

# STATEMENT OF POSITION AND INTENT

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BETWEEN THE CROWN

AND

TE AU MĀRO O NGĀTI PŪKENGĀ CHARITABLE TRUST

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22 AUGUST 2012

## Statement of Position and Intent between the Crown and Te Au Māro o Ngāti Pūkenga

### Introduction

1. The purpose of this document is to summarise the status of negotiations and the redress under offer between the Crown and Te Au Māro o Ngāti Pūkenga.
2. This document will be used as the basis upon which text for the final Deed of Settlement between the Crown and Ngāti Pūkenga will be arrived at. This Statement of Position and Intent is not a formal binding agreement between the parties and redress will still need to be considered by Ministers and/or Cabinet prior to inclusion in the Deed of Settlement.
3. The Crown and Te Au Māro o Ngāti Pūkenga propose to work towards a draft Deed of Settlement for the purposes of initialling in October 2012 and if ratified, signing in late December 2012.

### Progress to date

4. On 4 December 2009, the Crown confirmed the mandate of Te Au Māro o Ngāti Pūkenga to negotiate a settlement of all of the historical Treaty claims of Ngāti Pūkenga.
5. On 25 January 2010, Te Au Māro o Ngāti Pūkenga and the Crown entered into Terms of Negotiation which set out the scope, objectives and general procedures for negotiations.
6. Negotiations have now reached a stage where Te Au Māro o Ngāti Pūkenga and the Crown wish to enter into this Statement of Position and Intent recording they are willing to settle their historical claims by entering into a Deed of Settlement on the basis set out in this document.
7. Ngāti Pūkenga claim an interest in four kāinga namely Tauranga, Maketu, Manaia and Pakikaikutu. The Crown and Te Au Māro o Ngāti Pūkenga have agreed that the intention is to have one Deed of Settlement that settles all historical claims of Ngāti Pūkenga and that certain collective redress for Ngāti Pūkenga will be provided as noted in clauses 20 to 23.

### Proposed Contents of the Ngāti Pūkenga Deed of Settlement

8. The Crown and Te Au Māro o Ngāti Pūkenga have commenced discussions on the contents of a proposed Deed of Settlement.
9. It is proposed that the Deed of Settlement include the following sections. To ensure consistency, this Statement of Position and Intent will also follow the same format.
  - a. Background
  - b. Historical Account

- c. Acknowledgments and Apology
- d. Settlement
- e. Collective Redress
- f. Redress Package
- g. Settlement Legislation, Conditions and Termination
- h. General, Definitions and Interpretation
- i. Next Steps

## **SECTION A: Background**

10. The background section of the Deed of Settlement for Ngāti Pūkenga will include within it the history of the negotiation process including details of the events that gave rise to the negotiations and details of the negotiation process as summarised in clause 9 above. It will also include future processes including:
- a. Ratification and Approvals;
  - b. Agreement; and
  - c. Governance Entity to be established.

## **SECTION B and C: Historical Account, Acknowledgements and Apology**

11. The historical account, Crown acknowledgements, and Crown apology are the cornerstone of the Crown's settlement offer. The Deed of Settlement will contain an agreed historical account that will summarise the key events which defined the relationship between the claimant group and the Crown that gave rise to the breach/es of Te Tiriti o Waitangi / the Treaty of Waitangi and its principles as agreed between the Crown and the claimant group.
12. On the basis of this historical account, the Crown will acknowledge in the Deed of Settlement that certain actions or omissions of the Crown were in breach of Te Tiriti o Waitangi / the Treaty of Waitangi and its principles. The Crown will, in consultation with Te Au Māro o Ngāti Pūkenga, then offer an apology to Ngāti Pūkenga in the Deed of Settlement for the acknowledged Crown breaches of Te Tiriti o Waitangi / the Treaty of Waitangi and its principles.

### *Progress*

13. The Ngāti Pūkenga historical account is currently being drafted. Several drafts of the account have been reviewed by the Crown. This review and comments on the draft have been supplied to Te Au Māro o Ngāti Pūkenga for consideration.
14. In broad terms, the historical account is likely to reflect the relationship of Ngāti Pūkenga and the Crown through:

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- a. The origins and Traditional History of Ngāti Pūkenga;
  - i. Ngāti Pūkenga;
  - ii. Ngāti Ha;
  - iii. Te Tāwera;
  - iv. Ngāti Pūkenga beyond Tauranga Moana and Maketu;
- b. Introduction;
- c. Ngāti Pūkenga and Tauranga Moana;
- d. Te Tiriti o Waitangi and the early colonial period;
- e. The Queen's law;
  - i. The Kawau Incident;
  - ii. Kohimarama Conference;
- f. The war in Tauranga;
- g. The confiscation of the Tauranga district;
- h. The Crown's acquisition of the Katikati and Te Puna Blocks;
- i. The return of land in Tauranga;
- j. Ngāti Pūkenga land at Maketu;
  - i. The Native Land Court;
  - ii. The Arawa Consolidation Scheme;
  - iii. Maketu and Little Waihi estuaries;
- k. Pakikaikutu;
- l. Manaia: He Pataka Kai;
  - i. The Native Land Court;
  - ii. Crown land purchases;
  - iii. The Manaia 1C school site;
  - iv. Gold, timber and environment impacts;
- m. Tauranga kāinga;
  - i. The Tauranga Development Scheme;

