide land for the school. The Native Schools established in Tūranga soon folded due to poor attendance.

2.122 Most Tūranga Māori attended schools established under the Education Act 1877 with a curriculum modelled on a system inherited from Britain and designed around Pākehā values. The education system sought to assimilate Māori children to Pākehā culture, but generally did not prepare Māori for participation in the modern economy as well as it did Pākehā children.

2.123 The introduction of a British education system had detrimental effects on Māori language and identity. For many years the Crown did not take any responsibility for ensuring children had access to their language and culture through the education system to facilitate the preservation and maintenance of language and culture distinct to Tūranga Māori. This denied children a critical facet of their cultural identity. Prior to 1840 Tūranga Māori were fluent in their own language, but by the 1970s the number of Māori who could speak their language declined to 18-20% and most of those people were over the age of 65 years. The language has struggled to recover and in 2006, only 32% of Tūranga Māori could hold a conversation in Māori about every day matters.

2.124 Tūranga children and adults were also affected by official definitions of 'Māori' based on blood rather than self-identification or acknowledged whakapapa. For much of the period prior to 1974 to be legally defined as Māori for official purposes required at least

50% Māori ancestry, a requirement that was dropped only with the Maori Affairs Amendment Act of that year.

2.125 Stereotyping, the low expectations of educationalists and discriminatory practices within the education system and workplace resulted in limited career choices for Tūranga Māori.

2.126 In the mid-nineteenth century infectious diseases brought to the country by Europeans such as influenza and measles had a devastating impact on Tūranga Māori, and caused a significant decline in population. Epidemics continued to occur into the early years of the twentieth century, although Māori were developing immunity to some of the newly introduced infectious diseases.

2.127 At the beginning of the twentieth century the Government developed a health care programme to improve health among Māori. Government officials worked in local Māori communities improving sanitation standards. However, while some progress was made, serious problems remained. In 1928 typhoid, a leading disease of poverty, was reported to be the worst health care problem facing Māori. Although sanitation improvements and the introduction of an inoculation programme helped reduce the rate of typhoid among Māori after 1928, the incidence of typhoid among Māori was still much higher than among Pākehā for many years.

2.128 At the end of the 1930s more than half of Tūranga Māori households were overcrowded. Poor housing conditions and malnutrition made Māori more vulnerable to communicable diseases than Pākehā. Tuberculosis, and other respiratory disease, continued to have a severe impact on Māori until the 1950s. Another major effort was made to improve housing conditions for Tūranga Māori in the 1950s. However, overcrowding remained a serious problem. By the early 1960s a quarter of Tūranga Māori households were still overcrowded. By 1988 Māori home ownership was declining. A Government survey found that more than half the households in need of special housing assistance were Māori. Rural Tūranga was identified as a particular problem area.

2.129 The events of the nineteenth century continued to have severe social, economic, and political consequences for Ngai Tāmanuhiri and the neighbouring Tūranga iwi and hapu throughout the twentieth century. Tūranga Māori have also encountered widespread ignorance about nineteenth century Tūranga history. Even so, Ngai Tāmanuhiri and their neighbouring Tūranga iwi and hapu volunteered in both world wars (and other regional conflicts) and served with distinction in the New Zealand armed forces in large numbers, in part, as the price of citizenship.

2.130 Ngai Tāmanuhiri and their Tūranga whanaunga population today is disproportionately young. Sixty percent of all children in the Tūranga region are Māori, by far the highest proportion for all regions in New Zealand Economic restructuring since the 1980s severely impacted on Tūranga iwi, hapū and whānau, and despite signs of improvement since that time, a range of social and economic indicators suggest that Tūranga children are still at great risk of poor health, unemployment and educational disadvantage.

3 ACKNOWLEDGEMENTS AND APOLOGY

ACKNOWLEDGEMENTS

3.1 The Crown acknowledges –

3.1.1 it has failed to address until now the longstanding and legitimately held grievances of Ngai Tāmanuhiri in an appropriate manner;

3.1.2 its recognition of, and provision of redress for, those grievances is long overdue; and

3.1.3 that the sense of grief and loss suffered by, and the impact on, Ngai Tāmanuhiri remains today.

3.2 The Crown acknowledges that –

3.2.1 prior to 1865 Ngai Tāmanuhiri had full control of their lands and resources and were participating successfully in the New Zealand economy;

3.2.2 when war broke out in the 1860s in other regions of New Zealand, Ngai Tāmanuhiri remained neutral;

3.2.3 Ngai Tāmanuhiri were not involved in the fighting that took place on the East Coast in 1865;

3.2.4 the Crown used military force in Tūranga in November 1865 when there was no need for it to do so;

3.2.5 it did not pursue all reasonable possibilities for preserving peace in Tūranga after it issued the ultimatum to the occupants of Waerenga a Hika in November 1865;

3.2.6 the occupants of Waerenga a Hika were entitled to defend themselves; and

3.2.7 the Crown's attack on Waerenga a Hika whose occupants included many women and children, was unwarranted, unjust, and breached the Treaty of Waitangi and its principles.

3.3 The Crown acknowledges that its military forces partook in indiscriminate looting of the Tūranga region in the aftermath of the Waerenga a Hika attack, which contributed to acute food shortages which caused some loss of life among Tūranga Māori.

3.4 The Crown acknowledges that its detention of some Ngai Tāmanuhiri in harsh conditions on the Chatham Islands for more than two years without laying formal charges or bringing them to trial –

3.4.1 meant that they were detained for an unreasonably lengthy period which assumed the character of indefinite detention without trial;

3.4.2 inflicted unwarranted hardships on them and their whānau and hapū;

3.4.3 was prevented from being challenged in the Courts by several indemnity acts;

3.4.4 was wrongful, a breach of natural justice, and deprived those Ngai Tāmanuhiri of basic human rights; and

3.4.5 was an injustice and a breach of the Treaty of Waitangi and its principles.

3.5 The Crown further acknowledges that these prisoners were justified in finally escaping from the Chatham Islands in July 1868.

3.6 The Crown acknowledges that when the Whakarau returned to the mainland, they had reason not to trust the Crown when it asked them to lay down their arms.

