NGĀ HAPŪ O TE WHĀNAU A APANUI

me

TE KARAUNA | THE CROWN

TE WHAAKAETANGA O NGĀ KEREME TAWHITO

DEED OF SETTLEMENT OF HISTORICAL CLAIMS

“Kei te ringa au o te toa”

Initialling version for presentation to ngā hapū o Te Whānau a Apanui

[*date*]

TE WHĀRIKI MŌ TE KŌRERO A APANUI

He honore, he kororia, he maungarongo ki te whenua,
He whakaaro pai ki ngā tangata katoa,
Āmine

Taku mana

Taku mana Māori he mana Māori motuhake
I heke iho mai ra i a Toi-te-huatahi
Motatau mai tawhiti Te Auripo
Te Autaha Hinehaowhenua
Nāna ko Hinekaewa ko Muturangi
Ko Tanepawhero ka moe i a Tuariki
Heke iho mai i a Tamatekapua
Nāna ko Wahiawa ka puta mai ra ko Turirangi
Ka moe i a
Rongomaihuatahi
Heke iho mai i a Porouariki
Ka puta ko te Kuti
Ka puta ko te Wera
Ka puta ko te Haua
Ko Apanui e!

KO TE KUTI, KO TE WERA, KO TE KAUA, KO APANUI E

Te Whānau a Apanui have been positioned upon the lands from Te Taumata o Apanui to Potikirua continuously, and without interruption, for more than 14 successive generations. This is affirmed in tribal histories.

According to Te Whānau a Apanui, Te Taumata o Apanui is the name of the headland that forms part of the traditional border between Te Whānau a Apanui and Ngai Tai. This headland used to be known as Parahaki. It takes its name “Te Taumata o Apanui” from the event where Apanui Ringamutu, the eponymous ancestor of Te Whānau a Apanui, took refuge on Parahaki after the separation from his first wife Kahukuramihiata, who returned to her native Ngāti Kahungunu lands. While at Parahaki, Apanui was given two wives, sisters from Ngai Tai, Te Kohepare and Te Whaaki. These marriages cemented relationships, and ultimately a diplomatic and whakapapa bond, between the two neighbouring iwi. The puna (spring) know as Te Waiokota, slightly inland from Te Taumata o Apanui, is also a significant boundary marker for the iwi.

Apanui also went on to marry a fourth wife, Kiritapu. The marriage(s) of Apanui Ringamutu to Te Kohepare, Te Whaaki and Kiritapu produced the stock ancestry of the hapū from Te Taumata o Apanui through to Te Kaha.

From Te Kaha, the lands of Te Whānau a Apanui are amalgamated under affiliated hapū that descend from the Hinemāhuru whakapapa line to Rongomaihuatahi; the mother of Apanui Ringamutu. Hinemāhuru was a descendant of Rutanga, from whom she inherited her mana.

Apanui Ringamutu was born to Rongomaihuatahi and Turirangi, a Ngaariki chief, at Tunapahore, Hāwai, where they were in occupation at the time. Rongomaihuatahi’s whānau, through her older brother Te Aotakaia, bestowed upon Apanui Ringamutu the mana of the lands and seas under

his mantle from Potikirua to Puketapu. Rongomaihuatahi was the daughter of the ancestress Hinemahuru, whose lineage placed her as a woman of some mana throughout the Tairawhiti.

Potikirua marks the northern boundary between Te Whānau a Apanui and Ngati Porou. These lands were previously governed under the tipuna Rutanga, and eventually came to be known as Te Whānau a Pararaki, prior to that gifting. Pararaki held those lands as a custodian for the Hinemahuru whānau. Turirangi, Apanui Ringamutu's father subsequently bestowed the mana of the lands to which he held chieftainship at the time, from Parahaki to the Motu river. The small remaining portion between these two territorial endowments was the land occupied by Ngaariki, including descendants of Turirangi's first marriage to our ancestress Hinetama.

The close interrelationship and complex dynamic between Apanui Ringamutu and the descendants of his father's first marriage eventually culminated in the Ngaariki peoples being subsumed under the chieftainship of Apanui Ringamutu; and thus joined the lands from Te Taumata o Apanui to Potikirua under the tribal appellation it is now known, Te Whānau a Apanui.

One of the tribal narratives of Apanui Ringamutu, is drawn upon throughout this deed, as the iwi continues to draw many instructive lessons from that tribal history. Apanui Ringamutu, as a relatively young rangatira, fought several times against a particular adversary, but was frustrated in battle on a number of occasions. In seeking to improve the position of the iwi in battle Apanui Ringamutu went to seek the counsel of a well-known tohunga, Kinomoerua, who lived near Tauranga.

His arrival was heralded by a tui calling to his tohunga 'Tahia te marae' to prepare him for approaching visitors. When the tohunga queried who the manuhiri was, the mokai of Kinomoerua announced, after seeing battle weary Apanui approaching 'Ko te kuti, ko te wera, ko te haua'; the humble description remains a tribal identifier.

Upon reaching Kinomoerua, Apanui Ringamutu was taken to the mouth of the Tauranga Harbour, where he was guided to observe three occurrences in the natural world from which he could learn from, and these have become kōrero tuku iho, or intergenerational knowledge, for Te Whānau a Apanui. First, Apanui was instructed to observe the rock, Tirikawa. Kinomoerua also told Apanui to observe the waves crashing on Te Toka a Tirikawa – many times waves would cover the rock but each time it would reappear. Te Whānau a Apanui recall this lesson in the tribal saying 'Ka ngaro, ka ngaro, ka ea, ka ea, Te Toka a Tirikawa'. Tirikawa was steadfast and immovable no matter the strength of the waves or the storms that raged around it.

Second, Apanui was taken to the sand bank to observe a flock of karoro (seagulls). As the waves rolled over the sand bank, the birds would quickly lift off, only to alight again when the waves had passed by. The karoro were agile and adaptive. They had to react quickly and regularly to the changing waves and shifting sands.

Lastly, Apanui was taken to observe the kawau (the shag). On leaving its perch, the kawau flew in a straight line high above the water so it could see everything below it. Once it had singled out its prey, it would commit itself completely into a dive, and would always surface with a fish in its beak. The kawau was aware of all the variables, it had veracity and was efficient and effective in its execution. The tohunga talked to Apanui about the need to keep up the pressure when attacking his enemy.

TE PŪTAKE O TE KŌRERO

Te Whānau a Apanui have some immutable and unchanging principles that are akin to Tirikawa, the rock and anchor point that remains steadfast despite adversity and an ever-changing world. These principles are a cornerstone of Te Whānau a Apanui tikanga, identity and existence. They include:

- **Toitū te Mana Atua**: the Atua is the spiritual source of life, tapu, mauri and mana that guides the hapū of Te Whānau a Apanui in all decisions.

- **Toitū te Mana Motuhake**: the hapū of Te Whānau a Apanui have unbroken, inalienable and enduring self-determination over their territory and all that exists within it.

- **Toitū te Tiriti o Waitangi**: the hapū of Te Whānau a Apanui and the Crown are bound to honour and uphold Te Tiriti o Waitangi.

- **Toitū te Ao Tūroa**: Te Whānau a Apanui are required to live in balance and harmony with the natural world and all living things.

- **Toitū te Oranga whānui**: the hapū of Te Whānau a Apanui have rights and associated obligations to ensure their cultural, spiritual, physical, environmental, social and economic well-being.

- **Toitū te Mana o Ngā Hapū**: the hapū of Te Whānau a Apanui each possess their own mana, tikanga and kawa, however, collective obligations also exist to preserve the unity and mana of the tribe to ensure the wise management of the entire tribal territory.

The purpose of this deed for Te Whānau a Apanui is to put a stake in the ground on the journey towards these principles being fulfilled and honoured. The kōrero from Apanui Ringamutu "Kei te ringa au o te toa" is a rallying cry for all Te Whānau a Apanui to come together and move forward.

In this deed, the hapū of Te Whānau a Apanui and the Crown look to the past and the deep grievances caused to Te Whānau a Apanui as a result of the Crown's historic breaches of Te Tiriti o Waitangi/the Treaty of Waitangi. These breaches were an assault on and eroded the full expression of the principles above. Te Whānau a Apanui consider the colonial method deployed by the Crown to have been systemic and intentional. The impact of the Crown not honouring and upholding Te Tiriti is pervasive and will be felt for many generations to come.

This deed seeks to reset the relationship between Te Whānau a Apanui and the Crown and pave a new way forward. It recognises the rangatiratanga of the hapū of Te Whānau a Apanui and acknowledges that Te Tiriti o Waitangi is the foundation for the conduct of the present and on-going relationship between Te Whānau a Apanui and the Crown.

The parties to this deed are ngā hapū o Te Whānau a Apanui, Te Taumata o Ngā Hapū o Te Whānau a Apanui and the Crown. The parties to this deed recognise that ngā hapū o Te Whānau a Apanui are the Crown's Treaty partner and have the mana to enter into this deed with the Crown. Te Taumata assumes rights, obligations and functions as a party to this deed as a mahi entity that acts for the benefit of ngā hapū o Te Whānau a Apanui and to uphold their mana. To represent this relationship, only ngā hapū o Te Whānau a Apanui is listed on the front page of this deed alongside the Crown.

This deed should not be considered to represent the full embodiment of mana motuhake or codify the Te Whānau a Apanui and Crown Te Tiriti o Waitangi based relationship moving forward. Te Tiriti is a living document that will require each generation to work out what it requires in their

context. However, this deed in light of the historic actions of the Crown in breach of Te Tiriti, seeks to take a meaningful step in the right direction towards embodying the promise and spirit of Te Tiriti. It is entered into in good faith, and with the intention of creating meaningful change for Te Whānau Apanui so that present and future generations can move to a state of environmental, economic, social, cultural and political security.

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A. NGĀ WHAKARITE

1 BACKGROUND

CONTEXT

The hapū of Te Whānau a Apanui

1.1. Te Whānau a Apanui are indigenous peoples. Their ancestors migrated to Aotearoa from Hawaiki, their spiritual homelands, about 1,000 years ago.

1.2. The appellation Te Whānau a Apanui is ordinarily used to refer to the following twelve hapū that occupy the lands from Te Taumata o Apanui (formerly known as Parahaki) to Potikirua and include:

1.2.1. Te Whānau a Haraawaka;

1.2.2. Te Whānau a Hikarukutai (also known as Ngāti Horomoana);

1.2.3. Te Whānau a Tutawake hapū (also known as Ngāti Paeakau and Te Whānau a Tuahiawa);

1.2.4. Te Whānau a Nuku (also known as Ngāti Horowai);

1.2.5. Te Whānau a Rutaia (also known as Ngāti Terewai);

1.2.6. Te Whānau a Hinetekahu (also known as Te Whānau a Toihau);

1.2.7. Te Whānau a Te Ehutu;

1.2.8. Te Whānau a Kaiaio;

1.2.9. Te Whānau a Kahurautao hapū (including Te Whānau a Te Rangi-i-runga);

1.2.10. Te Whānau a Pararaki;

1.2.11. Te Whānau a Maruhaeremuri; and

1.2.12. Te Whānau a Kauaetangohia.

1.3. Hapū, or sub-tribal, groupings are dynamic; they have shifted over time, and will continue to shift. This present deed captures a moment in time where there are twelve constituent hapū of Te Whānau a Apanui, plus Te Whānau a Tapaeururangi, further explained below. Historically there have been more, or there have been hapū organised under different tupuna appellations that have consequently merged or been absorbed into other groupings. Te Whānau a Apanui retain their right to their uniquely indigenous evolution, and whilst the agreements reflected in this deed name specific hapū groupings that does not, in perpetuity, fix those things as unmoving or unchangeable by the iwi over time.