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- ii. Uneconomic interests and status changes;
  - iii. Urban development; and
  - n. The Ngāti Pūkenga identity.
15. The historical account will draw on research and customary evidence developed for the negotiations and before the Waitangi Tribunal's Tauranga Moana, Central North Island, Hauraki, and Te Paparahi o Te Raki inquiries as well as the Waitangi Tribunal's:
- a. He Maunga Rongo – The Report on the Central North Island Claims, Stage 1 (2008);
  - b. Report on Proposed Discharge of Sewage at Welcome Bay (1990);
  - c. The Hauraki Report (2006);
  - d. The Hauraki Gulf Marine Park Act Report (2001);
  - e. Te Raupatu o Tauranga Moana – Report on the Tauranga Confiscation Claims (2004); and
  - f. Tauranga Moana 1886 – 2006, Report on the Post Raupatu Claims (2010).
16. The development of the historical account will not necessarily involve acceptance by the Crown of all the Waitangi Tribunal's findings, or detailed coverage of all the matters addressed by the Waitangi Tribunal.
17. Following the signing of this Statement of Position and Intent, the form and content of the historical account, the Crown acknowledgements and Crown apology will be finalised and agreed between the parties for inclusion in the Deed of Settlement.

#### **SECTION D: Settlement**

18. The Deed of Settlement will include a settlement section which details:
- a. acknowledgements of each party;
  - b. settlement (final settlement of historical claims);
  - c. redress (what the provision of redress is intended to achieve); and
  - d. implementation (certain actions required to give effect to the settlement).
19. The Crown and Te Au Māro o Ngāti Pūkenga will develop this section once redress has been agreed to and during the Deed of Settlement drafting stage in 2012.

## SECTION E: Collective Redress

### *Tauranga Moana Iwi Collective*

20. The Tauranga Moana Iwi are Ngāi Te Rangi (including Ngā Pōtiki), Ngāti Ranginui and Ngāti Pūkenga. These iwi are all individually working towards the settlement of their historical Treaty of Waitangi claims and have agreed that where there are shared interests, the three iwi are taking a collective approach to their negotiations through the Tauranga Moana Iwi Collective. This approach has required intensive engagement but is extremely beneficial in dealing with inter-iwi overlapping claims in respect of Crown lands.
21. Details of the agreed collective redress items are described in the Tauranga Moana Iwi Collective Statement of Position and Intent dated 22 December 2011.

### *Potential Collective Redress for Ngāti Pūkenga in Hauraki*

22. The Crown agrees to continue exploring with Te Au Māro o Ngāti Pūkenga between this Statement of Position and Intent and the initialled Deed of Settlement, potential collective redress in the Hauraki kāinga. Details of the collective redress items are yet to be agreed at this date.

### *Potential Collective Redress for Ngāti Pūkenga in Maketu and Pakikaikutu*

23. The Crown agrees to explore with Te Au Māro o Ngāti Pūkenga, between this Statement of Position and Intent and the initialled Deed of Settlement, potential collective redress in the Maketu and Pakikaikutu kāinga.

## SECTION F: Ngāti Pūkenga Redress Package

### Cultural Redress

24. The cultural redress package is based on factors such as the strength and nature of cultural associations, the redress sought by Te Au Māro o Ngāti Pūkenga and instruments available to the Crown. There are a range of cultural redress instruments designed to recognise the cultural, spiritual, historical and traditional interests of Ngāti Pūkenga.
25. All items of cultural redress are subject to the following matters being addressed before a Deed of Settlement is signed:
- where applicable and indicated, Cabinet approval of the redress;
  - the Crown confirming that any overlapping claim issues in relation to any item of cultural redress have been addressed to the satisfaction of the Crown; and
  - any other conditions set out below relating to specific items of cultural redress.
26. While the Crown and Te Au Māro o Ngāti Pūkenga will continue to negotiate areas of the cultural redress package, in terms of significant sites, Te Au Māro o Ngāti Pūkenga maintain that for Ngāti Pūkenga the highest form of redress for land is ownership.
27. The Crown will be giving serious consideration to transfer of land, where appropriate, among the range of cultural redress instruments available for recognition of Ngāti Pūkenga cultural interests. As part of the Crown's development of possible cultural redress the Crown may also consider cultural redress options in a wider landscape context.
28. The Office of Treaty Settlements will explore possible relationship redress with a range of public and private sector agencies as set out in clauses 49 to 55 below.

#### *Properties - general*

29. Following Cabinet approval in 2012, the Deed of Settlement and the settlement legislation will provide for the following cultural redress properties to be vested in the Ngāti Pūkenga governance entity on settlement date or earlier as agreed:

Part I: Various land banked properties currently held in the Office of Treaty Settlements land bank; and

Part II: Public conservation land.

#### Part I: Land bank properties

30. Te Au Māro o Ngāti Pūkenga has provided the Office of Treaty Settlements with a list of all properties in the land bank that hold cultural significance for Ngāti Pūkenga. Subject to overlapping claims resolution and Cabinet approval the Crown is prepared to offer Ngāti Pūkenga the gifting and transfer of all Tauranga Part 1 properties being the agreed

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surplus Crown properties in the Office of Treaty Settlements land bank for Tauranga. This is subject to agreement being reached between the Crown and Te Au Māro o Ngāti Pūkenga on how the costs of the properties will be met within the gifting cap or other areas of the settlement package.