3.7 The Crown acknowledges that the summary executions at Ngatapa by Crown forces in January 1869 breached the Treaty of Waitangi and its principles, and tarnished the honour of the Crown.

3.7A The Crown acknowledges that the manner in which it forcibly took possession of Te Hau ki Turanga, and its ongoing care of Te Hau ki Turanga for many years, breached the Treaty of Waitangi and its principles.

3.8 The Crown acknowledges that –

3.8.1 some Ngai Tāmanuhiri did not give any consent to the 1868 deed of cession;

3.8.2 those Ngai Tāmanuhiri who agreed to the cession did so under duress; and

3.8.3 the pressure applied by the Crown to secure this cession, and the resulting extinguishment of Ngai Tāmanuhiri's customary interests in all their lands breached the Treaty of Waitangi and its principles.

3.9 The Crown acknowledges that –

3.9.1 it did not consult with Ngai Tāmanuhiri about the individualisation of titles by the Poverty Bay Commission, or the introduction of the native land legislation;

3.9.2 the Poverty Bay Commission awarded joint tenancies which promoted alienation as these titles could not be bequeathed;

3.9.3 the awarding of titles to individuals by the Poverty Bay Commission and the Native Land Court made Ngai Tāmanuhiri lands more susceptible to partition, fragmentation and alienation; and

3.9.4 this had a prejudicial effect on Ngai Tāmanuhiri as it contributed to the erosion of traditional tribal structures which were based on collective tribal and hapū custodianship of land. The Crown failed to take adequate steps to protect those structures and this was a breach of the Treaty of Waitangi and its principles.

3.10 The Crown acknowledges that it failed to enact legislation before 1894 that facilitated the administration of Ngai Tāmanuhiri land subject to the Native land laws on a community basis and this was a breach of the Treaty of Waitangi and its principles.

3.11 The Crown acknowledges that it did not investigate an allegation that the Validation Court had a validated transaction for 11,000 acres in Maraetaha 2 which did not take place.

3.12 The Crown acknowledges that –

3.12.1 a significant proportion of Ngai Tāmanuhiri land became vested in the East Coast Trust; and

3.12.2 its failure to provide for Ngai Tāmanuhiri beneficial owners to be involved in the development of policy for the administration of their land once it became clear that this Trust would have a long term existence was a breach of the Treaty of Waitangi and its principles.

3.13 The Crown acknowledges that –

3.13.1 it compulsorily acquired land from Ngai Tāmanuhiri under public works legislation in a number of blocks;

3.13.2 it took land for roads without paying compensation;

3.13.3 there was generally inadequate consultation with Ngai Tāmanuhiri about public works takings before the middle of the twentieth century; and

3.13.4 as late as 1983 the Crown acquired 99 acres at Maraetaha for waterworks, under public works legislation further reducing Ngai Tāmanuhiri landholdings.

3.14 The Crown acknowledges the distress caused by the Manutuke consolidation scheme in the years following 1958 as it required many Ngai Tāmanuhiri to exchange land to which they had significant ancestral connections for land to which they had no connections.

3.15 The Crown acknowledges –

3.15.1 the severe impact on Ngai Tāmanuhiri of the loss of many traditional sources of kai moana because of the pollution of their coastline by Gisborne's sewage system and industrial waste; and

3.15.2 Ngai Tāmanuhiri have lost control over many of their significant sites, including wāhi tapu, and that this has had an ongoing impact on their physical and spiritual relationship with their land.

3.16 The Crown acknowledges that the cumulative effect of the Crown's actions and omissions, including the operation and impact of the Poverty Bay Commission and native land laws, left Ngai Tāmanuhiri virtually landless and undermined their economic, social and cultural development. The Crown acknowledges the devastating consequences that flow from this for the well-being of Ngai Tāmanuhiri. The Crown's failure to ensure that Ngai Tāmanuhiri retained sufficient lands for its present and future needs was a breach of the Treaty of Waitangi and its principles.

3.17 The Crown acknowledges that Ngai Tāmanuhiri have lived with poorer housing, lower educational achievements, and worse health than many other New Zealanders for too long.

3.18 The Crown acknowledges –

3.18.1 Ngai Tāmanuhiri have made a significant contribution to the wealth and development of the nation; and

3.18.2 Ngai Tāmanuhiri have honoured their obligations and responsibilities under the Treaty of Waitangi, especially, but not exclusively, in their contribution to New Zealand's war efforts overseas. The Crown pays tribute to the contribution made by Ngai Tāmanuhiri to the defence of the nation.

APOLOGY

3.19 The Crown acknowledges its relationship with Ngai Tāmanuhiri has involved some of the darkest episodes in our country's history.

3.20 The Crown recognises that Ngai Tāmanuhiri has long sought to right the injustices they have suffered at the hands of the Crown, and is deeply sorry that it has failed until now to address the injustices in an appropriate manner.

3.21 The Crown deeply regrets, and apologises for, its use of military force in Tūranga, and the devastating consequences that flowed from this for Ngai Tāmanuhiri. The Crown is profoundly remorseful at the exile of some Ngai Tāmanuhiri to the Chatham Islands, and the summary executions of unarmed prisoners at Ngatapa during the war it fought against those who escaped their wrongful and unjust detention on the Chatham Islands.

3.22 The Crown sincerely apologises for its many failures to respect Ngai Tāmanuhiri rangatiratanga and to protect Ngai Tāmanuhiri from being left virtually landless and economically marginalised.

3.23 The Crown unreservedly apologises to Ngai Tāmanuhiri and your ancestors and descendants for the many failures to honour its obligations under the Treaty of Waitangi.

3.24 The Crown seeks to restore its honour and reputation as a Treaty partner and atone for its past failures to uphold the Treaty of Waitangi with this apology and settlement. The Crown hopes to build a new relationship with Ngai Tāmanuhiri based on respect for the Treaty of Waitangi and its principles.