1.4. These hapū all have a marae and can be divided into smaller groupings. They are also known by other names. A good example are the hapū that were associated with the children and adults who drowned at the Motu river. For a period of time their hapū were also known by other names, in remembrance of the tragic loss. Thus Te Whānau a Rutaia also became known as Ngai Terewai; Te Whānau a Nuku became known as Ngāti

Horowai; Te Whānau a Tutawake became known as Ngāti Paeakau and Te Whānau a Hikarukutai became known as Ngāti Horomoana.

1.5. Te Whānau a Tapaeururangi lands and territories actually sit within the territory of Ngati Porou, although Ngati Porou and Te Whānau a Apanui descend from a common ancestor, Ruawaipu. Therefore despite Te Whānau a Tapaeururangi historical claims being settled by the Ngati Porou deed of settlement, the whakapapa between the hapū of Te Whānau a Apanui and Te Whānau a Tapaeururangi is so strong that it cannot be contained by an arbitrary border line on a settlement map. Te Whānau a Tapaeururangi are included in the deed for Te Whānau a Apanui because the sacred inter-relationship requires the inclusivity of close kin. Their territorial interests remain part of Ngati Porou and are not affected by this deed.

1.6. Te Whānau a Apanui hapū identify with a stock of common ancestors, of which, Apanui Ringamutu was prominent. They can trace their whakapapa back to Apanui Ringamutu and beyond, to the ancestors that voyaged from Hawaiki. From those ancestors, the hapū of Te Whānau a Apanui are also able to trace their interconnectedness with the natural world.

1.7. Hapū are the central political unit in Te Whānau a Apanui and each hapū is effectively self-governing. Tikanga and law is made in Te Whānau a Apanui at this hapū level. Traditionally hapū have joined together as an iwi confederation for significant occasions that warranted such unity such as celebrations, external trade, regional relationships and war.

The rohe of Te Whānau a Apanui

1.8. The history of the extension and establishment of hapū mana across the Te Whānau a Apanui rohe is complex.

1.9. The inland boundary of the collective Te Whānau a Apanui hapū begins at Potikirua and heads inland to Te Peka a Te Rangihekeiho from there along the Rangaranga range to Te Pua a Rongomaitapu, hence to Kokomuka, where it turms west to Te Rangitihi, hence to Taumata o Te Awhengaio, Maunga-i-tauria-e-te-kohu, Te Hiwera-a-whakautua, Manga-o-tane, Te Pakira, Maungaparahi, Tangatapueru, Pakarutu, Te Ranganuiatai, Wairangatira, Pukakahonui, Puketauhinu, Manuka then follows the boundaries of the Pukemauri and Kapurangi Blocks.

1.10. The seaward boundary of Te Whānau a Apanui goes out to Tauritoatoa. Tauritoatoa is a sea-based boundary marker past Whakaari (or White Island) where albatross gather on the surface of the water.

1.11. The hapū of Te Whānau a Apanui have unbroken, inalienable and enduring mana over their land, seas and territory. Te Whānau a Apanui consider that this includes a right to own, control and manage their ancestral land, territories, waters and other resources. These territories are a source of health and well-being and are inextricably linked to the survival of the hapū of Te Whānau a Apanui and to the preservation and further development of their knowledge systems and culture.

Tikanga and Self-determination

1.12. For Te Whānau a Apanui, their tikanga governs the conservation, and the sustainable use and enjoyment, of their lands, territories and resources within their tribal territory. The hapū of Te Whānau a Apanui consider it their birthright to live according to their tikanga in a physically, culturally and spiritually safe and healthy environment.

1.13. On 14 June 1840 the hapū o Te Whānau a Apanui entered into a treaty with the British Crown at Te Kaha. The sacred and historic Treaty established an enduring framework for the relationship between the hapū of Te Whānau a Apanui and the Crown. Te Whānau a Apanui regard the Māori version of Te Tiriti as the authoritative treaty governing their relationship with the Crown, as that is the version their ancestors signed.

1.14. The hapū of Te Whānau a Apanui consider that when Te Tiriti was signed, they were a fully self-governing indigenous nation possessed of their collective rights. Their right to self-government, self-determination, and jurisdiction pre-dated Te Tiriti o Waitangi and was affirmed by its signing.

1.15. The hapū of Te Whānau a Apanui do not consider they ever ceded sovereignty, including through the signing of Te Tiriti o Waitangi. This is reflected not only through protest and claims but also in their oral histories and waiata.

1.16. The hapū of Te Whānau a Apanui assert that the continued ownership of te rohe o Te Whānau a Apanui is a fundamental and integral expression of the mana of the hapū of Te Whānau a Apanui. This ownership is expressed culturally as mana. In relation to land it is expressed as mana whenua, and in relation to the sea it is expressed as mana moana.

Te Whānau a Apanui Claims

1.17. Since the signing of Te Tiriti o Waitangi in Te Kaha in June 1840, Te Whānau a Apanui have shown the Crown good faith and manaakitanga in order to honour the agreement made by their ancestors. They have regarded the Crown as a protector of the rangatiratanga guaranteed to them under Article Two of Te Tiriti o Waitangi. The hapū of Te Whānau a Apanui have honoured their obligations arising under Te Tiriti.

1.18. Te Whānau a Apanui have over many years raised grievances with the Crown in respect of their actions and omissions that have breached Te Tiriti o Waitangi. Te Whānau a Apanui have, right throughout history, implored the Crown to honour their obligations.

1.19. The hapū of Te Whānau a Apanui opposed the Government's breaches of Te Tiriti o Waitangi. They have registered this opposition by making written submissions to draft legislation where it looks to impact on collective rights and interests. Apanui signatories were included in the petition Tahupotiki Wiremu Ratana made appealing for the honourable implementation of Te Tiriti o Waitangi.

1.20. In addition the hapū of Te Whānau a Apanui have sent representatives to the national hui, have hosted national Taumata, have attended the Iwi Chairs Forum, the Kingitanga, have led and participated in protest, were led by their kaumatua and kuia in the Hikoi ki Paremata (Land March) protesting the proposed Foreshore and Seabed legislation (2004), have attended the United Nations Working Group for Indigenous Populations (2004), the United Nations Committee for the Elimination of Racial Discrimination (CERD) in Geneva (2007), the International Indian Treaty Council Conference (2005), the International Indigenous Nations Treaty Summit hosted by the Enoch River Cree Nation (2006), the United Expert Seminar on Treaties, Agreement and Constructive Arrangements hosted by the Maskwacis Cree Nation (2006) and the 14th Session of the United Nations Permanent Forum for Indigenous Issues (2015) to register their opposition to repeated Crown breaches of their Treaty obligations.

1.21. Te Whānau a Apanui's claims in respect of Te Tiriti o Waitangi primarily come from the Crown's failure to recognise Te Whānau a Apanui's rangatiratanga and mana motuhake following the years after the signing of Te Tiriti o Waitangi.

NEGOTIATIONS

1.22. Te Whānau a Apanui first entered into negotiations with the Crown in respect of the recognition of Te Whānau a Apanui rights in the takutai moana in 2004 as a consequence of the Court of Appeal's decision in *Ngati Apa & Ors v Attorney-General* and the subsequent passing of the Foreshore and Seabed Act 2004. Te Whānau a Apanui acknowledge their whanaunga from Ngati Porou who invited them to enter into discussions with the Crown alongside them.

1.23. A hui was held in Kauaetangohia marae and Omaio marae in January 2003 where representatives of the hapū of Te Whānau a Apanui endorsed the decision to enter into negotiations in respect of the recognition of Te Whānau a Apanui rights in the takutai moana. Rikirangi Gage and Dayle Takitimu were also endorsed to represent Te Whānau a Apanui in these negotiations.

1.24. On 1 November 2004 the Crown and Te Rūnanga o Te Whānau entered into terms of negotiation. In the same month, the Foreshore and Seabed Act was passed into law. Despite the passing of the Act, the hapū of Te Whānau Apanui decided to continue negotiating with the Crown on a 'without prejudice' basis alongside pursuing other means in which to assert their rights and protect the interests of the present and future generations of the hapū of Te Whānau a Apanui. The negotiations culminated in the signing of a Heads of Agreement between the Crown and the hapū of Te Whānau a Apanui in 2008.

1.25. In 2009 ngā hapū o Te Whānau a Apanui agreed to put takutai moana negotiations on hold while the government undertook a review of the Foreshore and Seabed Act 2004. Following the review, the Foreshore and Seabed Act 2004 was repealed and replaced by the Marine and Coastal Area (Takutai Moana) Act 2011.

1.26. Negotiations stalled after the Crown granted a company licence to engage in exploratory drilling off the coastline of Te Whānau a Apanui. Te Whānau a Apanui opposed this action and undertook protest action in response. It resulted in mistrust of the Crown and ultimately a breakdown and erosion of the relationship between the hapū of Te Whānau a Apanui and the Crown.

1.27. In September/October 2016 the Rūnanga undertook a consultation process with the hapū of Te Whānau a Apanui. The hapū also carried out internal consultation with its members. The outcome of this consultation was that the hapū of Whānau a Apanui had again resolved to engage in direct negotiations with the Crown in respect of Whānau a Apanui's historical Treaty of Waitangi claims and claims over the foreshore and seabed claims.

1.28. On 8 August 2017 the hapū o Te Whānau a Apanui, in accordance with their tikanga, exercised their own methods of decision-making, to formally:

1.28.1. mandate Rikirangi Gage, Matanuku Mahuika and Natalie Coates to negotiate directly with the Crown;

(a) a deed of settlement settling the historical claims of ngā hapū o Te Whānau a Apanui; and

(b) recognition of Te Whānau a Apanui's customary rights in the foreshore and seabed (to be progressed in the context of the Marine and Coastal Area (Takutai Moana) Act 2011); and

1.28.2. resolve to create a Hapū Chairs Forum to meet regularly with the mandated negotiators as a means to keep the hapū informed of progress in negotiations, provide the mandated negotiators with feedback and advice about issues from a hapū perspective, and to share information.

1.29. The Crown recognised the mandate on 16 August 2017.

1.30. The mandated negotiators and the Crown by terms of negotiation dated 7 September 2017, agreed the scope, objectives, and general procedures for the negotiations. On 28 June 2019 the Crown and the hapū of Te Whānau a Apanui agreed to an "in principle" agreement. Since then, extensive negotiations have been conducted and a deed of settlement negotiated.

1.31. The negotiations have proceeded on the following basis, which is reflected in the deed of mandate and the agreement in principle:

1.31.1. mana and ultimate decision-making power resides with ngā hapū o Te Whānau a Apanui; and

1.31.2. the mandated negotiators are responsible for carrying out the mahi for the negotiations but have, at all times, been accountable to ngā hapū o Te Whānau a Apanui.

RATIFICATION AND APPROVALS

1.32. Ngā hapū o Te Whānau a Apanui undertook a two-step ratification process in respect of this deed.

1.33. Before initialling this deed, ngā hapū o Te Whānau a Apanui undertook a process to determine initial hapū support for the deed of settlement.

1.34. [Ngā hapū o Te Whānau a Apanui have, since the initialling of the deed, by a majority of:

1.34.1. [*percentage*]%, ratified this deed; and

1.34.2. [*percentage*]%, approved its signing on their behalf by [Te Taumata][a minimum of [number] of] the mandated signatories]; and

1.34.3. [*percentage*]%, approved [Te Taumata] receiving the redress.