31. The properties confirmed for inclusion in the Crown's settlement with Ngāti Pūkenga are outlined below. The Crown also confirms its commitment to release the land banked properties at the date of the Deed of Settlement being signed. This list is subject to confirmation by Cabinet in 2012 and final transfer values being determined.

**Table One: Land banked properties**

Physical address	Legal description	Final agreed redress mechanism
<b>Pakikaikutu</b>		
No land banked properties in the kāinga		
<b>Manaia</b>		
No land banked properties in the kāinga		
<b>Tauranga</b>		
447-479 Welcome Bay Rd ( <i>Te Kapua</i> )		
<i>Bethlehem properties:</i>		
15 Saltwood Lane	Lot 6 DPS 72376	
10 Saltwood Lane	Lot 11 DPS 72376	
14 Saltwood Lane	Lot 9 DPS 72376	
19 Allington PI	Lot 22 DPS 72376	
5 Allington PI	Lot 19 DPS 72376	
6 Saltwood Lane	Lot 13 DPS 72376	
4 Allington PI	Lot 28 DPS 72376	
17 Allington PI	Lot 21 DPS 72376	
8 Saltwood Lane	Lot 12 DPS 72376	
15 Allington PI	Lot 20 DPS 72376	



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<b>Physical address</b>	<b>Legal description</b>	<b>Final agreed redress mechanism</b>
19 Saltwood Lane	Lot 8 DPS 72376	
17 Saltwood Lane	Lot 7 DPS 72376	
5 Saltwood Lane	Lot 5 DPS 72376	
12 Saltwood Lane	Lot 10 DPS 72376	
<b>Maketu</b>		
No land banked properties in the kāinga		

32. Any land bank properties listed above that may be selected as deferred selection properties will be available to Ngāti Pūkenga for a specific period following the settlement date. That period is to be agreed between this Statement of Position and Intent and the initialled Deed of Settlement. Upon expiry, any properties not taken by Ngāti Pūkenga will then be made available to the Tauranga Moana Iwi Collective Joint Venture Holding Company ("JVHC"). This proposal is yet to be confirmed by Cabinet.
33. The Crown acknowledges that Ngāti Pūkenga seek the gifting of all of these lands.

**Part II: Public conservation lands**

34. The Crown received a consolidated list of priority sites of significance from Te Au Māro o Ngāti Pūkenga. These sites of significance were identified by Ngāti Pūkenga and formally approved for inclusion in the Ngāti Pūkenga settlement package by Ngāti Pūkenga. The sites are believed to be located on public conservation land.
35. Cultural redress over public conservation land is designed to reconnect iwi to places of spiritual, cultural and historical importance to iwi, which are located on public conservation land. There are a range of cultural redress instruments which can be applied to make up a cultural redress package.
36. These range from non-exclusive recognition through statutory acknowledgements (which strengthen iwi involvement in Resource Management Act 1991 processes) and deeds of recognition (which strengthen iwi involvement in Department of Conservation's operational planning matters) through to overlay classifications (a high level of recognition that acts on Department of Conservation's day to day and strategic management of a site) and transfer of land into iwi ownership with appropriate protections on the conservation values.
37. The Crown aims for a balance in any cultural redress package, to reflect the strength and nature of the significance of the sites to iwi.
38. In consultation with Te Au Māro o Ngāti Pūkenga, the Crown is assessing the sites identified as being of significance to develop cultural redress as part of a cultural redress package for Ngāti Pūkenga. The Crown has a long standing policy of retaining in Crown ownership, on behalf of the public of New Zealand, marginal strips along waterways and

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the coast. As part of the Crown's development of possible recognition of Ngāti Pūkenga interests in their sites of significance, the Crown may also consider cultural redress options in a wider landscape context.

39. Thus far, the Crown has been able to develop possible redress options for the Tauranga sites listed below. The Crown agrees to explore possible redress options in respect of the lands in Manaia between this Statement of Position and Intent and the initialled Deed of Settlement. All redress options are made on a without prejudice basis and are subject to Cabinet approval and the resolution of overlapping claims.

**Table two: Public conservation lands**

<b>Site</b>	<b>Physical description</b>	<b>Legal description</b>	<b>Final agreed redress mechanism</b>
<b>Pakikaikutu</b>			
No public conservation lands in this kāinga			
<b>Manaia</b>			
Manaia survey liens blocks		Manaia (1B & 2B) E1 and (1B & 2B) D1 blocks of approximately 129.6258 ha	
Manaia Crown purchase block including the maunga Hauturu		Section 31, Block II Hastings Survey District of approximately 799.6588 ha. and formerly known as the Manaia (1B & 2B) sections E2A1 and E2E1	
<b>Tauranga</b>			
Otukopiri		Section 26 Block XV Tauranga Survey District	
Te Tioroa		Crown Land Survey Office Plan 25092/2	
Otawa		Part Otawa 2. Part	

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Site	Physical description	Legal description	Final agreed redress mechanism
		Proclamation 10454	
Otara (location and size of site to be confirmed)		To be confirmed	
<b>Maketu</b>			
No suitable public conservation lands in this kāinga			

Next steps

40. Identify the cultural and conservation values of the sites of significance to the iwi.
41. Finalise options for cultural redress over public conservation land for consideration by Ministers and Cabinet.