4 SETTLEMENT

ACKNOWLEDGEMENTS

4.1 Each party acknowledges that –

4.1.1 the other party has acted honourably and reasonably in relation to the settlement; but

4.1.2 it is difficult to assess redress for the loss and prejudice suffered by Ngai Tāmanuhiri; and

4.1.3 full compensation of Ngai Tāmanuhiri for all loss and prejudice suffered is not possible; and

4.1.4 the Crown has to set limits on what and how much redress is available to settle historical claims; and

4.1.5 Ngai Tāmanuhiri intends their foregoing of full compensation to contribute to New Zealand's development and the foregoing of full compensation is recognised by the Crown as a contribution to New Zealand's development; and

4.1.6 the settlement is intended to enhance the ongoing relationship between Ngai Tāmanuhiri and the Crown (in terms of the Treaty of Waitangi, its principles, and otherwise); and

4.1.7 they intend to build a positive relationship between them into the future that is based on the Treaty of Waitangi and its principles.

4.2 The parties acknowledge that Ngai Tāmanuhiri has entered into this deed based on –

4.2.1 the decision of the Minister for Treaty of Waitangi Negotiations on the allocation of the Tūranganui a Kiwa redress recorded in the agreement in principle, as set out in the Minister's letter dated 8 September 2010, together with the additional redress offered in that letter; and

4.2.2 subsequent negotiations with the Crown.

4.3 Ngai Tāmanuhiri acknowledge that, taking all matters into consideration (some of which are specified in clause 4.1), the settlement is fair in the circumstances.

SETTLEMENT

4.4 Therefore, on and from the settlement date, –

4.4.1 the historical claims are settled; and

4.4.2 the Crown is released and discharged from all obligations and liabilities in respect of the historical claims; and

4.4.3 the settlement is final.

4.5 Except as provided in this deed or the settlement legislation, the parties' rights and obligations remain unaffected.

4.6 Without limiting clause 4.5, nothing in this deed or the settlement legislation will –

4.6.1 extinguish or limit any aboriginal title or customary right that Ngai Tāmanuhiri may have; or

4.6.2 constitute or imply, an acknowledgement by the Crown that any aboriginal title, or customary right, exists; or

4.6.3 except as provided in this deed or the settlement legislation —

(a) affect a right that Ngai Tāmanuhiri may have, including a right arising –

(i) from the Treaty of Waitangi or its principles; or

(ii) under legislation; or

(iii) at common law (including in relation to aboriginal title or customary law); or

(iv) from a fiduciary duty; or

(v) otherwise; or

(b) be intended to affect any action or decision under the deed of settlement between Māori and the Crown dated 23 September 1992 in relation to Māori fishing claims; or

(c) affect any action or decision under any legislation and, in particular, under legislation giving effect to the deed of settlement referred to in clause 4.6.3(b), including –

(i) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or

(ii) the Fisheries Act 1996; or

(iii) the Maori Fisheries Act 2004; or

(iv) the Maori Commercial Aquaculture Claims Settlement Act 2004.

4.7 Clause 4.6 does not limit clause 4.4.

4.8 Nothing in this deed will affect any Ngai Tāmanuhiri foreshore and seabed claims. These claims will be progressed after any legislation replacing the regime for the Foreshore and Seabed Act 2004 becomes law.

REDRESS

4.9 The redress, to be provided in settlement of the historical claims, –

4.9.1 is intended to benefit Ngai Tāmanuhiri collectively; but

4.9.2 may benefit particular members, or particular groups of members, of Ngai Tāmanuhiri if the governance entity so determines in accordance with the governance entity's procedures.

IMPLEMENTATION

4.10 The settlement legislation will, on the terms provided by sections 10 to 14 and 16 of the draft settlement bill, –

4.10.1 settle the historical claims; and

4.10.2 exclude the jurisdiction of any court, tribunal, or other judicial body in relation to the historical claims and the settlement; and

4.10.3 provide that the Māori land claims protection legislation does not apply –

(a) to a redress property, a purchased deferred selection property if settlement of that property has been effected, or any RFR land; or

(b) for the benefit of Ngai Tāmanuhiri or a representative entity; and

4.10.4 require any resumptive memorial to be removed from a certificate of title to, or a computer register for, a redress property, a purchased deferred selection property if settlement of that property has been effected, or any RFR land; and

4.10.5 provide that the rule against perpetuities and the Perpetuities Act 1964 does not –

(a) apply to a settlement document; or

(b) prescribe or restrict the period during which –

(i) the trustees of the Tāmanuhiri Tutu Poroporo Trust, being the governance entity, may hold or deal with property; and

(ii) the Tāmanuhiri Tutu Poroporo Trust may exist; and

4.10.6 require the Secretary for Justice to make copies of this deed publicly available.

4.11 Part 1 of the general matters schedule provides for other action in relation to the settlement.

5 CULTURAL REDRESS

5.1 There are three main components of the cultural redress –

5.1.1 mana tangata (identity and heritage) redress, the objective of which is to assist Ngai Tāmanuhiri to reclaim and promote their identity, tikanga and history; and

5.1.2 mana whenua/mana moana (protection and use of land and sea) redress; and

5.1.3 mana rangatira (enhancement of relationship) redress which contributes towards the protection and recognition of the right of Ngai Tāmanuhiri to exercise mana rangatira, mana tangata, mana tipuna, mana atua, mana whenua and mana moana.

MANA TANGATA (IDENTITY AND HERITAGE) REDRESS

CULTURAL REVITALISATION PLAN

5.2 The Crown will pay $180,000 to the governance entity on the settlement date to assist Ngai Tāmanuhiri with the preparation and implementation of a cultural revitalisation plan.

PUTEA FOR MEMORIAL

5.3 Prior to the date of this deed, Te Runanga o Tūranganui a Kiwa, as trustee, the governance entity and the Crown agreed the form of a deed of trust to establish Te Runanga o Tūranganui a Kiwa as trustee of the Tūranganui a Kiwa Putea Memorial and Central Leadership Trust.

5.4 The purposes of the trust include the establishment of an appropriate and enduring memorial open to members of Tūranganui a Kiwa and the public generally, to commemorate and provide education about those members of Tūranganui a Kiwa who lost their lives due to the actions of the Crown in the past.