1.35. Each majority referred to in clause 1.34 is of valid votes cast in a ballot by eligible members of ngā hapū o Te Whānau a Apanui.

1.36. The trustees of Te Taumata o Ngā Hapū o Te Whānau a Apanui (**Te Taumata**) approved entering into, and complying with, this deed by [*process (resolution of trustees etc)*] on [*date*].

1.37. The Crown is satisfied:

1.37.1. with the ratification and approvals of ngā hapū o Te Whānau a Apanui referred to in clause 1.34; and

1.37.2. with Te Taumata's approval referred to in clause 1.36; and

1.37.3. Te Taumata is appropriate to receive the redress.]

AGREEMENT

1.38. Therefore, the parties:

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

1.38.2. agree and acknowledge as provided in this deed.

B. TOITŪ TE MANA ATUA

Te Whānau a Apanui aspires to be an iwi under the mantle of Te Atua and that is living in balance and harmony with Te Ao Tūroa, actively maintaining and developing internal and external relationships, its mātauranga base, its mana, its reo, its toi wananga, its tikanga and all taonga to ensure that present and future generations achieve environmental, economic, social, cultural and political security. Te Whānau a Apanui are a spiritual people, with a cultural epistemology that centres the sacred and spiritual connection between all beings. The Crown recognise that Te Whānau a Apanui hold this uniquely indigenous worldview.

C. TOITŪ TE MANA MOTUHAKE

Mehemea na te tangata, āpōpō ka mate;
Mehemea na te Atua, ka haere tonu, ka haere tonu
[If it derived from mankind, tomorrow it will be gone;
If it is derived from Atua it will endure forever]

2 HAPŪ RANGATIRATANGA | STATEMENTS ON SOVEREIGNTY

2.1. Ngā hapū o Te Whānau a Apanui's position is:

2.1.1. The iwi is an indigenous nation. They have ongoing and enduring mana, rangatiratanga and sovereignty over the territory of Te Whānau a Apanui. Te Whānau a Apanui rely on inherent sovereignty authority and jurisdiction, acquired when the hapū of Te Whānau a Apanui settled their territory in accordance with tikanga, and consistent with accepted international law standards. This sovereignty has never been taken, ceded, voluntarily relinquished or acquired in any other way by a foreign power or government, including the Crown.

2.1.2. Accordingly Te Whānau a Apanui have never considered, and have consistently objected to, the claim by the Crown that the Treaty they signed on 14 June 1840 was a treaty of cession. Further the Treaty they signed protected Te Whānau a Apanui's territorial integrity and rangatiratanga. Te Whānau a Apanui's nationhood and rangatiratanga survived the signing of Te Tiriti o Waitangi.

2.1.3. Te Whānau a Apanui rely on their indigenous law, history, expert findings of the Waitangi Tribunal and international law, particularly the United Nations Declaration of the Rights of Indigenous Peoples, as reaffirming that they are sovereign in their own right, and entitled to the full measure of their indigenous and treaty protected rights, as a matter of law and fact.

2.2. The Crown's position is:

2.2.1. New Zealand is a constitutional monarchy. Formally, sovereignty over New Zealand is held by the King, and exercised through his Ministers in accordance with applicable law, convention and practice. That sovereignty was established by a process of constitutional and jurisdictional steps that included the signings of the Treaty of Waitangi/Te Tiriti o Waitangi by rangatira and proclamations by Governor Hobson in May 1840 and culminated in the gazetting of the proclamations of 21 May 1840 by the British Government in October 1840.

2.2.2. The Sovereign acts on the advice of New Zealand Ministers. In almost all cases Ministers are members of Parliament.

2.2.3. Ministers and their departments form the executive government. This deed is entered into by the Sovereign through his executive government. Parts of this deed will be given legal effect by Parliament (which is not the Crown, but which comprises the Sovereign and the House of Representatives). Parliament has full power to make laws.

2.3. These positions are not reconciled by this deed.

2.4. The Crown and ngā hapū o Te Whānau a Apanui agree that:

2.4.1. they have different positions on sovereignty as set out in clauses 2.1 and 2.2;

2.4.2. this deed is not intended to reconcile the different perspectives that the Crown and ngā hapū o Te Whānau a Apanui have in relation to sovereignty; and

2.4.3. nothing in this deed can be interpreted as ngā hapū o Te Whānau a Apanui relinquishing or extinguishing their claim to on-going mana, rangatiratanga or sovereignty or prevents ngā hapū o Te Whānau a Apanui from raising its views about sovereignty with the Crown in the future.

D. TOITŪ TE TIRITI O WAITANGI

3 TE TIROHANGA TŌMURI | HISTORICAL ACCOUNT

KUPU ARATAKI I INTRODUCTION

Ka ngaro ka ngaro, ka ea ka ea Te Toka a Tirikawa!

3.1. This historical account describes how the Crown has repeatedly undermined the rangatiratanga of Te Whānau a Apanui, thereby causing immense damage to the well-being of the iwi and its people. Before 1840, Te Whānau a Apanui were in full control of their own affairs. Through Te Tiriti o Waitangi, the Crown promised to protect the rangatiratanga of Te Whānau a Apanui. However, the Crown then implemented laws and policies which sought to promote colonisation and assimilate Māori into European culture. Through its acts and omissions, the Crown has caused prejudice to generations of Te Whānau a Apanui people, which continues to be strongly felt to the present day.

I MUA I TE TAENGA MAI O TE KARAUNA | PRIOR TO THE ARRIVAL OF THE CROWN

Te Whānau a Apanui before Te Tiriti

3.2. The hapū of Te Whānau a Apanui are the indigenous peoples and original inhabitants of the territory which spans from Te Taumata o Apanui to Pōtikirua. Since their initial settlement of those lands over 15 generations ago, they have remained tangata whenua of their territory and in continuous possession and occupation of the vast majority of that territory.

3.3. The land boundary of Te Whānau a Apanui begins at Pōtikirua and heads inland to Te Peka a Te Rangihekeiho, from there along the Rangaranga Range to Te Pua a Rongomaitapu, then to Kokomuka, where it turns west to Te Rangitihi, then to Taumata o Te Awhengaio, Maunga-i-tauria-e-te-kohu, Te Hiwera-a-whakautua, Manga-o-tane, Te Pakira, Maungaparahi, Tangatapueru, Pakarutu, Te Ranganuiatai, Wairangatira, Pukakahonui, Puketauhinu, Manuka, then follows the boundaries of the Pukemauri and Kapuarangi Blocks. The seaward boundary of Te Whānau a Apanui goes out to Tauritoatoa. Tauritoatoa is a sea-based boundary marker that goes out past (and includes) Whakaari (or White Island).

3.4. Te Whānau a Apanui, as a tribal confederation of inter-related hapū, evolved into a stable self-determining collective by the time Apanui Ringamutu, the ancestor from which the iwi takes its name, was entrusted the territory and the peoples upon it. Unifying under this ancestral appellation was a union between sacredly inter-related but fiercely autonomous hapū groupings, which created the body politic known as Te Whānau a Apanui.

3.5. Te Whānau a Apanui hapū had in place full systems of self-government at 1840. Those systems were based upon tikanga that has wairua at its core; a complete set of laws, values and practices that had evolved (and continues to evolve) over time to serve the unique population it was organic to. These complete systems were recognised and in place, and functioning, well before the arrival of the British to the shores of Aotearoa. This authority and status was affirmed by the Crown at the signing of Te Tiriti o Waitangi at Te Kaha on 14 June 1840.

The Crown before Te Tiriti

3.6. Over the course of its history, the British asserted authority over new lands in a range of ways, depending on factors including local circumstances and changing ideas about the nature of sovereignty. As the British Empire developed in the seventeenth and eighteenth centuries, the British often exercised authority in collaboration with local political structures and exempted indigenous communities from English law in their dealings amongst themselves. Britain often treated polities which had a degree of political organisation as having capacity to enter into treaties for a range of purposes.

3.7. When the British Government sent Captain James Cook to the South Pacific in the late 1760s, one of his instructions permitted him to "take possession of Convenient Situations" in new countries. Cook was advised to do this with the consent of any "natives" he encountered, and to obtain that consent by convincing them of the "superiority of Europeans". Cook's instructions were underpinned by a powerful belief in the value of British cultural norms, including Christianity, commerce and the spread of civilisation.

3.8. By the start of the nineteenth century, Britain's imperial policies often included supporting the growth of British trade, settlement, and missionary activity while seeking to avoid the expense of formally annexing foreign lands. However, by the early 1830s there were increasing pressures for official British intervention in New Zealand, as both commercial activity and the number of British subjects settling there increased. Missionary societies and some Māori lobbied the British Government to restrain disorderly Britons. In 1832 the British Government responded by appointing an official British Resident, James Busby, to the Bay of Islands. Imperial authorities continued to acknowledge New Zealand as being outside the Crown's sovereign territory.

3.9. By the late 1830s, the British Government believed, on the basis of incomplete information from the British Resident and others, that Māori had "already been overwhelmed", that their independence was "little more than nominal", and that settlers had already purchased much of their land. In fact, Māori societies were much stronger and far less willing to enter land transactions than the British Government had been led to expect.

3.10. The British Government decided to increase its formal presence in New Zealand. A key concern was to take control of the land trade and investigate previous land transactions. This was intended to secure the Crown's ability to fund the new colony, promote orderly settlement and development, and protect Māori from private "land-sharks". This was made more urgent by a private company (the New Zealand Company) seeking to undertake the systematic colonisation of New Zealand.

TE TIRITI O WAITANGI | THE TREATY OF WAITANGI

3.11. In 1839 the British Government instructed William Hobson to obtain Māori agreement to British sovereignty over New Zealand.

3.12. In February 1840 Hobson began negotiations to secure Māori agreement to Te Tiriti o Waitangi with iwi and hapū in Te Raki (Northland). Te Tiriti was drafted in English and translated into te reo Māori by a missionary. Most rangatira signed a te reo sheet. After the first signing at Waitangi on 6 February Hobson soon began sending agents to secure the signatures of rangatira from other districts.

3.13. On 21 May 1840 Hobson proclaimed British sovereignty over all of New Zealand, before the Crown had even presented Te Tiriti to Te Whānau a Apanui and sought to obtain their consent to British sovereignty. Many important rangatira from other iwi had not signed either. It was not until 23 days after the first proclamation of British sovereignty that Crown

emissaries carried Te Tiriti o Waitangi into what Te Whānau a Apanui consider to have been their sovereign territory. Te Tiriti was signed by four Te Whānau a Apanui rangatira.