*Conditions for cultural redress properties*

42. The vesting of the cultural redress properties is subject to (where relevant):
  - a. further identification and survey of sites;
  - b. final written confirmation from the Crown that each of those properties are available including confirmation that no prior offer back or third party right, such as those under the Public Works Act 1981, exists in relation to the site and that any other statutory provisions that must be complied with before the site can be transferred are complied with;
  - c. any specific conditions or encumbrances (such as a tenancy, lease, license, easement, covenant or other right or interest whether registered or unregistered) in respect of the site to be vested, either existing at the date of Deed of Settlement is signed, or which are advised in the disclosure information as being required to be created;
  - d. the rights or obligations at the settlement date of third parties in relation to fixtures, structures or improvements;
  - e. the creation of marginal strips where Part 4A of the Conservation Act 1987 so requires;
  - f. sections 10 and 11 of the Crown Minerals Act 1991;
  - g. any other specific provisions relating to cultural redress properties that are included in the Deed of Settlement;

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- h. the Crown confirming the nature and extent of overlapping interests to the sites and being satisfied that these interests have been appropriately safeguarded; and
  - i. the preservation of existing public access rights.
43. Unless otherwise specified in the Deed of Settlement, the Governance Entity will be responsible for the maintenance of the cultural redress properties, including any future pest control (including flora and fauna), fencing, interpretation material, required biosecurity responses, and removal of refuse if required.
44. The Governance Entity will also be responsible for any rates that become payable after vesting of the cultural redress properties in the Governance Entity.
45. Following the signing of this Statement of Position and Intent, the Crown will prepare disclosure information in relation to each site, and will provide such information to Te Au Māro o Ngāti Pūkenga. If any sites are unavailable for transfer for any reasons given above the Crown has no obligation to substitute such sites with other sites but, in good faith, will consider alternative redress options.

**Other cultural redress**

46. Te Au Māro o Ngāti Pūkenga and the Crown agree that following the signing of this Statement of Position and Intent and before the initialled Deed of Settlement, the Crown will explore the following potential redress:
- (a) co-governance and co-management arrangements (together with other iwi / hapu that have interests);

<b>Pakikaikutu</b>
To be dealt with at a collective level in accordance with clause 23.
<b>Manaia</b>
To be dealt with as part of the Hauraki Collective Negotiations in accordance with clause 22.
<b>Tauranga</b>
To be dealt with at a collective level in accordance with clauses 20 and 21.
<b>Maketu – to be dealt with in accordance with clause 23</b>
Waihi Estuary
Maketu Estuary
Kaituna River

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(b) statutory acknowledgements over the following rivers, islands, areas and sites of importance to Ngāti Pūkenga. The names and location of sites marked with an asterisk need to be confirmed:

<b>Pakikaikutu</b>	
No rivers, islands, areas and sites of importance owned by the Crown	
<b>Manaia</b>	<b>Feature</b>
Manaia River	River
Manaia Harbour	Harbour
Otamatoa*	River
Tawawawahi*	River
<b>Tauranga</b>	<b>Feature</b>
Amaru Te Waihi*	Site
Motuotau Island	Island
Moturiki Island	Island
Omatata*	River
Tahawai Stream	River
Takahi Paru	Tahuna
Te Tioroa	Tahuna
Te Toto	Tahuna
Uretureture Bay	Bay
Waimapu Stream	River
Waiomahuru*	River
Waipu Bay	Bay
Wairere (source)*	River
Waitao Stream	River
<b>Maketu</b>	<b>Feature</b>
Kaikokopu Canal	River

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47. The Crown also agrees to explore with Te Te Au Māro o Ngāti Pūkenga following the signing of this Statement of Position and Intent and before the initialled Deed of Settlement, the potential for statutory acknowledgements:
- a. in relation to the coastal areas from Waihi Estuary to Mauao and from Waikaraka to and including Parua in Northland (place names to be confirmed); and
  - b. in relation to geothermal areas within the Ngāti Pūkenga area of interest.
48. If agreed by the Crown, statutory acknowledgements will provide for the Crown to acknowledge in the settlement legislation statements by Ngāti Pūkenga of their cultural, spiritual, historical, and traditional association with those rivers, islands, areas and sites, which will be non-exclusive and relate only to those Crown-owned portions of the riverbeds, and which will be on similar terms, in substance, to those provided in previous Treaty settlements.

## **Relationship Redress**

### *Relationships with local government*

49. Initial Crown meetings with Tauranga City Council, Western Bay of Plenty District Council and Bay of Plenty Regional Council have been productive. All councils are prepared to participate in the development of the Tauranga Moana Iwi Collective's Moana framework and are ready to engage with Tauranga Moana iwi, including Ngāti Pūkenga, on other issues such as cultural sites.
50. Letters of introduction will be sent from the Minister for Treaty of Waitangi Negotiations to the Whangarei District Council, Northland Regional Council, Thames-Coromandel District Council and Waikato Regional Council encouraging them to enter into a formal relationship with Ngāti Pūkenga and engage with Ngāti Pūkenga on issues such as cultural sites and the environment.