5.5 Within five business days of receipt by the Crown of an original, copy of the deed of trust in the form agreed and referred to in clause 5.3 and signed by Te Runanga o Tūranganui a Kiwa as trustee the Crown will –

5.5.1 sign, date and deliver the deed to Te Runanga o Tūranganui a Kiwa; and

5.5.2 pay $100,000 to Te Runanga o Tūranganui a Kiwa, as trustee of the trust established by that deed.

5.6 Deleted.

ACKNOWLEDGEMENTS

Statutory acknowledgement

5.7 The settlement legislation will, on the terms provided by subpart 2 of part 2 of the draft settlement bill, –

5.7.1 provide the Crown's acknowledgement of the statements by Ngai Tāmanuhiri of their particular cultural, spiritual, historical, and traditional association with the following areas (to the extent that those areas are within the area of interest):

(a) Waipaoa River (including Karaua Stream) (as shown on deed plan OTS-005-006):

(b) Ngai Tāmanuhiri Coastal Marine Area (as shown on deed plan OTS-005-005); and

5.7.2 require relevant consent authorities, the Environment Court, and the New Zealand Historic Places Trust to have regard to the statutory acknowledgement; and

5.7.3 require relevant consent authorities to forward to the governance entity summaries of resource consent applications affecting an area; and

5.7.4 enable the governance entity, and any member of Ngai Tāmanuhiri, to cite the statutory acknowledgement as evidence of Ngai Tāmanuhiri's association with an area.

5.8 The statements of association are in the documents schedule.

Non-statutory acknowledgement

5.9 The Crown acknowledges Ngai Tāmanuhiri's statement of their particular cultural, spiritual, historical and traditional association set out in the statements of association in the documents schedule.

5.10 The parties agree that the acknowledgement in clause 5.9 is not Crown redress.

PROTOCOLS

5.11 Each of the following protocols must, by or on the settlement date, be signed and issued to the governance entity by the responsible Minister:

5.11.1 the conservation protocol:

5.11.2 the fisheries protocol:

5.11.3 the taonga tūturu protocol:

5.11.4 the Crown minerals protocol.

5.12 A protocol sets out how the Crown will interact with the governance entity with regard to the matters specified in it.

FORM AND EFFECT OF PROTOCOLS

5.13 Each protocol will be –

5.13.1 in the form in the documents schedule; and

5.13.2 issued under, and subject to, the terms provided by subpart 1 of part 2 of the draft settlement bill.

5.14 A failure by the Crown to comply with a protocol is not a breach of this deed.

MANA WHENUA/MANA MOANA (PROTECTION AND USE OF LAND AND SEA) REDRESS

CULTURAL REDRESS PROPERTIES

Vesting of properties

5.15 The settlement legislation will vest in the governance entity on the settlement date –

In fee simple

5.15.1 the fee simple estate in Mangapoike; and

As a national historic reserve

5.15.2 the fee simple estate in Te Kuri a Paoa/Young Nick's Head as a national historic reserve, as if it were vested under section 26 of the Reserves Act 1977, with the governance entity as the administering body.

5.16 Each cultural redress property is to be –

5.16.1 as described in part 1 of schedule 2 of the draft settlement bill; and

5.16.2 vested on the terms provided by –

(a) subpart 4 of part 2 of the draft settlement bill; and

(b) part 2 of the property redress schedule; and

5.16.3 subject to any encumbrances, or other documentation, in relation to that property –

(a) required by clause 5.15 to be provided by the governance entity; or

(b) required by the settlement legislation; and

(c) in particular, referred to by schedule 2 of the draft settlement bill.

5.17 The settlement legislation will, on the terms provided by section 43(5) of the draft settlement bill, provide that the national historic reserve created by clause 5.15.2 is named Te Kuri a Paoa/Young Nick's Head National Historic Reserve.

Te Wherowhero

5.18 Te Wherowhero is culturally significant to Ngai Tāmanuhiri. The Crown has agreed to facilitate the purchase of Te Wherowhero by the trustees under clauses 5.19 to 5.23 because of Ngai Tāmanuhiri's association with the site.

5.19 By agreement (**purchase agreement**) dated 17 December 2010 the Ngai Tāmanuhiri Whānui Trust entered into an agreement for sale and purchase to acquire the fee simple estate in Te Wherowhero.

5.20 The purchase agreement provides for the trustees to assume the rights and obligations of the purchaser under the purchase agreement.

5.21 The trustees agree, at the cost of the Crown, to do all things necessary to ensure that the trustees assume the rights and obligations of the purchaser under the agreement.

5.22 The Crown agrees to –

5.22.1 pay to the trustees the purchase price under the purchase agreement in time for the trustees to comply with the obligation to pay the purchase price under the purchase agreement; and

5.22.2 otherwise undertake the obligations of the purchaser on behalf of the trustees at the cost of the Crown.

5.23 The settlement legislation will, on the terms provided by subpart 5 of part 2 of the draft settlement bill, facilitate the acquisition by the trustees of the fee simple estate in Te Wherowhero under the purchase agreement.

FUNDING ASSOCIATED WITH CULTURAL REDRESS PROPERTIES

5.24 The Crown will contribute $50,000 to assist with the management of Te Kuri a Paoa/Young Nick's Head, to be primarily used for fencing and planting, and if appropriate, the recognition of Ngai Tāmanuhiri's association with the site.

5.25 The Crown must pay the amount in clause 5.24 to the governance entity on the settlement date.

MANA RANGATIRA (ENHANCEMENT OF RELATIONSHIP) REDRESS

LOCAL LEADERSHIP BODY

5.26 Ngai Tāmanuhiri, Rongowhakaata and Te Whakarau and Gisborne District Council have agreed to establish a local leadership body the purpose of which is to contribute to the sustainable management of all resources in the Tūranganui a Kiwa region for the use and enjoyment of present and future generations, while recognising and providing for the traditional relationship of Ngai Tāmanuhiri, Rongowhakaata and Te Whakarau with their ancestral lands.

5.27 Ngai Tāmanuhiri, Rongowhakaata, Te Whakarau and the Gisborne District Council are continuing to develop and agree provisions addressing quorum, standing orders and other operational arrangements for the body.