3.14. Te Whānau a Apanui signatories were the rangatira:

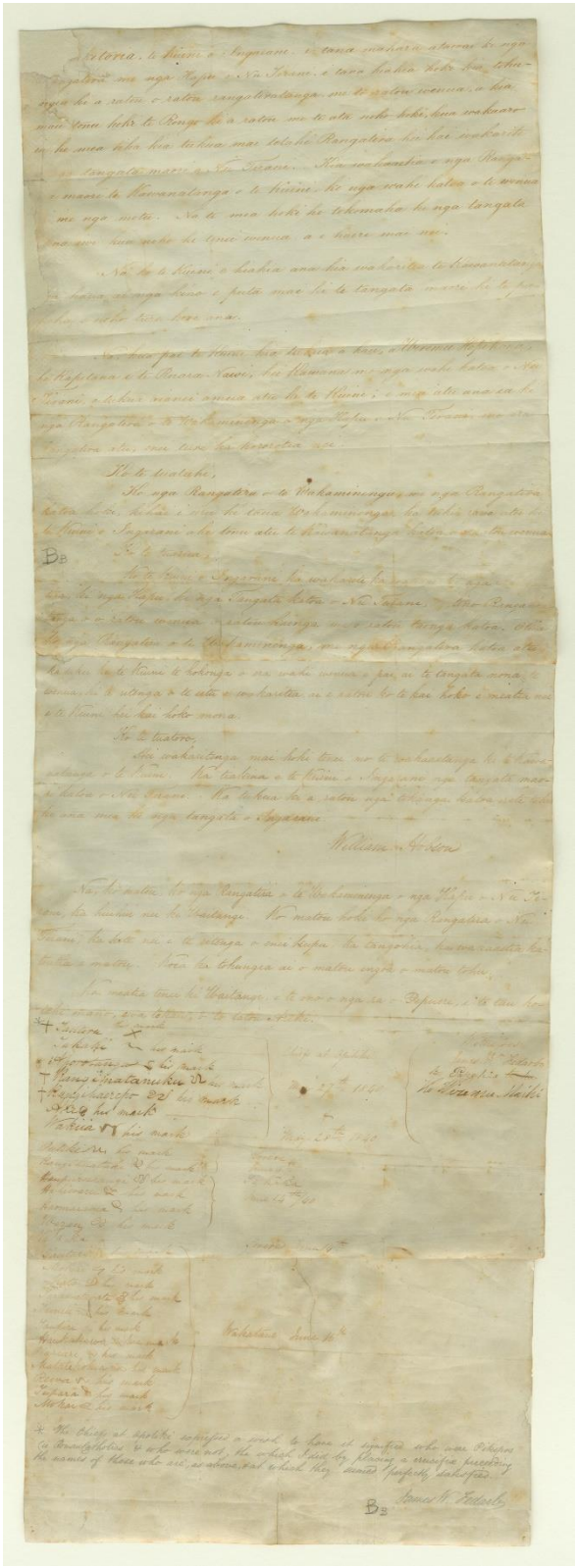
Te Aopururangi

Te Ahiwaru

Te Aomarama

Te Wharau

3.15. Te Whānau a Apanui rangatira signed the “Bay of Plenty (Fedarb)” sheet, which was in te reo Māori. No Te Whānau a Apanui rangatira signed an English language version of Te Tiriti o Waitangi.



Source: Te Tiriti o Waitangi/the Treaty of Waitangi. Tiriti ki Te Moana o Toi Huatahai - Bay of Plenty sheet (Fedarb sheet), R25403767 ACGO 8341 Archives New Zealand

This is the text that the four rangatira signed:

> Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani, i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga,

me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te ata noho hoki, kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga tangata maori o Nu Tirani. Kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini, ki nga wahi katoa o te wenua nei me nga motu. Na te mea hoki he tokomaha ke nga tangata o tona iwi kua noho ki tenei wenua, a e haere mai nei.

Na, ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata maori ki te pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau, a Wiremu Hopihona, he Kapitana i te Roiara Nawi, hei Kawana mo nga wahi katoa o Nu Tirani, e tukua aianei amua atu ki te Kuini, e mea atu ana ia ki nga Rangatira o te Wakaminenga o nga Hapu o Nu Tirani, me era Rangatira atu, enei ture ka korerotia nei.

Ko te tuatahi,

Ko nga Rangatira o te Wakaminenga, me nga Rangatira katoa hoki, kihai i uru ki taua Wakaminenga, ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu te Kawanatanga katoa o o ratou wenua.

Ko te tuarua,

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira, ki nga hapu, ki nga Tangata katoa o Nu Tirani, te tino Rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga, me nga Rangatira katoa atu, ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua, ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

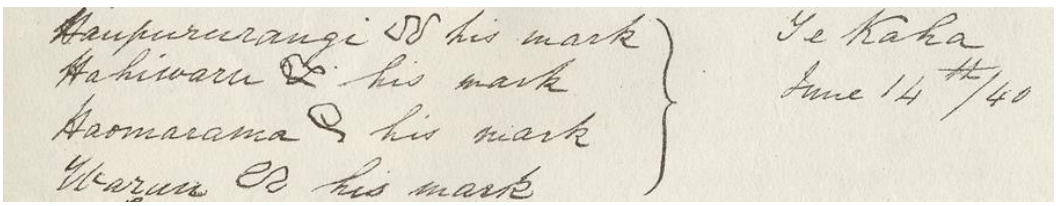
Ko te tuatoro [sic],

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini. Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani. Ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

[Signed] William Hobson

Na, ko matou, ko nga Rangatira o te Wakaminenga o nga Hapu o Nu Tirani, ka huihui nei ki Waitangi. Ko matou hoki ko nga Rangatira o Nu Tirani, ka kite nei i te ritenga o enei kupu, ka tangohia, ka wakaaetia katoatia e matou. Koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi, i te ono o nga ra o Pepuere, i te tau kotahi mano, [e waru rau] ewa tekau, o to tatou Ariki.



Signatures of the four Te Whānau a Apanui rangatira who signed Te Tiriti o Waitangi at Te Kaha on 14 June 1840

Source: Te Tiriti o Waitangi: The Treaty of Waitangi 1840, Wellington: Bridget Williams Books, 2017

3.16. The British and Te Whānau a Apanui had very different world views, and this would make it extremely challenging to achieve a shared understanding of what would be provided for in Te Tiriti. There is no record of how the Crown emissary who brought Te Tiriti to Te Whānau a Apanui explained its meaning. To this day there remains considerable debate about the meaning of Te Tiriti. Nevertheless, the sacred and historic Treaty set the framework for the relationship between the hapū of Te Whānau a Apanui and the Crown.

TE TAENGA MAI O TE TURE PĀKEHĀ | THE ARRIVAL OF ENGLISH LAW

3.17. Immediately after the signing of Te Tiriti, the Crown did not establish a physical presence in the Te Whānau a Apanui rohe. Te Whānau a Apanui remained in full control of their rohe, but the Crown, based in Auckland, started to promote laws and policies intended to begin the establishment of de facto authority. Te Whānau a Apanui, in their rohe, sought to continue to exercise their rangatiratanga as they had always done.

3.18. Despite the lack of Crown presence in the Te Whānau a Apanui rohe, European traders and whalers were active in the Bay of Plenty for several decades before Te Tiriti o Waitangi was brought to the area in 1840. From the mid-1830s, Europeans established coastal trading stations in the area. Māori communities along the East Coast exchanged flax, potatoes, maize and wheat for European goods. By the late 1840s, several East Coast tribes including Te Whānau a Apanui had acquired their own ships and were conducting trade with Auckland directly. However, the rohe of Te Whānau a Apanui attracted few permanent European settlers, due mainly to the area's isolation from main centres, the lack of a deep-water harbour, and difficult overland communications.

3.19. For over twenty years after the signing of Te Tiriti o Waitangi at Te Kaha in June 1840, there appears to have been no direct contact between the Crown and Te Whānau a Apanui. However, the Crown wanted to promote the assimilation of Māori into European culture, and legislation was enacted during this time to begin facilitating this. In some cases, the Crown recognised that that end would be achieved more effectively on a gradual basis rather than by the immediate enforcement of colonial laws. For example, the Native Exemption Act 1844 made limited provision for Māori custom and authority within colonial law relating to crimes and other offences. The Crown did not specifically inform Te Whānau a Apanui of its policy of assimilation, or about the legislation enacted at this time. Te Whānau a Apanui did not agree to these policies or legislation before they were enacted and implemented.

3.20. Notwithstanding, in 1852, the British Parliament passed the New Zealand Constitution Act, which replaced the existing 1848 Act with a new form of representative government in New Zealand, but which extended the vote only to men over 21 years of age who owned or rented property that met a minimum value, or who were the "householder" of a building that met that value. In practice this legislation excluded all Māori women and most Māori men from participation in the parliamentary process, because at that time most Māori land remained under customary tenure and local courts restricted the availability of the householder qualification.

3.21. Section 71 of the Act also provided that "native districts" could be proclaimed, within which Māori custom and law would be officially recognised. The full text of section 71 stated:

> *"And Whereas it may be expedient that the Laws, Customs, and Usages of the Aboriginal or Native Inhabitants of New Zealand, so far as they are not repugnant to the general principles of Humanity, should for the present be maintained for the*

Government of themselves, in all their relations to and dealings with each other, and that particular districts should be set apart within which Laws, Customs, or Usages should be so observed. It should be lawful for Her Majesty, by any Letters Patent to be issued under the Great Seal of the United Kingdom from time to time to make Provisions for the purposes aforesaid, any repugnancy of any such Native's Laws, Customs, or Usages, to the Law of England or to in any part thereof, in any wise notwithstanding".

3.22. This provision was never implemented despite repeated requests from Māori. Te Whānau a Apanui consider this to be a formal recognition of the continuance of their rangatiratanga.

3.23. In August 1858, the Native Districts Regulation Act and the Native Circuit Courts Act were passed to empower the Governor to create and put in force regulations over defined "Native Districts". All regulations were to be made "as far as possible with the general assent of the Native population", as ascertained by the Governor. However, the Act also provided that the issue of any Order in Council under this Act was to be considered conclusive proof of general assent to the regulation thereby made. Matters to be regulated included cattle-trespass, the creation of boundary fences, the control of thistles, the cleansing of houses, protection of public and common property, public health measures, the prevention of drunkenness, and the "suppression of injurious Native customs". The Native Circuit Courts Act enabled the Governor to appoint Resident Magistrates to these districts who would hold courts to hear, determine, and punish any offences committed under these regulations and "all Crimes, Misdemeanours, and other Offences whatever". Under this legislation, the "Native District of Waiapu", which included the northern half of the Te Whānau a Apanui rohe, was proclaimed in January 1862.

3.24. In 1861, a Resident Magistrate came to the rohe of Te Whānau a Apanui for the first time. Later in the year, another Resident Magistrate reported that Māori and Europeans resident at Te Kaha "do not appear to live on the best of terms". This was attributed mainly to the large debt burden that Māori in the area had been placed under by unscrupulous traders who had given out goods on credit, and in some instances "pressed them upon" Māori. The resulting debts were to be repaid by future crop returns, but in some cases the scale of debt approached the value of an entire year's crop. A Crown official reported that the low prices paid for Māori produce by Pākehā traders on the coast compared to the higher prices traders charged Te Whānau a Apanui for goods were a key grievance of Māori in the region. In response, Te Whānau a Apanui people had "combined" to demand higher prices for their produce.

3.25. In January 1862, another visiting magistrate observed that almost every village in the East Cape district had established a rūnanga. While rūnanga were ancient institutions in the Māori world, Māori communities began to revive them in the mid-1850s as a way to generate collective responses to new challenges arising from growing pressure to alienate land and new forms of economic activity. The Resident Magistrate reported that rūnanga had been established at Te Kaha and Raukōkore to settle disputes and misdemeanours in the immediate neighbourhood, and had "managed pretty well".

3.26. In June 1862, a visiting Crown official reported that some of the rūnanga in the Te Whānau a Apanui area were "divided between [the Māori] King and [the British] Queen". This divided loyalty reflected the circumstances of Te Whānau a Apanui at this time. On one hand, the official reported that the coastal tribes, including Te Whānau a Apanui, were in "ready communication with Auckland", and that horses, ploughs, sledges, tools and utensils were plentiful amongst Māori of the eastern Bay of Plenty, suggesting willing engagement with the new settler economy. At the same time, however, the official noted that distrust of Pākehā appeared to be growing among Māori communities in the area, including Te Whānau a Apanui. He attributed this in part to Crown military action in other

parts of the country, and also to "the long course of comparative neglect which they have experienced. The Missionary and the Magistrate have been almost entirely strangers to them".