### *Relationships with central government*

#### Right of first refusal for fish species introduced into the quota management system

51. The Ministry for Primary Industries has proposed a right of first refusal to Te Au Māro o Ngāti Pūkenga that enables Ngāti Pūkenga to purchase at fair market value a proportion of Crown-owned quota for specified species within their area of interest, should those species be introduced into the quota management system. The right of first refusal lasts for fifty years and applies only to a percentage of surplus quotas held by the Crown.
52. Letters of introduction will be sent from the Minister for Treaty of Waitangi Negotiations to the Ministries listed below and drafts will be prepared for Te Au Māro o Ngāti Pūkenga to consider no later than one month of the signing of the Deed of Settlement.

Ministry for Primary Industries

Ministry for Business, Innovation and Employment

Ministry of Education  
Ministry of Social Development  
Ministry for the Environment

53. The Office of Treaty Settlements is exploring a relationship (or relationships) between Ngāti Pūkenga and the Ministry for Culture and Heritage, the Department of Internal Affairs (which includes the National Library of Zealand and the Alexander Turnbull Library) and Te Papa Tongarewa. Ngāti Pūkenga has met with these agencies to discuss taonga in national collections and taonga tūturu.

*Other Relationships*

54. Letters of introduction will be sent from the Minister for Treaty of Waitangi Negotiations to the Bay of Plenty Tertiary Partnership, University of Waikato, Bay of Plenty Polytechnic Te Whare Wananga o Awanuiarangi, University of Auckland, Massey University, NorthTec, Te Wananga o Aotearoa, Te Wananga o Raukawa and Waiariki Institute of Technology on behalf of Ngāti Pūkenga. Drafts will be prepared for Te Au Māro o Ngāti Pūkenga to consider no later than one month of the signing of the Deed of Settlement.

55. A letter of introduction will be sent from the Minister for Treaty of Waitangi Negotiations to Telecom New Zealand Limited on behalf of Ngāti Pūkenga in relation to Kopukairoa maunga. A draft will be prepared for Te Au Māro o Ngāti Pūkenga to consider no later than one month of the signing of the Deed of Settlement. The Crown further agrees to explore how it will initiate, support and broker negotiations between Ngāti Pūkenga and Telecom New Zealand Limited in relation to Kopukairoa.

**Financial and Commercial Redress**

56. The Deed of Settlement will outline the financial and commercial redress to be provided by the Crown.

*Financial redress*

57. Te Au Māro o Ngāti Pūkenga and Crown negotiations in respect of the financial and commercial redress amount are ongoing.

*Interest and on-account payment*

58. Following the signing of this Statement of Position and Intent, and before initialling of the Deed of Settlement, Te Au Māro o Ngāti Pūkenga and the Crown will explore:

- a. the provision of interest on the financial and commercial redress amount; and
- b. the provision of an on-account payment before the settlement date.

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*Commercial property redress*

59. The Deed of Settlement and the settlement legislation will, if relevant, provide for:
- a. the Crown to transfer selected commercial redress properties to the Governance Entity on the settlement date; and
  - b. any other commercial redress agreed between the parties.

*Conditions of commercial redress properties*

60. The transfer of the commercial redress properties will be subject to (where relevant):
- a. the consent of the relevant Crown agency;
  - b. confirmation that no prior offer back or other third party rights and obligations, such as those under the Public Works Act 1981, exist in relation to the property and that any other statutory provisions that must be complied with before the property can be transferred are complied with;
  - c. any express provision relating to specified properties that are included in the Deed of Settlement;
  - d. standard terms of transfer and specific terms of transfer application to the specified property;
  - e. any rights or encumbrances (such as tenancy, lease, licence, easement, covenant or other right or interest whether registered or unregistered) in respect of the property to be transferred, either existing at the date of Deed of Settlement is signed, or which are advised in the disclosure information to be provided to Te Au Māro o Ngāti Pūkenga as being required to be created;
  - f. the creation of marginal strips where Part 4A of the Conservations Act 1987 so requires, except as expressly provided;
  - g. sections 10 and 11 of the Crown Minerals Act 1991; and
  - h. the Crown confirming the nature and extent of overlapping claims to the properties and the Crown being satisfied that these interests have been protected.
61. Following the signing of this Statement of Position and Intent, the Crown will confirm whether any commercial redress properties will be unavailable for transfer to the Governance Entity. The Crown will then prepare disclosure information in relation to each property that is available for transfer to the Governance Entity and will provide such information to Te Au Māro o Ngāti Pūkenga. If any properties are unavailable for transfer for the reasons given in the paragraph above, the Crown has no obligation to substitute such properties with other properties but, in good faith, will consider redress options.
62. In the context that certain of the kāinga of Ngāti Pūkenga do not have any commercial properties available for redress within their respective areas of interest the Crown and Te Au Māro o Ngāti Pūkenga agree to explore other potential redress.



## **SECTION G: Settlement Legislation, Conditions and Termination**

63. This section will describe the settlement legislation, post settlement governance arrangements, deed and settlement conditions, the effect of the deed, and termination clauses.

### **Status of this document**

64. The parties acknowledge that this document summarises the position reached in the negotiations to date. It is entered into without prejudice to the respective positions of the parties.

65. The parties further acknowledge that because this document is a summary of the position reached in the negotiations, it is not legally binding and does not create enforceable legal relations. The objective of the parties is to reach a final Deed of Settlement that will be binding according to its terms.