5.28 The Crown agrees to establish the local leadership body, through settlement legislation, (that legislation relating to one of Ngai Tāmanuhiri, Rongowhakaata, or Te Whakarau), as a permanent statutory body on the condition that the local leadership body is established in the nature of a joint committee of the Gisborne District Council under the Local Government Act 2002.

CENTRAL LEADERSHIP GROUP

5.29 As part of the agreement in principle the Crown agreed to assist with the establishment of a central leadership group to –

5.29.1 provide Tūranganui a Kiwa with a forum to engage with central government departments into the future; and

5.29.2 ensure that the principles of the Treaty of Waitangi are implemented in a co-ordinated manner within the Tūranga region to the extent consistent with relevant legislation.

5.30 On and from the date of this deed, the Crown and Ngai Tāmanuhiri will negotiate, in good faith, to develop and establish the central leadership group.

5.31 The key participants in the central leadership group will be representatives from Ngai Tāmanuhiri, Rongowhakaata, Te Whakarau, the Ministry of Fisheries, the Department of Conservation, the Ministry of Agriculture and Forestry (as appropriate), the Ministry for the Environment, other relevant Crown agencies as agreed and, if invited and agreed, the Gisborne District Council.

5.32 The matters that Ngai Tāmanuhiri intend to address through the central leadership group are environmental outcomes (including, but not limited to, assistance with the development of an iwi management plan) and economic and social outcomes within the Tūranga region. Ngai Tāmanuhiri intend that economic and social outcomes will require Crown agencies with statutory responsibilities in these areas to participate from time to time in the central leadership group.

5.33 The Crown is developing a framework for the post-settlement Crown-iwi relationship. The Crown will involve representatives of Ngai Tāmanuhiri in the development of this framework.

5.34 The parties agree that the form, function and membership of the central leadership group will remain flexible so it can align with the terms of the framework being developed by the Crown for the post-settlement Crown-iwi relationship and, so far as reasonably practicable, the provisions of the agreement in principle.

5.35 The Crown must –

5.35.1 provide a facilitator for –

(a) a period of 12 months from the date of this deed to assist with the establishment of the central leadership group; and

(b) the inaugural meeting of the central leadership group; and

5.35.2 contribute $35,000 to the establishment costs of the central leadership group by paying that amount to the trustee of the trust established under clauses 5.3 to 5.5 on the date the Crown makes payment under clause 5.5.

RELATIONSHIP AGREEMENT WITH THE MINISTRY FOR THE ENVIRONMENT

5.36 The Crown and the governance entity must, by or on the settlement date, enter into a relationship agreement in the form set out in part 4 of the documents schedule.

5.37 The parties agree that representatives of the Ministry for the Environment, the governance entity and the post settlement governance entities for Te Whakarau and for Rongowhakaata will meet biennially, in accordance with that relationship agreement.

5.38 Without limiting the terms of the relationship agreement, the meetings will be held to discuss the performance of local government in implementing the Treaty of Waitangi provisions in the Resource Management Act 1991, and other resource management issues, in the area of interest.

PROMOTION OF RELATIONSHIP WITH MUSEUMS

5.39 The Minister for Treaty of Waitangi Negotiations will write letters to –

5.39.1 the New Zealand museums in part 5 of the documents schedule encouraging them to enhance their relationship with Ngai Tāmanuhiri, particularly in regard to Ngai Tāmanuhiri taonga; and

5.39.2 the international museums in part 5 of the documents schedule introducing them to Ngai Tāmanuhiri and identifying any issues of relevance to Ngai Tāmanuhiri and the museum.

CULTURAL REDRESS GENERALLY NON-EXCLUSIVE

5.40 The Crown may do anything that is consistent with the cultural redress, including entering into, and giving effect to, another settlement that provides for the same or similar cultural redress.

6 FINANCIAL AND COMMERCIAL REDRESS

FINANCIAL REDRESS

6.1 The Crown must pay the governance entity on the settlement date $6,600,000, being the financial and commercial redress amount of $11,070,000 less –

6.1.1 the on-account payment; and

6.1.2 $3,570,000 being the transfer value of Ngai Tāmanuhiri's interest in the licensed land, being Wharerata Forest.

ON-ACCOUNT PAYMENT

6.2 The Crown will pay $900,000 on account of the financial and commercial redress amount in clause 6.1 (**on-account payment**) to the governance entity within five business days after the date of this deed.

6.3 The parties intend that if this deed does not become unconditional under clause 7.4 the on-account payment will be taken into account in relation to any future settlement of the historical claims.

PAYMENT OF $114,286

6.4 The Minister for Treaty of Waitangi Negotiations agreed to make a payment of $800,000 to Tūranga Manu Whiriwhiri, by letter of 31 August 2009.

6.5 Tūranga Manu Whiriwhiri agreed that the payment under clause 6.4 would be divided equally between the groups that brought the historical claims before the Waitangi Tribunal's Tūranga inquiry.

6.6 The Minister for Treaty of Waitangi Negotiations, in his decision on the Tūranganui a Kiwa redress allocation dated 8 September 2010, determined that Ngai Tāmanuhiri's share of the payment under clause 6.4 was $114,286.

6.7 The Crown will pay $114,286 to the governance entity on the settlement date.

ESTABLISHMENT OF WHARERATA FOREST LIMITED

6.8 The parties agree that they will –

6.8.1 jointly incorporate Wharerata Forest Limited in accordance with the constitution and the shareholders' agreement and trust deed by the settlement date; and

6.8.2 ensure that Wharerata Forest Limited complies with any obligations imposed on Wharerata Forest Limited under this deed as if it were a party to this deed.

6.9 The parties agree that the Crown, the governance entity and Wharerata Forest Limited will enter into the shareholders' agreement and trust deed by the settlement date which will establish the terms upon which Wharerata Forest Limited will receive and hold the licensed land.

COMMERCIAL REDRESS PROPERTIES

6.10 The Crown must transfer –

6.10.1 1858 Waingake Road to the governance entity; and

6.10.2 the licensed land to Wharerata Forest Limited,

on the settlement date.