NGĀ PAKANGA MŌ TE WHENUA | NEW ZEALAND WARS 1864–1872

3.27. The mid- to late 1860s was a time of great tension and uncertainty for Te Whānau a Apanui as they sought to protect the integrity of their territories following the Crown's military aggression in other districts. Te Whānau a Apanui consider themselves to have been neither rebels nor loyal to the Crown during the conflicts of this period. Te Whānau a Apanui based the decisions they made in the mid- to late 1860s and early 1870s on the political realities of the time, relying on their mana and rangatiratanga to protect their lands.

3.28. In the early 1860s, Te Whānau a Apanui closely followed Crown military action against Māori in other parts of the North Island. War broke out in Taranaki in March 1860 after the Crown used military force to enforce a contested land purchase. In July 1863 the Crown invaded Waikato to assert its authority and announced its intention to confiscate a large area of Waikato land.

3.29. As previously noted, Te Whānau a Apanui attitudes toward the Kīngitanga were divided. In June 1862, the Crown received a report noting that some residents of Ōmaio and Te Kaha supported the Kīngitanga movement while others supported Queen Victoria.

3.30. Early in 1864 Reverend Carl Völkner, an Anglican missionary in Ōpōtiki who provided intelligence to the Crown, reported that despite the opposition of the Te Whānau a Apanui rangatira Te Tatana Ngatawa, two members of Te Whānau a Apanui had accompanied another iwi group to Waikato to support the Kīngitanga. Later that year, a Tai-Rawhiti taua that included some members of Te Whānau a Apanui and neighbouring iwi unsuccessfully attempted to reach the Rotorua region and join the Kīngitanga cause.

3.31. War came to the eastern Bay of Plenty late in 1865 after Pai Mārire emissaries visited the region and Völkner was killed. This new religion, which sought a world based on goodness and peace, was established in Taranaki in 1862. Pai Mārire combined traditional Māori spirituality with elements of Christianity. It also sought Māori autonomy, deliverance from European control, and represented a rejection of Pākehā religious authority.

3.32. Pai Mārire emissaries had travelled from Taranaki to the East Coast and the north-eastern Bay of Plenty seeking converts and support for their political aims among local Māori. At the time of Völkner's death, the Crown had few forces available to apprehend those accused of his murder, but it remained determined to apprehend his killers and their followers. In April 1865 the Crown issued a proclamation stating its intention to suppress, if necessary, by armed force, what it described as the "fanatical" practices it associated with Pai Mārire.

3.33. By May 1865, one of the Pai Mārire leaders had entered the rohe of Te Whānau a Apanui and the captain of H.M.S. Eclipse unsuccessfully attempted to apprehend him at Raukōkore. A Crown official reported several years later that a Te Whānau a Apanui rangatira had escorted the Pai Mārire leader to the East Coast. After Pai Mārire emissaries went to the East Coast, fighting broke out between Pai Mārire adherents and their Māori opponents. The Crown supplied weapons and military support to the opponents of Pai Mārire in this fighting.

3.34. In September 1865, a Crown force invaded the Ōpōtiki region and attacked neighbouring iwi of Te Whānau a Apanui. Although the Crown did not invade the Te Whānau a Apanui rohe, it nonetheless considered some members of the iwi to be in rebellion. Following

Völkner's death, the Crown had been attempting to secure the allegiance of Māori in the north-eastern Bay of Plenty. In October 1865, a Crown official reported that he had received information that 100 Māori at Te Kaha were "undecided" about where their allegiance lay.

3.35. In December 1865, the government gunboat Sturt stopped at Orete in the north-east of the Te Whānau a Apanui rohe. A senior Crown official, Donald McLean, sent a message ashore to the local rangatira stating the Crown's terms of surrender and demanding that the rangatira decide immediately which side he was on.

3.36. The Crown threatened that Te Whānau a Apanui at Orete would have their land confiscated if they failed to swear the oath of allegiance and expel Pai Mārire emissaries from their region. Under the New Zealand Settlements Act 1863 the Crown was empowered to confiscate land from Māori it deemed to be "in rebellion against Her Majesty's authority".

3.37. After McLean delivered the Crown's terms, the Sturt sailed for Ōpōtiki where 79 Taranaki military settlers boarded the vessel before returning to Orete. Under duress, and with a sizeable armed Crown force aboard the gunboat off the coast, the rangatira and 57 of his followers then swore the oath of allegiance.

3.38. Nevertheless, in January and September 1866 the Crown issued confiscation proclamations over land in the eastern Bay of Plenty that included some land in the west of the Te Whānau a Apanui rohe. Both proclamations, issued under the New Zealand Settlements Act, 1863, fixed the mouth of the Hāparapara River (within the Te Whānau a Apanui rohe) as the north-easternmost boundary of the confiscation area. In 1867, a Crown official estimated that a total of 440,000 acres had originally been confiscated by the Crown in the eastern Bay of Plenty. This included 57,000 acres where the confiscation was not enforced.

3.39. By June 1867, the Crown had abandoned the confiscation in the west of the Te Whānau a Apanui rohe. Despite this, the Crown's 1866 proclamations under the New Zealand Settlements Act 1863 created significant uncertainty and trepidation and remain a grievance for Te Whānau a Apanui.

3.40. Between 1868 and 1872, the Crown fought a war with Te Kooti Arikirangi and his followers after Te Kooti led an escape of prisoners whom the Crown had detained without trial on the Chatham Islands. Te Kooti was to become an important figure in the history of Te Whānau a Apanui. Some Te Whānau a Apanui provided the Crown with military support during operations against Te Kooti, but he became greatly admired by others in the iwi because he championed rangatiratanga and resisted the Crown.

3.41. While in captivity on the Chatham Islands, Te Kooti founded Te Haahi Ringatū. This religious movement appealed to many Te Whānau a Apanui as a form of political resistance, and because their tikanga involved encouraging the continuation of many of their traditional practices. Te Whānau a Apanui sought political refuge in spiritual places. There was a deliberateness in how the iwi sought out allegiances that would provide support or relief to them in the face of Crown action.

3.42. Although they had formerly opposed Te Kooti, by 1885 Te Tatana Ngatawa and Paora Ngamoki were followers of Te Haahi Ringatū. Te Whānau a Apanui record in their oral tradition the journey their tūpuna undertook, by riding on horseback through hostile territory to find Te Kooti in exile in Otewa, formally seeking to extend the reach of his faith and political allegiance eastward to Apanui. They asked for the taonga of the haahi to be entrusted to Te Whānau a Apanui as a protective cloak for their descendants. Te Kooti

agreed, and both spiritual and political alliances were reaffirmed when Te Kooti later travelled to Maraenui in July 1887, where he tested the iwi in their adherence to the laws he had proscribed for the haahi. His waiata, E pā tō reo, was composed to reflect this.

3.43. E pā tō reo, e te Tai Rāwhiti e,
Pākatokato ai te aroha i ahau.
Me tika taku rori, me tika ki Maketu rā,
Hāngai tonu atu te rae kei Kōhī.
Kai atu aku mata, kai atu ki Mōtū rā,
He huihuinga mai nō ngā iwi katoa.
Hoki atu e te kino, hoki atu ki tō nohonga rā,
Kei te haere tonu mai ngā ture.
He aha rawa te mea, e tohea-riria nei e?
E tūāhae kei kōrerotia Te Rongopai.
Me tū ake e au, ki te marae o te whare nei,
Ki te whakapuaki te kupu o te Hūrae.
He aroha ia nei, ki ngā mōrehu o te motu nei e,
Mō ngā kupu whakaari e pānuitia nei.
Me kawea tatou, ki ngā wai wehe ai,
Kia mutu ake ai te aroha i ahau.

Your voice calling from Tai Rawhiti touches me,
Forlorn still the love within me.
Straight is my road, straight to Maketū there,
Then forward on to the headland at Kohi
My eyes gaze on, over to Mōtū there,
A gathering place of all the tribes.
Go back evil, return to your dwelling place,
For the laws will continue to come.
What is this thing that causes constant quarrelling?
It is jealousy lest the gospel be preached.
Let me stand up at the marae of this house,
To speak the message of July.
My concern is for the remnants of the people of this land, and
For the words of revelation being proclaimed here.
May you take us to the water to sprinkle ourselves,
So that my distress may cease.

3.44. In 1889, a Crown official noted that some Te Whānau a Apanui were followers of Te Kooti while others were not.

3.45. Te Haahi Ringatū has remained central to many Te Whānau a Apanui hapū to the present day, being seen as a backbone of strength anchored in political resistance. Other hapū in Te Whānau a Apanui sought similar political strengthening through allegiances with the Anglican Church. These hapū were influenced by their neighbouring Ngati Porou whanaunga who had earlier aligned themselves with the Church, although there is a small but distinct Haahi Ringatū presence within Ngati Porou today.

TE TURE KAI WHENUA

3.46. The Te Whānau a Apanui worldview was premised on a perception of the world as sacredly interconnected and interdependent. It was also predicated upon an understanding that humans are subordinate within the natural order, and that te ao tūroa was a physical embodiment of ngā atua (the gods).

3.47. Te Whānau a Apanui occupied land in accordance with their traditional laws, which did not require continuous, exclusive occupation, cultivation or demonstrable land use. Land was considered a taonga tuku iho inherited from ancestors and held on trust for their mokopuna. Traditional land tenure was considered contextually within the hapū and iwi dynamic. This was based on two key principles: whakapapa, or right of connection to the land; and the ability to use, occupy or defend it. There were complex layers of tribal rights to land and resources. Te Whānau a Apanui also had a robust system for resolving disputes if they arose. Land was central to the iwi, and Te Whānau a Apanui came to be renowned for both their industry and the productivity of their coastal lands which yielded bountiful crops of maize, wheat, potatoes and kūmara.

Native land laws

3.48. In 1862 the Crown introduced a new system of native land laws. The Crown intended to reform Māori land tenure, as well as introduce a new process for settling disputes about Māori land ownership. The Crown wanted its new system to facilitate the opening up of Māori land to British colonisation, and to promote the detribalisation and eventual assimilation of Māori. Customary tenure allowed for multiple and overlapping interests of iwi and hapū over the same area of land. The Crown's system of land laws did not allow for this complexity as it assigned permanent ownership to named individuals.

3.49. The new land laws provided for Māori being granted titles by the Crown, and were premised on the doctrine of radical title. This doctrine held that the Crown was the ultimate owner of all land in the colony of New Zealand.

3.50. The Crown did not consult Te Whānau a Apanui before the Native Land Acts of 1862 and 1865 established the Native Land Court. The Court was set up to determine the ownership of Māori land according to Māori custom and to provide the owners with titles derived from the Crown. Whereas Te Whānau a Apanui had a deep spiritual connection to their land, and held it collectively on the basis of whakapapa and occupation, the Court awarded rights to individuals. The Native Land Court Act 1894 allowed owners to be constituted as a body corporate which would hold legal title to a land block, but it did not allow for hapū title.

3.51. The Native Land Acts provided that any individual could make a claim to the Court without referring to or consulting their hapū or whānau. After a claim had been made to a block, all those with interests in the land were required to attend court hearings if they wished to assert their interests. If claimants did not appear in court, they risked exclusion from title

to the land. Converting customary land title to individual title made it easier for Māori land to be sold to settlers. For example, this is illustrated by the Native Land Court hearings for Whakaari.