66. As a consequence of the acknowledgements referred to in clauses 64 and 65 above, this document is not to be used as evidence, or as an interpretative guide in aid of any matter, in any proceedings before, or presented to, the Courts, the Waitangi Tribunal, or any other judicial body or tribunal. However, this document can be produced to prove its existence and to prove any of the matters referred to in this clause.

67. Terms of Negotiation agreed on 25 January 2010 will continue to apply.

## SECTION H: General, Definitions and Interpretation

### Claimant Definition

68. The Deed of Settlement will specify who is covered by the settlement, that is, whose claims are being settled and therefore who can benefit from the settlement.
69. The detail of the definition of Ngāti Pūkenga will be developed further over the course of the negotiations for inclusion in the Deed of Settlement and will use a format similar to that used for recent Treaty settlements.
70. The Deed of Settlement will also define key terms of the claimant definition.

### Scope of Settlement

71. The Deed of Settlement will settle all the historical claims of Ngāti Pūkenga. Historical claims means every claim made by Ngāti Pūkenga (in accordance with the claimant definition to be developed in accordance with clause 69 above) or by a representative entity of Ngāti Pūkenga:

- wherever the claim occurs, including any claims relating to matters outside the Area of Interest;
- whether or not the claim has arisen or been considered, researched, registered, or notified;
- whenever the claim is made (either before, on, or after settlement date):

that:

- a is founded on a right arising from Te Tiriti o Waitangi / the Treaty of Waitangi or its principles, under legislation, at common law (including aboriginal title or customary law), from a fiduciary duty or 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 any legislation; and
- c accordingly includes (without limiting the general wording of (a) and (b) above):
  - i every claim to the Waitangi Tribunal that relates specifically to Ngāti Pūkenga, including:
    - a. Wai 148;
    - b. Wai 162;
    - c. Wai 210;
    - d. Wai 285;
    - e. Wai 637;

- f. Wai 751;
  - g. Wai 851;
  - h. Wai 1441; and
  - i. Wai 1703.
- d. all other claims to the Waitangi Tribunal, insofar as they relate to Ngāti Pūkenga, including all claims, insofar as they relate to Ngāti Pūkenga, that were subject of findings and recommendations by the Waitangi Tribunal in the Te Raupatu o Tauranga Moana - Report on the Tauranga Confiscation Claims 2004 and Tauranga Moana 1886-2006 – Report on the Post Raupatu Claims 2010, He Maunga Rongo – The Report on the Central North Island claims, Stage 1 (2008), Report on Proposed Discharge of Sewage at Welcome Bay (1990), The Hauraki Report (2006) and the Hauraki Gulf Marine Park Act Report (2001).

72. The definition of historical claims does not include:

- a any claim that a member of Ngāti Pūkenga [or a whānau, hapū or group referred in the claimant definition developed in accordance with clause 69] may have that is, or is founded on, a right arising as a result of being descended from an ancestor who is not an ancestor of Ngāti Pūkenga hapū; and
- b any claim that a representative entity may have to the extent that such claim is, or is based on, a claim referred to in (a) above.

73. The format for the definition of historical claims will be discussed in the process of finalising the Deed of Settlement and will use a format similar to that used for recent Treaty settlements.

## **Proposed Terms of the Deed of Settlement**

### *Acknowledgements concerning the settlement and the redress*

74. The Crown and Ngāti Pūkenga will acknowledge in the Deed of Settlement that:

- a the negotiations resulting in this Deed of Settlement have been conducted in good faith and in the spirit of co-operation and compromise by Ngāti Pūkenga;
- b it is not possible to:
  - i assess fully the loss and prejudice suffered by Ngāti Pūkenga as a result of the events on which the historical claims are based; or
  - ii compensate Ngāti Pūkenga fully for all the loss and prejudice suffered;
- c the foregoing of full compensation and the redress contained in this Deed of Settlement is intended by Ngāti Pūkenga to be for the benefit of all New Zealanders;
- d taking all matters into consideration (some of which are specified in this paragraph) the settlement is fair in the circumstances; and

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- e the settlement is intended to enhance the ongoing relationship between the Crown and Ngāti Pūkenga (both in terms of Te Tiriti o Waitangi/the Treaty of Waitangi and otherwise).

*Acknowledgements concerning the settlement and its finality*

75. Ngāti Pūkenga and the Crown will acknowledge (amongst other things) in the Deed of Settlement that the settlement of the historical claims:

- a will prevent any member of Ngāti Pūkenga (or any representative entity of Ngāti Pūkenga) from pursuing claims against the Crown (including claims based on Te Tiriti o Waitangi/the Treaty of Waitangi or its principles, or based on legislation, common law (including aboriginal title or customary law), a fiduciary duty or otherwise) if such claims come within the definition of historical claims;
- b except as expressly provided in the Deed of Settlement or the settlement legislation, the parties rights and obligations remain unaffected;
- c is not intended to affect any actions or decisions under:
  - i the Deed of Settlement between Māori and the Crown dated 23 September 1992 in relation to Māori fishing claims;
  - ii the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;
  - iii the Fisheries Act 1996;
  - iv the Māori Fisheries Act 2004; or
  - v the Māori Commercial Aquaculture Claims Settlement Act 2004.