6.11 The licensed land is to be –

6.11.1 transferred by the Crown to Wharerata Forest Limited –

(a) as part of the redress to settle the historical claims, and without any other consideration to be paid or provided by Wharerata Forest Limited, the governance entity or any other person; and

(b) on the terms of transfer in part 6 of the property redress schedule as if all references to the governance entity were references to Wharerata Forest Limited; and

6.11.2 as described in part 3 of the property redress schedule.

6.12 The commercial redress property, 1858 Waingake Road –

6.12.1 is to be as described in part 3 of the property redress schedule; and

6.12.2 is to be transferred by the Crown to the governance entity –

(a) as redress, for no consideration; and

(b) subject to paragraph 6.1.1 of the property redress schedule, on the terms of transfer in part 6 of the property redress schedule.

6.13 The transfer of each commercial redress property will be subject to, and where applicable with the benefit of, the encumbrances described in part 3 of the property redress schedule in relation to that property.

6.14 The settlement legislation will, on the terms provided by subparts 2 and 3 of part 3 of the draft settlement bill, provide, in relation to the licensed land:

6.14.1 for its transfer by the Crown to Wharerata Forest Limited and a subsequent transfer by Wharerata Forest Limited to give effect to a subdivision agreement between Ngai Tāmanuhiri and other Wharerata claimants under the shareholders' agreement and trust deed:

6.14.2 for it to cease to be Crown forest land upon registration of the transfer:

6.14.3 for Wharerata Forest Limited to be, from the settlement date, in relation to the licensed land, –

(a) a confirmed beneficiary under clause 11.1 of the Crown forestry rental trust deed; and

(b) entitled to the rental proceeds since the commencement of the Crown forestry licence:

6.14.4 the Crown to give notice under section 17(4)(b) of the Crown Forest Assets Act 1989 terminating the Crown forestry licence, in so far as it relates to the licensed land, at the expiry of the period determined under that section, as if –

(a) the Waitangi Tribunal had made a recommendation under section 8HB(1)(a) of the Treaty of Waitangi Act 1975 for the return of the licensed land to Māori ownership; and

(b) the Waitangi Tribunal's recommendation became final on settlement date:

6.14.5 Wharerata Forest Limited to be the licensor under the Crown forestry licence as if the licensed land had been returned to Māori ownership on the settlement date under section 36 of the Crown Forest Assets Act 1989, but without section 36(1)(b) applying:

6.14.6 modify the jurisdiction of the Waitangi Tribunal to make recommendations in respect of the licensed land so that the jurisdiction applies only to the "Crown Beneficial Interest" under the shareholders' agreement and trust deed:

6.14.7 for rights of access to areas that are wāhi tapu.

6.15 The parties acknowledge that, to the extent the licensed land is eligible land in respect of a pre-1990 forest land allocation plan issued under subpart 2 of part 4 of the Climate Change Response Act 2002, the eligible person in respect of that land will be the person entitled to apply for an allocation of New Zealand units under that subpart.

6.16 Any application for an allocation of New Zealand units made by an eligible person in respect of the licensed land and any allocation of New Zealand units in respect of the

allocation plan shall be subject to the provisions of the Climate Change Response Act 2002, including (but not limited to) the allocation plan.

6.17 In clauses 6.15 and 6.16, "allocation plan", "eligible land" and "eligible person" each has the meaning given to it in the Climate Change Response Act 2002.

DEFERRED SELECTION PROPERTIES

6.18 The governance entity may for two years after the settlement date purchase the deferred selection properties on, and subject to, the terms and conditions in parts 5 and 6 of the property redress schedule.

6.19 The Muriwai School DSP site is to be leased back to the Crown, immediately after its purchase by the governance entity, on the terms and conditions provided by the lease for the Muriwai School DSP site in part 3 of the documents schedule. As the lease is a registrable ground lease of the property, the governance entity will be purchasing only the bare land, all improvements remaining under the ownership of the Crown or other third party as applicable.

6.20 Clause 6.21 applies if, at any time before the settlement date, the board of trustees relinquishes its beneficial interest in the Muriwai School House site.

6.21 If this clause applies, the Crown must give notice to the governance entity that the Muriwai School House site is available for transfer to the governance entity and, on receipt by the governance entity of that notice, all references in this deed to the Muriwai School DSP site will be read as if they were references to all the land comprised in computer freehold register GS2A/870, being together the Muriwai School DSP site and the Muriwai School House site.

SETTLEMENT LEGISLATION

6.22 The settlement legislation will, on the terms provided by subpart 1 of part 3 of the draft settlement bill, enable the transfer of the commercial redress properties and the deferred selection properties.

RFR FROM THE CROWN

6.23 The governance entity is to have a right of first refusal in relation to a disposal by the Crown or a Crown body of RFR land on the terms provided by subpart 4 of part 3 of the draft settlement bill and, in particular, will apply –.

6.23.1 for a term of –

(a) 100 years from the settlement date in respect of Pakowhai Scenic Reserve; and

(b) 169 years from the settlement date in respect of the Muriwai School RFR site;

6.23.2 only if Pakowhai Scenic **R**eserve is on the settlement date vested in, or the fee simple estate in it is held by, the Crown; and

6.23.3 only if the **RFR** land is not being disposed of in the circumstances provided by sections 85 to 94 of the draft settlement bill.

7 SETTLEMENT LEGISLATION, STATUS OF GOVERNANCE ENTITY, CONDITIONS, AND TERMINATION

SETTLEMENT LEGISLATION

7.1 Within 6 months after the date of this deed the Crown must propose the draft settlement bill for introduction to the House of Representatives.

7.2 The bill proposed for introduction may:

7.2.1 contain provisions giving effect to the settlement of the historical claims of Te Whakarau and Rongowhakaata; and

7.2.2 include changes agreed in writing by the governance entity and the Crown; and

7.2.3 include provisions relating to the establishment of the local leadership body.

7.3 Ngai Tāmanuhiri and the governance entity must support the enactment of the settlement legislation.

7.3A To avoid doubt, the Crown will still satisfy its obligation under clause 7.1 if the provisions relating to the establishment of the local leadership body are not included in the draft settlement bill for introduction to the House of Representatives.