Whakaari

3.52. The volcanic island of Whakaari in the Bay of Plenty is a taonga to Te Whānau a Apanui and is of particular importance to Te Whānau a Te Ehutu.

3.53. Whakaari was traditionally used on a seasonal basis for fishing and the harvesting of tītī. It also provided a vital lifeline to Te Whānau a Apanui during the siege of Toka a Kuka Pā in the early 1800s. Traditional narratives record the gifting of Whakaari to Te Whānau a Te Ehutu at some time in the 1820s as reward for the hapū avenging the death of the son of a rangatira from another iwi. In 1867 though, the Native Land Court awarded Whakaari to the Māori children of a Pākehā trader who presented evidence to the Court that Whakaari had been gifted to the trader's wife, who was from another iwi. Te Whānau a Apanui have long contested the trader's claim as a matter of tikanga and consider they were dispossessed of Whakaari as a result of an illegitimate transfer of Whakaari to the trader.

3.54. There are some conflicting accounts of the transaction. As noted above, testimony in the Native Land Court was that Whakaari was given to the Māori wife of the Pākehā trader. However, in 1882 the Native Minister stated in Parliament that the Pākehā trader had purchased Whakaari and his Māori heirs had taken the case to the Native Land Court. Another account of the transaction recorded in 1924 also described Whakaari being sold to the trader, rather than his wife, for a quantity of rum.

3.55. In 1867, the children of the Pākehā trader and his wife applied for a Native Land Court investigation into Whakaari. In September 1867 notification appeared in Te Waka Maori o Ahuriri that the Native Land Court would investigate title to Whakaari at a hearing in Maketū the following month. The Native Land Court minutes do not record the reasons for its decision, but the Court ultimately awarded Whakaari to the applicants.

3.56. Te Whānau a Apanui were not involved in the Maketū hearing, which took place approximately 170 kilometres from the Te Kaha rohe of Te Whānau a Te Ehutu. Te Hata Te Kakatuamaro of Te Whānau a Te Ehutu (also known as Te Hata Te Rangituamaro, Te Hata Hokopaura and Te Hata Moutara) and others later wrote to the Chief Judge of the Native Land Court stating that they had continued using the resources of Whakaari until the 1870s. The historical evidence suggests they were not aware of the Native Land Court hearings.

3.57. Shortly after the Native Land Court award, the successful applicants sold their interests in Whakaari. However, Te Whānau a Apanui continued to assert interests in Whakaari. For example, in 1874 Te Ahiwaru of Te Kaha (under the name of Tamatama-a-rangi) wrote two letters to the Government objecting to the sale of Whakaari and calling for its "return". In 1874, Whakaari was sold in a private sale to two buyers. One of the buyers worked as a Land Purchase Officer for the Crown, the other was the Member of the House of Representatives for the East Coast electorate.

3.58. Four years later, Te Hata Te Kakatuamaro and over 30 others wrote to the Chief Judge of the Native Land Court unsuccessfully seeking a rehearing of Whakaari and objecting to it being sold. They stated they were not aware of the 1820s Whakaari transaction involving the Pākehā trader and his wife, or the subsequent 1874 sale to the two Pākehā, calling both "hokonga tahaetanga" (fraudulent sales). Although his second letter does not appear to have survived, in 1879 Te Hata again wrote to the Government regarding Whakaari.

3.59. The Native Land Court considered Whakaari in November 1881 when Paora Matenga and another individual lodged an application in relation to the island. However, the claim was dismissed on the basis that no map was produced. Although the official response is unclear, the following May written objections Te Moana made to the sale of Whakaari were forwarded to the Crown.

3.60. Whakaari was also discussed in Parliament in May 1882 when the member for Eastern Māori noted Whakaari was "a matter of great importance" to Māori on the Bay of Plenty coast. He argued that the coastal Māori had not been aware of the sale of Whakaari until 1880 and requested details of how it had been alienated. The Minister of Native Affairs replied that the Crown did not have much information about the transaction. He said, however, that it appeared the island had been "sold" to the trader by another iwi prior to 1840 and that the trader's heirs had then had title investigated by the Native Land Court.

3.61. In 1884, Te Hata Te Kakatuamaro and 117 others petitioned the Crown again seeking a Native Land Court rehearing of Whakaari. The Chairman of the Native Affairs Committee reported that Whakaari had been considered by the Native Land Court in 1867 and had "been dealt with by sale". The Chairman further noted that the "Government has never dealt with [Whakaari] in any way". Two years later, the Resident Magistrate at Ōpōtiki forwarded another letter from Te Hata Te Kakatuamaro relating to Whakaari. In response, the Crown informed Te Hata that the Crown was unable to consider the matter.

3.62. Te Whānau a Te Ehutu continue to assert their interests in Whakaari. In July 1991, Tiopira Phares lodged Wai 225, the Te Puia-i-Whakaari (White Island) claim, with the Waitangi Tribunal on behalf of Te Whānau a Te Ehutu.

Surveys and Native Land Court costs

3.63. Despite their bad experience with Whakaari, Te Whānau a Apanui reluctantly started to become involved in the Native Land Court processes in the 1870s. Blocks of land had to be surveyed before the Court could determine their titles. In 1883 a Crown official reported that Te Whānau a Apanui at Maraenui and the Te Whānau a Apanui hapū of Te Whānau a Te Ehutu at Te Kaha and Te Whānau a Maruhaeremuri at Raukōkore had in the past strongly objected to surveys being made.

3.64. However, Te Whānau a Apanui had little choice other than to participate in the Native Land Court if they wished to utilise their land for economic benefit. The native land laws provided that Māori land could not be leased, sold or pledged as security unless a title to the land in question had previously been awarded by the Court.

3.65. Te Whānau a Apanui first participated in Native Land Court hearings in 1876. By 1929 they had been involved in hearings for 57 blocks containing approximately 318,000 acres. Attendance at hearings could be costly and inconvenient, and hearings often took place outside the rohe of the iwi. Thirty-six hearings for blocks in which Te Whānau a Apanui asserted interests took place in Ōpōtiki, and the 1882 hearing for the Maungawaru block was held in Gisborne, approximately 200km from the Te Whānau a Apanui rohe. This required claimants to travel to the Court, which often involved fording rivers, negotiating poor quality roads, or sailing on coastal steamers.

3.66. Attendance at Native Land Court hearings was burdensome on Te Whānau a Apanui claimants. During Court hearings, they had to leave their cultivations and were responsible for their own food and accommodation. Surveys were expensive, and there were also legal and court costs associated with hearings. Some title investigations for blocks in the Te Whānau a Apanui rohe were brief as Te Whānau a Apanui claims were not seriously contested. In those cases where other iwi disputed ownership the costs of protracted

hearings could be significant. For example, this is illustrated by the Native Land Court hearings for Tunapahore.

Tunapahore

3.67. The most protracted title investigation in which Te Whānau a Apanui were involved concerned the Tunapahore block. The first title investigation for Tunapahore was held in 1885, but the appeals and rehearings continued through to 1945.

3.68. Te Whānau a Apanui and a neighbouring iwi had disputed the rights to land at Tunapahore and adjacent blocks since at least the early nineteenth century. In 1885 the neighbouring iwi made a claim to the Native Land Court for the title to 5,449 acres at Tunapahore. After a two-week hearing the Court awarded 3,770 acres to Te Whānau a Apanui and 1,679 acres to the other iwi.

3.69. Te Whānau a Apanui disagreed with the 1885 award, but an appellate court was not created until 1894. In 1893 and 1894 Te Whānau a Apanui petitioned for a rehearing. The Chief Judge of the Native Land Court dismissed these applications, but in 1895 Parliament enacted legislation authorising a rehearing. In January 1898, the Native Appellate Court investigated the ownership of the Tunapahore block, along with that of the Kapuarangi and Takaputahi blocks. After hearing evidence from Te Whānau a Apanui and the neighbouring iwi, the Court awarded the title of the entire Tunapahore block to descendants of Te Whānau a Apanui. The Court noted that it considered the descendants of Te Whānau a Haraawaka had the best rights to the land as they were the occupiers.

3.70. The neighbouring iwi responded by petitioning Parliament for yet another rehearing of the Tunapahore case. Rather than recommend another hearing, Parliament passed legislation to appoint a Royal Commission to determine the ownership and boundaries of Tunapahore and other blocks. After several months of hearings in 1902 and 1903, the Royal Commission partitioned Tunapahore into two blocks to the north and south of the “Hawai Stream”. Tunapahore North, covering 2,628 acres, was awarded to descendants of Te Whānau a Haraawaka. Tunapahore South, covering 2,821 acres, was awarded to descendants of the other iwi.

3.71. Te Whānau a Apanui lodged a petition, in 1909, with the Native Affairs Committee calling for another rehearing of the Tunapahore case. In 1910, after hearing evidence from lawyers representing Te Whānau a Apanui and the neighbouring iwi, the Committee recommended the Government consider the Te Whānau a Apanui petition. The Chief Judge of the Native Land Court, sitting at Ōpōtiki in 1913, then conducted an inquiry into the petition. Following his recommendation, Parliament enacted legislation giving those aggrieved by the 1903 Royal Commission’s decisions six weeks to appeal.

3.72. Te Whānau a Apanui launched an appeal, which led to a hearing in 1914 before the Native Appellate Court at Ōpōtiki. The Court decided the neighbouring iwi had no rights to Tunapahore South and awarded the entire block to Te Whānau a Apanui. The Court awarded a quarter of the shares in Tunapahore South to the descendants of Te Whānau a Haraawaka, with the rest being held by descendants of the broader Te Whānau a Apanui iwi.

3.73. In the years from 1914 to 1937, the neighbouring iwi lodged a series of petitions against the Native Appellate Court’s decision. The Crown eventually responded in 1938 by setting up another Royal Commission of Inquiry to determine the ownership of the Tunapahore block.

3.74. The Commission, consisting of three Native Land Court judges, did not sit until 1944. The 1944 hearing took place over five days and was followed, in February 1945, by submissions from lawyers. The Commission then awarded 850 acres of the western area of Tunapahore to descendants of the neighbouring iwi. The remainder of the Tunapahore block was awarded to descendants of Te Whānau a Haraawaka and to descendants of the broader Te Whānau a Apanui iwi.

3.75. All told, the process for determining title to the Tunapahore block took over 60 years. Te Whānau a Apanui were eventually left with individualised titles to a partitioned Tunapahore block that did not reflect traditional ownership structures or systems of hapū organisation.

3.76. This was a particularly egregious example of the Native Land Court processes imposing heavy financial and social costs over many decades and damaging relationships in ways that continue to be felt today. Elements of this experience were evident in other blocks to various degrees.

Te Whānau a Apanui and the Native Land Court: an overview of the title hearings

3.77. Despite the ongoing engagement of Te Whānau a Apanui with the Native Land Court, by the early twentieth century title to many of their blocks had still not been investigated. Te Whānau a Apanui had made much of their coastal customary land economically productive. In 1907 a Crown-appointed land commission reported on lands held under customary title at Te Kaha that “every acre of agricultural land in the neighbourhood of Te Kaha has been for years under close cultivation, and has produced great quantities of maize” and “the kaingas are well kept, the houses are substantial and give evidence of an energetic and progressive community”.