76. Te Au Māro o Ngāti Pūkenga will acknowledge and agree (amongst other things) in the Deed of Settlement, and the settlement legislation will provide that, with effect from the settlement date:

- a the historical claims are settled;
- b the settlement of the historical claims is final;
- c the Crown is released and discharged from any obligations, liabilities and duties in respect of the historical claims;
- d the Courts, the Waitangi Tribunal and any other judicial body or tribunal do not have jurisdiction (including the jurisdiction to inquire into or to make a finding or recommendation) in respect of:
  - i the historical claims;
  - ii the Deed of Settlement;
  - iii the redress provided to Ngāti Pūkenga and the Ngāti Pūkenga Governance Entity in the settlement; and
  - iv the settlement legislation,

(except in respect of the interpretation and enforcement of the Deed of Settlement and the settlement legislation); and

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e any proceedings in relation to the historical claims will be discontinued.

77. The Deed of Settlement will provide for Ngāti Pūkenga to acknowledge and agree the following:

- a it is intended that the settlement is for the benefit of Ngāti Pūkenga and may be for the benefit of particular individuals or any particular iwi, hapū, or group of individuals as is determined appropriate between Te Au Māro o Ngāti Pūkenga and the Crown; and
- b the settlement is binding on Ngāti Pūkenga and the Ngāti Pūkenga Governance Entity (and any representative entity of Ngāti Pūkenga).

*Removal of statutory protections and termination of landbanking arrangements*

78. Agreement by Ngāti Pūkenga to the Deed of Settlement includes agreement to the following:

- a the settlement legislation will provide that the following legislation does not apply to the cultural redress properties, namely:
  - i sections 8A-8HJ of the Treaty of Waitangi Act 1975;
  - ii sections 27A to 27C of the State Owned Enterprises Act 1986;
  - iii sections 211 to 213 of the Education Act 1989;
  - iv part III of the Crown Forests Assets Act 1989; and
  - v part III of the New Zealand Railways Corporation Restructuring Act 1990;
- b the settlement legislation will provide for the removal of all resumptive memorials from the Cultural Redress Properties;
- c the land bank arrangements in relation to Ngāti Pūkenga will cease;
- d that neither Ngāti Pūkenga nor any representative entity of Ngāti Pūkenga have, from the settlement date, the benefit of the legislation referred to in (a) above in relation to land outside the Area of Interest; and
- e that neither Ngāti Pūkenga nor any representative entity of Ngāti Pūkenga will object to the removal by legislation or the application of the legislation referred to in (d) above in relation to any land outside the Area of Interest, or to the removal of memorials with respect to such land.

## **Conditions**

79. The Deed of Settlement will be subject to the following conditions:

*Overlapping interests*

- a the Crown confirming that overlapping interests from other tribal groups in relation to any part of the settlement redress have been addressed to the satisfaction of the Crown in respect of that item of redress;

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*Cabinet agreement*

- b Cabinet agreeing to the settlement and the redress to be provided to Ngāti Pūkenga;

*Ratification*

- c Te Au Māro o Ngāti Pūkenga obtaining, before the Deed of Settlement is signed, a mandate from the members of Ngāti Pūkenga (through a process agreed by Te Au Māro o Ngāti Pūkenga and the Crown) authorising them to:
  - i enter into the Deed of Settlement on behalf of Ngāti Pūkenga; and
  - ii in particular, settle the historical claims on the terms provided in the Deed of Settlement;

*Ngāti Pūkenga Governance Entity*

- d the establishment of an entity (the “Ngāti Pūkenga Governance Entity”), prior to the introduction of settlement legislation that the Crown is satisfied:
  - i is an appropriate entity to which the Crown will provide the settlement redress;
  - ii has a structure that provides for:
    - a. representation of Ngāti Pūkenga;
    - b. transparent decision-making and dispute resolution processes; and
    - c. full accountability to Ngāti Pūkenga; and
  - iii has been ratified by the members of Ngāti Pūkenga (through a process agreed by Te Au Māro o Ngāti Pūkenga and the Crown) as an appropriate entity to receive the settlement redress; and
- e the Ngāti Pūkenga Governance Entity signing a Deed of Covenant to provide for it, among other things, to be bound by the terms of the Deed of Settlement.

*Settlement legislation*

80. This Statement of Position and Intent and the Deed of Settlement will be subject to:

- a the passing of settlement legislation to give effect to parts of the settlement and;
- b Ngāti Pūkenga supporting the passage of settlement legislation.

81. The Crown will propose settlement legislation for introduction into the House of Representatives only after the Ngāti Pūkenga Governance Entity has been established and ratified in accordance with clauses 79(c) and 79(d).

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82. The Crown will ensure that Te Au Māro o Ngāti Pūkenga or the Ngāti Pūkenga Governance Entity has appropriate participation in the process of drafting the settlement legislation and such drafting will commence as soon as reasonably practicable.
83. The Crown must propose the draft settlement bill for introduction to the House of Representatives by the latter of the following:
- a 12 months after the date of the signing of the Deed of Settlement; or
  - b 12 months after the signing of the Tauranga Moana Iwi Collective Deed.
84. In doing so the Crown may elect the extent to which such draft settlement bill deals with, in addition to the deed, the Tauranga Moana Iwi Collective Deed and any other deed of settlement with the other iwi who comprise the Tauranga Moana Iwi Collective.