SETTLEMENT CONDITIONAL

7.4 This deed, and the settlement, are conditional on the settlement legislation coming into force.

7.5 However, the following provisions of this deed are binding on its signing:

7.5.1 clauses 5.5, 5.21, 5.30 to 5.35, 6.2, 6.3 and 7.1 to 7.12; and

7.5.2 parts 4 to 7 of the general matters schedule.

7: SETTLEMENT LEGISLATION, STATUS OF GOVERNANCE ENTITY, CONDITIONS, AND TERMINATION

MAORI FISHERIES ACT 2004

7.6 The parties acknowledge that the Maori Purposes Bill No 234-1 currently before the Maori Affairs Committee, if enacted, will amend the Maori Fisheries Act 2004 to enable the transfer of mandated iwi organisation (**MIO**) status and fisheries settlement assets from an existing MIO to another separate entity belonging to the same iwi (**MIO amendment**).

7.7 If, by the second reading of the draft settlement bill, the MIO amendment has not been enacted, the Crown will introduce by way of supplementary order paper an amendment to the draft settlement bill that will replicate, in relation to Ngai Tāmanuhiri, the MIO amendment (as set out in the Maori Purposes Bill No 234-1).

REMOVAL OF CHARITABLE STATUS

7.8 The settlement legislation will, on the terms provided by part 4 of the draft settlement bill, provide, to the extent that any assets and liabilities of the trustees of the Ngai Tāmanuhiri Whānui Trust and the asset holding company of the trustees of the Ngai Tāmanuhiri Whānui Trust are held subject to any charitable trusts, that those assets and liabilities remain the assets and liabilities of the relevant entity, but freed of all charitable trusts.

EFFECT OF THIS DEED

7.9 This deed –

7.9.1 is "without prejudice" until it becomes unconditional; and

7.9.2 in particular, may not be used as evidence in proceedings before, or presented to, the Waitangi Tribunal, any court, or any other judicial body or tribunal.

7.10 Clause 7.9 does not exclude the jurisdiction of a court, tribunal, or other judicial body in respect of the interpretation or enforcement of this deed.

TERMINATION

7.11 The Crown or the governance entity may terminate this deed, by notice to the other, if –

7.11.1 the settlement legislation has not come into force within 24 months after the date of this deed; and

7.11.2 the terminating party has given the other party at least 60 business days notice of an intention to terminate.

7.12 If this deed is terminated in accordance with its provisions, it –

7: SETTLEMENT LEGISLATION, STATUS OF GOVERNANCE ENTITY, CONDITIONS, AND TERMINATION

7.12.1 (and the settlement) are at an end; and

7.12.2 does not give rise to any rights or obligations; and

7.12.3 remains "without prejudice".

8 GENERAL, DEFINITIONS, AND INTERPRETATION

GENERAL

8.1 The general matters schedule includes provisions in relation to –

8.1.1 the effect and implementation of the settlement; and

8.1.2 the Crown's –

(a) payment of interest in relation to the settlement; and

(b) tax indemnities in relation to redress; and

8.1.3 giving notice under this deed or a settlement document; and

8.1.4 amending this deed; and

8.1.5 the use of defined terms for official geographic names.

HISTORICAL CLAIMS

8.2 In this deed, **historical claims** –

8.2.1 means every claim (whether or not the claim has arisen or been considered, researched, registered, notified, or made by or on the settlement date) that Ngai Tāmanuhiri, or a representative entity, had at, or at any time before, the settlement date, or may have at any time after the settlement date, and that –

(a) is, or is founded on, a right arising –

(i) from the Treaty of Waitangi or its principles; or

(ii) under legislation; or

(iii) at common law, including aboriginal title or customary law; or

(iv) from fiduciary duty; or

(v) otherwise; and

(b) arises from, or relates to, acts or omissions before 21 September 1992 –

(i) by, or on behalf of, the Crown; or

(ii) by or under legislation; and

8.2.2 includes every claim to the Waitangi Tribunal to which clause 8.2.1 applies that relates exclusively to Ngai Tāmanuhiri or a representative entity, including the following claims:

(a) Wai 163 – Maraetaha Block claim; and

(b) Wai 917 – Ngai Tāmanuhiri claim; and

8.2.3 includes every other claim to the Waitangi Tribunal to which clause 8.2.1 applies, so far as it relates to Ngai Tāmanuhiri or a representative entity, including the following claims:

(a) Wai 129 – Ngati Porou Land claim; and

(b) Wai 283 – East Coast Raupatu claim; and

(c) Wai 878 – Wastewater and Social Services claim.

8.3 However, **historical claims** does not include the following claims:

8.3.1 a claim that a member of Ngai Tāmanuhiri, or a whānau, hapū, or group referred to in clause 8.5.2, may have that is, or is founded on, a right arising as a result of being descended from an ancestor who is not referred to in clause 8.6.2:

8.3.2 a claim that a representative entity may have to the extent the claim is, or is founded, on a claim referred to in clause 8.3.1.

8.4 To avoid doubt, clause 8.2.1 is not limited by clauses 8.2.2 or 8.2.3.

NGAI TĀMANUHIRI

8.5 In this deed, **Ngai Tāmanuhiri** means –

8.5.1 the collective group composed of individuals who descend from one or more of Ngai Tāmanuhiri ancestors; and

8.5.2 every whānau, hapū, or group to the extent that it is composed of individuals referred to in clause 8.5.1, including the following groups:

(a) Ngāti Rangiwaho Matua:

(b) Ngāti Rangiwaho:

(c) **N**gāti Kahutia:

(d) **N**gāti **R**angitauwhiwhia:

(e) Ngai **T**awehi; and

8.5.3 every individual referred to in clause 8.5.1.

8.6 **F**or the purposes of clause 8.5.1 –

8.6.1 a person is **descended** from another person if the first person is descended from the other by –

(a) birth; or

(b) legal adoption.

8.6.2 **Ngai Tāmanuhiri ancestor** means:

(a) **T**āmanuhiri; and

(b) any other recognised ancestor of the hapū or descent groups referred to in clause 8.5.2 who exercised customary rights within the area of interest after 6 **F**ebruary 1840; and

8.6.3 **customary rights** means rights according to tikanga Māori (Māori customary values and practices), including –

(a) rights to occupy land; and

(b) rights in relation to the use of land or other natural or physical resources.