3.78. By the end of the 1920s virtually all the land in which Te Whānau a Apanui claimed interests had passed through the Native Land Court. As a result of these hearings, Te Whānau a Apanui descendants were awarded complete or partial ownership of the following blocks: Awanui Hāparapara, Hakota, Houpoto Te Pua, Houpoto Whituare, Huruaute, Iwiroa, Kaikoura, Kapongaro, Kapuarangi, Karikarirau, Mangaroa, Maraehako, Maraenui, Matangareka, Matapapa, Maungaroa, Motuāruhe, Ohineomaoma, Ohotu, Ōmaio, Orete, Oruaiti, Otaimina, Papahaoa, Pohaturoa, Pohueroro, Pukemauri, Puketauhinu, Raekahu, Tataramoa, Tauanui, Taungaure, Tawaroa Topu, Te Anaputarua, Te Aruhe-a-Hika, Te Kaha, Te Karaka, Te Koau, Te Kumi, Te Moari, Te Poito, Te Rua, Te Waiti, Tunapahore, Waiherere, Waikawa, Waikawa Pahaoa, Waikura, Whangaparāoa, Wharawhara, and Whitianga.

Crown purchasing

3.79. The attitudes of Te Whānau a Apanui and the Crown to land differed significantly. The Crown sought to acquire Māori land for European settlement using a variety of techniques that reflected its own worldview, but not that of Te Whānau a Apanui.

3.80. A particularly stark example is that, during the nineteenth and early twentieth century, the Crown referred to Māori land that was not used for habitation or cultivations as “waste lands”. It argued that such land was of little economic value and considered it should be made available to Pākehā settlers who would improve it and increase its economic productivity. Crown officials generally held this view despite the spiritual connection Te Whānau a Apanui had to their land and the successful agricultural production of the iwi in its coastal blocks.

3.81. Between 1879 and 1898 the Crown purchased land from Te Whānau a Apanui owners in the Puketauhinu, Te Kumi and Kapuarangi blocks, all located in the Raukūmara Range

(the Raukūmara) hinterland. The combined area of these purchases was approximately 83,000 acres.

Puketauhinu: Advanced payments

3.82. In 1879 the Crown paid £200 in advance payments to another iwi for the purchase of customary land at Puketauhinu. The rangatira who received these payments acknowledged that Te Whānau a Apanui and others had interests in the block.

3.83. The Crown agreed to pay 3 shillings and 6 pence per acre for Puketauhinu. The block was to be surveyed at the Crown's expense, and 5% of the land was to be retained by the vendors as a "for ever inalienable" reserve.

3.84. Later in 1879, the Crown made an advance payment to a Te Whānau a Apanui rangatira of £200 for his interests in Puketauhinu. The Native Land Court did not investigate the ownership of this block until 1881.

Puketauhinu: monopoly powers

3.85. The Crown nearly always conducted land purchase negotiations from a privileged position through its legislative power to make itself a monopoly purchaser. In July 1879 the Crown issued a proclamation precluding any other party from acquiring interests in 30,000 acres at Puketauhinu even though the block did not come before the Native Land Court until 1881. Later, the Crown also proclaimed monopoly powers over the Te Kumi No. 1 and 2 blocks when it entered negotiations for these lands in 1894.

Puketauhinu: negotiating the price

3.86. Despite its privileged position as a monopoly purchaser, the Crown generally sought to purchase land as cheaply as possible. It was willing to exploit the straitened circumstances of Te Whānau a Apanui to achieve this goal.

3.87. Soon after the 1881 Native Land Court title investigation began, a Crown official reported that Te Whānau a Apanui were "in great want of some money & will ratify in court any agreement desired by the Crown". The Crown took advantage of this to negotiate a lower price than it had agreed to pay before the Court hearings. Te Whānau a Apanui agreed to take six pence an acre less than the Crown had promised in 1879, as well as pay the cost of surveying the reserve.

3.88. Despite the 1879 agreement, in January 1882 a Crown official reported that he had completed the purchase of Puketauhinu No. 1 for £4,650, or two shillings and seven pence per acre. The Crown believed it had acquired 35,733 acres. It deducted the £200 advance and the Te Whānau a Apanui portion of the cost of surveying the block from its payment leaving only £4,021 to be paid to the iwi.

3.89. By 1884 Puketauhinu No. 1 was found to contain an additional 3,334 acres. In late December 1884, Te Whānau a Apanui informed the Native Minister that it had spent around £200 in connection to Puketauhinu, as well as paying additional court expenses relating to the block's three Native Land Court hearings.

3.90. A rangatira requested the Crown pay 3 shillings and 6 pence per acre for the extra land to recoup Court and travel expenses. However, the Native Land Purchase Officer opposed compensating Te Whānau a Apanui for costs the iwi had incurred during the Court hearings. He reported an additional payment of 3 shillings an acre to Te Whānau a Apanui for the 3,334 acres was "sufficient". The rangatira reluctantly accepted this price.

3.91. At the same time as requesting 3 shillings and 6 pence per acre for the additional 3,334 acres, the rangatira also offered to sell 8,000 acres of the 10,000-acre Puketauhinu No. 2 reserve to the Crown. However, the Crown paid an even lower price of 2 shillings and 8 pence per acre for this land.

Te Kumi: the Crown purchase process

3.92. Following a Native Land Court hearing in January 1885, the Court issued titles for the Te Kumi No. 1 block, of 26,160 acres, and the Te Kumi No. 2 block, of 3,940 acres. In 1893, the Gisborne Land Purchase Officer informed the Chief Land Purchase Officer that there was a government survey lien of £313 and 5 shillings over Te Kumi No. 1. This particular Land Purchase Officer also acted as Native Land Court Registrar for the district.

3.93. A Pākehā settler based at Tūpāroa wrote to the Secretary of the Land Purchase Department later in 1893 asking whether the Crown intended proclaiming monopoly powers over Te Kumi. He had been negotiating its purchase and had made some payments for the block, although he had not finalised terms with the owners. A Crown proclamation would have had the effect of making it illegal for private parties to either purchase or lease Te Kumi while the Crown was negotiating purchase of the block.

3.94. The Crown paid £3,253 in February 1894 to a Te Whānau a Apanui rangatira and others for 23,709 acres of Te Kumi No. 1. On 21 August 1894, the Crown completed the purchase of the block, making additional payments of £81 16 shillings and 9 pence to other members of Te Whānau a Apanui. The Crown also paid £256 3 shillings and 11 pence to the Public Trustee to be held for six minors with interests in Te Kumi No. 1. The Crown agreed to pay £3,900, or 3 shillings per acre for Te Kumi No. 1, but deducted the survey lien. In July 1895, Te Kumi No. 1 was proclaimed Crown land under the Land Act 1892.

3.95. The Surveyor General, in 1894, informed the Auckland Crown Lands Board that Te Kumi No. 1 had been purchased and was now open for settlement. The Board decided not to make the land available for Pākēhā settlers until a report was made and the Crown acquired land to connect Te Kumi No. 1 with the coast.

3.96. Later in 1894 the Governor proclaimed that the Crown had entered into negotiations to purchase the Te Kumi No. 1 block and the Te Kumi No. 2 block. By this time, the Crown had already completed its purchase of Te Kumi No. 1.

3.97. The Native Land Court Act 1894 reimposed pre-emption over the whole country, giving the Crown greater power to dictate the prices it paid for Māori land. Pre-emption remained in place for land blocks larger than 500 acres until the Native Land Act 1909 removed all restrictions on the alienation of Māori land. This meant that Te Kumi No. 2 was not available for private purchase until after the 1909 Act came into force. In 1913 Te Kumi No. 2 was purchased by private buyers.

Kapuarangi: land sold to pay survey costs

3.98. High survey costs could be a factor in encouraging Māori owners to sell land. The survey costs involved in putting land through the Native Land Court often resulted in liens, which could lead to land being sold. In 1898 Te Whānau a Apanui offered to sell the 10,000-acre Kapuarangi No. 2 block to the Crown to pay off £501 in Crown survey debts owing on the Kapuarangi, Tunapahore and Houpoto blocks. When Te Whānau a Apanui asked 3 shillings and 6 pence per acre, a Crown official told his superior the land was good, forested land that was worth the amount asked.

3.99. However, the Native Land Purchase Department only authorised 2 shillings per acre to pay for the purchase of this block. Two rangatira travelled to Auckland to complete the purchase and were dissatisfied with the price offered, having expected at least 2 shillings and 6 pence per acre. The Crown would not increase its offer, and Te Whānau a Apanui were paid £1,000 for this block, with half of this then paid out in survey costs.

Consolidation schemes and uneconomic interests

3.100. The individualisation of title was a key goal of the Crown in promoting the native land laws. The application of those laws meant the land remaining in Māori hands had severely fragmented ownership. The Crown recognised this as a consequence of the individualisation of title. Subsequently the Crown began to carry out consolidation schemes in an attempt to alleviate this problem by concentrating all the individual interests of landowners and whānau members in single blocks so that owners would have more economically viable land holdings.

3.101. By the 1930s the Crown was carrying out a consolidation scheme in the rohe of Te Whānau a Apanui. Consolidation schemes sometimes resulted in Māori losing interests in lands where they had customary connections, and receiving interests in land where they had no customary connections. However, the schemes reflected the Crown's view that land tenure should be organised for economic purpose and not Te Whānau a Apanui tikanga. The schemes were complex and did not solve the problem of fragmented ownership.

3.102. In 1953 the Crown promoted legislation in another attempt to address the fragmentation of Māori land ownership. This legislation defined interests in Māori land with a value of less than £25 as uneconomic. It empowered the Māori Trustee to compulsorily acquire such interests and to sell them to other owners. In 1967 this power of sale was extended to allow sales to other Māori who were not owners. Between 1953 and 1974 the Māori Trustee compulsorily acquired "uneconomic interests" in at least 17 blocks in the rohe of Te Whānau a Apanui, affecting multiple whānau.

3.103. These compulsory acquisitions reflected the Crown's view of land as an economic commodity. As previously noted, this was not the way Te Whānau a Apanui viewed their whenua. Compulsory acquisitions by the Māori Trustee permanently deprived some Te Whānau a Apanui individuals of their connections to their ancestral land.

3.104. It was not until 1974 that the Māori Trustee's power to compulsorily acquire uneconomic interests was repealed. In 1987 the Crown finally promoted legislation providing for the Māori Trustee to return all uneconomic interests it held to the original owners or their successors. However, because of the large number of shares involved it took several years to find owners and revest shares, thereby prolonging the disconnection of some Te Whānau a Apanui with their ancestral land.

Te Kaha Development Scheme

3.105. Before 1929, the Crown had provided little funding for Māori to develop or utilise their lands. Following his appointment as Native Minister in 1928, Sir Apirana Ngata instituted schemes that used Crown funds to develop land for commercial agriculture. Land was to come into the schemes with the consent of the majority of owners. The Crown insisted on taking control of management of all land included in these development schemes, which Ngata characterised as "benevolent despotism".

3.106. In December 1931, the Crown established the Te Kaha Development Scheme, initially involving 1,568 acres in the Ōmaio and Wharawhara Blocks under the provisions of the

1929 legislation. The following year, the Crown extended the scheme under the Native Land Act 1931 to include approximately 40,000 additional acres, half of which was considered by the Crown to be capable of development. By March 1932, the scheme included approximately 41,800 acres of 27 blocks of Te Whānau a Apanui land at Maraenui, Ōmaio, Te Kaha, Orete and Whangaparāoa.

3.107. When the region faced economic difficulties associated with the Depression, the scheme provided work for unemployed Te Whānau a Apanui in the region. During this period, the Cape Runaway store and Post Office were taken over by the Department of Native Affairs with the store serving as a depot for development work.