### **Taxation**

85. The Deed of Settlement will include the following taxation matters:
- a subject to obtaining the consent of the Minister of Finance, the Ngāti Pūkenga Governance Entity will be indemnified by the Crown against income tax and GST arising from the transfer of Cultural, Financial and Commercial Redress by the Crown to the Ngāti Pūkenga Governance Entity; and
  - b neither the Ngāti Pūkenga Governance Entity nor any other person shall claim a GST input credit or tax deduction in respect of any Cultural, Financial and Commercial Redress provided by the Crown to the Ngāti Pūkenga Governance Entity.

### **Definitions**

86. Key terms used in this Statement of Position and Intent are defined as follows:

**Crown** means:

- a the Sovereign in right of New Zealand; and
- b includes all Ministers of the Crown and all Departments; but
- c does not include:
  - i an Office of Parliament;
  - ii a Crown Entity; or
  - iii a State Enterprise named in the First Schedule to the State-Owned Enterprises Act 1986.
  - iv a mixed ownership model company (within the meaning of section 45P of the Public Finance Act 1989).

**Cultural Redress** means the redress offered for the settlement of the historical claims as set out in clauses 24 to 55.

**Cultural Redress Properties** means those properties referred to in Tables 1, 2 and 3.

**Deed of Settlement** means the Deed of Settlement to be entered into between the Crown and Ngāti Pūkenga.

**Ngāti Pūkenga Governance Entity** means an entity established in accordance with clause 79(d).

**Historical Claims** has the meaning set out in clause 71.

**Ngāti Pūkenga** means the collective group, and groups and individuals, to be defined in the Deed of Settlement in accordance with paragraph 69.

**Settlement Date** means the date that is 20 business days after the date the settlement legislation comes into force, being the date on which the settlement redress is to be transferred to the Ngāti Pūkenga Governance Entity.

**Settlement Legislation** means the Bill or Act, if the Bill is passed, to give effect to the Deed of Settlement.

**Te Au Māro O Ngāti Pūkenga** means the charitable trust incorporated under the Charitable Trusts Act 1957 as "Te Au Māro o Ngāti Pūkenga Charitable Trust" and being the entity mandated by the iwi of Ngāti Pūkenga to negotiate and settle the historical claims of Ngāti Pūkenga.

## SECTION I: Next Steps

### *Continue negotiations*

87. Negotiations will continue with a view to the Crown and Ngāti Pūkenga reaching agreement of outstanding issues and concluding a Deed of Settlement.

### *Overlapping claims*

88. Te Au Māro o Ngāti Pūkenga Deed of Settlement will be subject to the Crown confirming that overlapping interests from other tribal groups in relation to any part of the settlement redress have been addressed to the satisfaction of the Crown in respect of that item of redress.

89. The proposed strategy is based on a commitment from Te Au Māro o Ngāti Pūkenga entering into ongoing dialogue with those overlapping iwi groups who have not already provided support for the proposed redress package and the Crown's fiduciary duty to ensure it retains the ability to achieve a fair settlement with other groups in varying stages of the Treaty settlement process.

90. The proposed strategy is based on, but not limited to, the following general process:



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- a. Te Au Māro o Ngāti Pūkenga Statement of Position and Intent is made publicly available;
- b. Crown advises all overlapping iwi of Ngāti Pūkenga interests, who are asked to confirm their interests directly with Te Au Māro o Ngāti Pūkenga;
- c. overlapping iwi enter into hui to discuss redress with Te Au Māro o Ngāti Pūkenga;
- d. Crown seeks comments from overlapping iwi to identify level of agreement;
- e. Crown to identify unresolved overlapping claims and propose an approach to ensuring issues are addressed appropriately among themselves (which may include facilitation and mediation); and
- f. Minister for Treaty of Waitangi Negotiations is updated on unresolved issues and his decision sought on final redress allocation.

*Consultation and ratification*

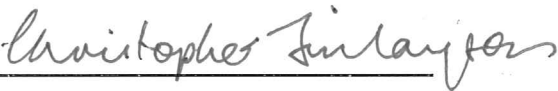
91. Before the Deed of Settlement is finalised, the Crown intends to consult (as appropriate) with agencies, public interest groups, and other third parties with a direct involvement in the territorial customary rights areas.
92. Once concluded, the Deed of Settlement will be the subject of an agreed ratification process.

WITHOUT PREJUDICE  
NGĀTI PŪKENGĀ STATEMENT OF POSITION AND INTENT

SIGNED THIS

DAY OF

For and on behalf of the Crown:

  
\_\_\_\_\_

Hon Christopher Finlayson  
Minister for Treaty of Waitangi Negotiations

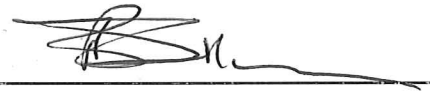
  
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Hon Dr Pita R Sharples  
Minister of Māori Affairs

For and on behalf of Ngāti Pūkenga by Te Au Māro o Ngāti Pūkenga

Chairman, Te Au Māro o Ngāti Pūkenga

Printed Name *Renua Smalman*

  
\_\_\_\_\_

Authorised Signatory for Ngāti Pūkenga:

Printed Name

  
\_\_\_\_\_

Authorised Signatory for Ngāti Pūkenga:

Printed Name

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