MANDATED NEGOTIATORS

8.7 In this deed mandated negotiators means the following individuals:

8.7.1 Pauline Norah Hill, Wellington:

8.7.2 Hope Nga **T**aare Tupara, Palmerston North:

8.7.3 **T**e Hemoata Dawn Pomana, **G**isborne:

8.7.4 Melanie Peti Akata Tarsau, Gisborne:

8.7.5 **R**euben **R**iki, deceased.

8: GENERAL, DEFINITIONS, AND INTERPRETATION

ADDITIONAL DEFINITIONS

8.8 The definitions in part 6 of the general matters schedule apply to this deed.

INTERPRETATION

8.9 Part 7 of the general matters schedule applies to the interpretation of this deed.

SIGNED as a deed on 5 March 2011

SIGNED by the trustees of the **TĀMANUHIRI TUTU POROPORO TRUST** as trustees of that trust and for and on behalf of **NGAI TĀMANUHIRI** in the presence of –

Na Rongowhakaata Raihania

Hope Nga Taare Tupara

WITNESS

Name: Lynnette Rerehau Pounsford

Occupation: JP

Address: 10 Elsdon Best St
GISBORNE

SIGNED for and on behalf of **THE CROWN** by –

The Minister for Treaty of Waitangi Negotiations in the presence of –

Hon Christopher Finlayson

WITNESS

Name: Tariana Turia.

Occupation: MP.

Address: Whanganui

Hon Parekura Horomia.

The Minister of Finance (only in relation to the tax indemnities) in the presence of –

Hon Simon William English

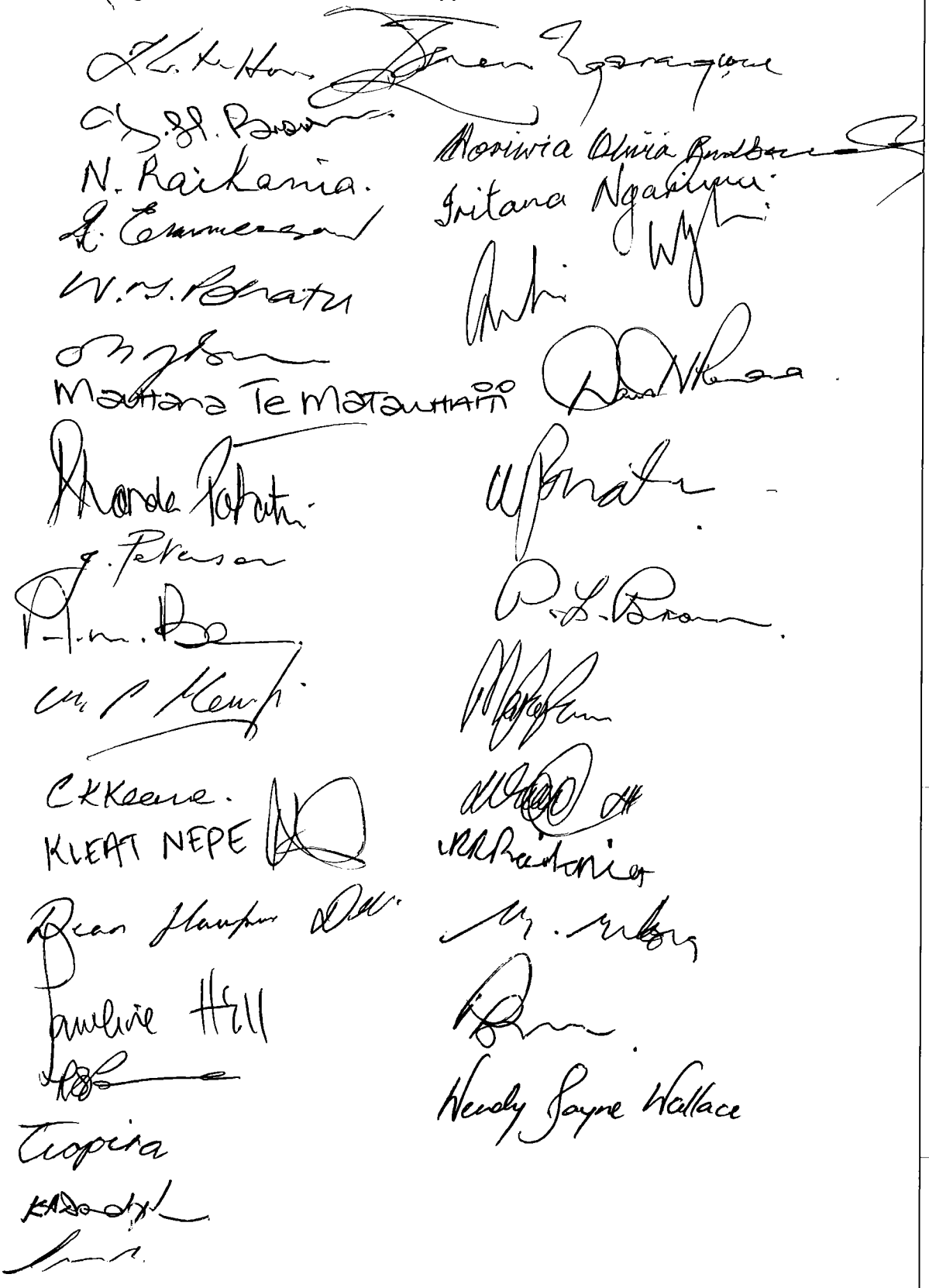
WITNESS

Name: Amokaere Houkamau

Occupation: Public Servant

Address: Wellington.

People of Ngai Tāmanuhiri signed below to indicate their support for the settlement



Takotahiwi Thompson - nee Pohatu.

Darren Thompson
Judd Thompson
Erin Thompson Pou
Aroha Thompson

Jo Haraweira nee Pohatea

Justine Haraweira
Dean Haraweira
Todd Haraweira

T. Pala. (Pohatu)
Jo Pohatu