3.108. The Te Kaha Development Scheme was extended on numerous occasions during the 1930s to include additional blocks and expand its area. The amount of land brought into the scheme began to slow after 1945. Meanwhile, some blocks were also released from the scheme. This was most probably because development was completed, or the land was deemed unsuitable for development. From the late 1940s an increasing number of blocks came to be released from the scheme, with the majority of these releases occurring in the 1960s. After February 1968, a development scheme continued, but the Crown stopped referring to it as the Te Kaha Development Scheme in official notifications.

3.109. The development scheme at Te Kaha and surrounding areas involved a total over 470 blocks totalling approximately 91,000 acres. The last release of blocks that had once been in the scheme appears to have occurred in 2011.

Whangaparāoa Township

3.110. In 1915 a Crown official proposed the Crown purchase land at Cape Runaway for a township site. The official noted that Cape Runaway was “destined to be the outlet for an important district”. For some time, the Cape Runaway Settlers Association had been advocating the Crown’s acquisition of a 40-acre portion of the Whangaparāoa 1B block for the township site.

3.111. The area, near the mouth of the Whangaparāoa River, already had several buildings in the immediate vicinity including a store, billiard room, boarding house, wash house, stables, a smithy, and “men’s huts”. Prior to the improvement of roads in the region, the Whangaparāoa River mouth was an important transport link as wool from stations in the area and mail were shipped from the river mouth by coastal freighters that also landed supplies.

3.112. By October 1916, the proposed township site had been valued by the Crown and a meeting of the landowners called at Whangaparāoa for the following month. In January 1917, the Under-Secretary of the Native Department noted that at the meeting the assembled owners had passed a resolution accepting a Crown offer of £3,727 for 150 acres. The resolution was confirmed by the Waiariki District Māori Land Board and adopted by the Native Land Purchase Board. In March 1917 the Governor proclaimed the 150 acres to be Crown land.

3.113. By 1919, this land had been subdivided into smaller blocks for settlement within what was by then described as “Whangaparaoa Township”. Although a Post Office was opened at Cape Runaway in 1901, money order facilities were not provided until 1914 and Post Office savings bank facilities were not established until 1920. However, by the 1920s, the idea of establishing a township at Whangaparāoa had languished and the Crown was leasing portions of the land it had proclaimed in 1917. The Governor permanently reserved sections 2 and 3 of Whangaparāoa Township as the site of Whangaparāoa Native School in 1931 after the land had been temporarily reserved in December of the previous year.

3.114. In 1951, an area of approximately 118 acres that included approximately 6 acres of Whangaparāoa Township was included in the "Whangaparaoa Development Scheme". The following year, the Crown proclaimed approximately 16 acres (again including a portion of Whangaparāoa Township) to be part of the Te Kaha Development Scheme. In December 1952, another proclamation excluded approximately 13 acres of the same land (known as Section I, Block II, Whangaparāoa Survey District) from the scheme.

3.115. In March 1958 a small section of Crown land adjacent to the existing school site was set apart under the Public Works Act 1928 and became part of Whangaparāoa Māori School. The school on this site had been established in the early 1930s after it was relocated from its original site on the north side of the Whangaparāoa River. The site is now the location of Te Kura Mana Māori o Whangaparāoa.

3.116. The Whangaparāoa Township was never established, and the expectations of Te Whānau a Apanui that they might enjoy the economic and social benefits of having a township in the north-east of their rohe were never fulfilled.

Public Works

3.117. Since the 1860s the Crown has been empowered by statute to compulsorily take Te Whānau a Apanui land for roads and other public purposes. The Native Land legislation of the nineteenth and early twentieth centuries provided for the Crown to compulsorily take up to five percent of any land block within ten years of the Native Land Court awarding title to that land. Since 1882 public works legislation has provided for the Crown to compulsorily acquire land for nearly any public purpose.

3.118. The Crown has used its powers to acquire land for roading and public purposes on a number of occasions in the Te Whānau a Apanui rohe. The blocks the Crown has compulsorily taken land from include the Tunapahore, Houpoto Whituare, Houpoto Te Pua, Maraenui, Whitianga, Ōmaio, Wharawhara, Awanui Haparapara, Hakota; Te Kaha, Maungaroa, Waikawa Pahaoa, Motuaruhe, Maraehako, Te Waiti, Te Anaputarua, Te Aruhe-a-Hika, Taungaure, Kaikoura, Kapongaro, Raekahu, Pohaturoa, Te Rua, Te Moari, Te Poito, Orete, Matapapa, Oruaiti and Whangaparāoa blocks. All twelve hapū of Te Whānau a Apanui had associations with at least one of these blocks.

3.119. Many of the Crown's compulsory takings in the Te Whānau a Apanui rohe have been for roading purposes such as the construction of State Highway 35. However, the Crown did not always construct roads on land which it took for this purpose. For example, in 1922 the Crown proclaimed land near the mouth of the Mōtū River including a portion of the Maraenui 2 block as a road line approaching the river. However, the Crown later decided to build the bridge in a different location, and the land taken from Maraenui 2 remained Crown land as an unformed road.

3.120. The Crown sometimes took land under public works legislation for one public purpose but ended up using the land for another without offering the land back to Te Whānau a Apanui. For example, in 1938 the Crown took just over 4 acres for the Te Kaha Police Station. In 1959, the Crown set aside part of this land for post and telegraph purposes. In 1972, another part of the land taken in 1938 for the police station (1 acre) was vested in the Bay of Plenty Electric Power Board for electric works and employee dwellings.

3.121. In 1949 the Crown proposed to take about 12 acres in the Motuāruhe block for road alignments on the recommendation of a surveyor who was surveying the line for the road. In 1950, the Māori Land Court, which had to determine the compensation Te Whānau a Apanui would receive for land taken under public works legislation, concluded that it was "evident and apparent that this land [was] not required for the construction of a road", but

that it was going to be taken "simply because there was an opportunity which presented itself to the surveyor to take the land." In February 1950, Apirana Ngata told the Minister for Māori Affairs that the taking of land for the road was not for the declared purpose. Ngata stated that "the taking of the seaside spots along the highway included larger areas than were required for the road and served some other purposes." In the end, the Crown agreed to take a much-reduced area of land, of about 4 acres, in July 1950.

3.122. The Crown was keen to acquire land in the Te Whānau a Apanui rohe for scenery preservation and recreational purposes, and used compulsory powers under public works and scenery preservation legislation for this purpose. For example, in 1927 the Crown used powers under the scenery preservation and public works legislation to take part of Ōmaio 43 for scenery purposes. Sometimes the Crown ended up using land it had acquired for other purposes as scenic reserves. For example, the Crown took 4 acres adjoining Whitianga No. 9 Block on the northern side of the Mōtū River mouth for a road in February 1927, but closed the road later that year and after stating it was not required for that purpose, declared it to be Crown land. In June 1927, the area was declared "permanently reserved for scenic purposes" under the Scenery Preservation Act 1908 and named Whitianga Bay Scenic Reserve. This land was designated as Tokata Scenic Reserve in 1980.

3.123. In 1939 the Crown was made aware that Te Whānau a Apanui wished to retain control over scenic areas. A memorandum from the Native Department to the Under Secretary for Lands on the taking of land for scenic areas on the coast from Ōpōtiki to Cape Runaway noted that Te Whānau a Apanui landowners were "unwilling to allow the scenic areas to pass out of their control".

3.124. In 1949 Māori representatives from parts of the eastern Bay of Plenty which Crown officials had recommended be acquired as scenic areas and camping grounds took a deputation to the Ōpōtiki County Council. They complained about the arbitrary nature of the Crown's definition of lands deemed necessary for public domains and camp sites. They stated that they had not been consulted and that some of the lands identified were farmlands necessary for their Māori owners' welfare. Prime Minister Peter Fraser (in his capacity as Minister of Māori Affairs) sent a telegram to the Member of Parliament for Eastern Māori a few weeks later, stating that there was no intention of taking land and that nothing would be done without consulting the owners.

Additional land purchases

3.125. There was a comparatively small amount of Crown land purchases in the twentieth century in the Te Whānau a Apanui rohe. In 1963, the Crown purchased some land in Maungaroa 1 bordering the state highway near Te Kaha for use as a Ministry of Works depot. Te Whānau a Kaiaio say that this land lies within a papakāinga. It lies at the foot of Te Maunga Roa, an area of great cultural significance for Te Whānau a Kaiaio. It is directly adjacent to an ancient pā site, Kopuakoaea, and contains grave sites of Te Whānau a Kaiaio tīpuna.

3.126. The Crown was not the only purchaser of Te Whānau a Apanui land in the twentieth century. For example, the Ōpōtiki County Council purchased the land which became the Hoani Waititi Memorial Reserve at Ōmaio Beach in 1965. The reserve was named after the educationalist Hoani Retimana Waititi (1926–1965).

Land retained by Te Whānau a Apanui today

3.127. Currently, there are approximately 84,500 hectares of Māori land within the Te Whānau a Apanui Area of Interest. There are approximately 169,000 hectares in the area of interest.

Nevertheless, the legally recognised tenure in which this land is owned does not reflect Te Whānau a Apanui tikanga, and has created significant ongoing impacts on the tribal landscape.

TE AO TŪROA | THE NATURAL WORLD

3.128. The hapū of Te Whānau a Apanui have, in accordance with their tikanga, an unbroken, inalienable, and enduring sacred relationship with te ao tūroa (the natural world). The spiritual source of this relationship, grounded in whakapapa, is the Atua. This relationship sits at the core of their existence and requires that Te Whānau a Apanui live in balance with te ao tūroa. They have a deep understanding of te ao tūroa. In turn, flora and fauna species have traditionally provided the hapū of Te Whānau a Apanui with their livelihood and nurtured them. The cultural, social, physical, and spiritual wellbeing of Te Whānau a Apanui is tied up in te ao tūroa.

3.129. The hapū of Te Whānau a Apanui regard it as a birth right to honour and respect the reciprocal relationship that they have with te ao tūroa. They consider that they have the right to own, control and manage their remaining lands, waters and resources within their territory in a sustainable way. Te Whānau a Apanui have always sought to live according to their tikanga in a physically, culturally and spiritually safe and healthy environment.

Raukūmara

3.130. The rohe of Te Whānau a Apanui is dominated by the Raukūmara, both inland along the mountainous ridgeline that forms the watershed between Te Whānau a Apanui and Ngati Porou, and out to sea, where the submerged Raukūmara basin forms part of the marine area of the iwi. The tribal pepeha “Raukūmara ki uta, Raukūmara ki tai” references the prominence of this geographical feature within Te Whānau a Apanui tribal consciousness; Te Whānau a Apanui are peoples whose livelihood is intimately connected with the health of the Raukūmara.

3.131. The Raukūmara is considered by Te Whānau a Apanui to be the tāhuhu (ridge beam) of their traditional lands and a taonga. It is the backbone that supports the Whare of Te Whānau a Apanui (the house of Te Whānau of Apanui). Te Whānau a Apanui regard the Raukūmara as an indivisible whole and an interconnected ngahere (forest) system that incorporates all physical and spiritual elements. The iwi has a symbiotic relationship with the Raukūmara encompassed in the expression “ka ora ai te Raukūmara, ka ora ai te iwi, ka ora ai te iwi, ka ora ai te Raukūmara” (if the Raukūmara thrives, so too does the iwi, if the iwi thrives, so too does the Raukūmara).

3.132. The approximately 495,000-acre Raukūmara is comprised of vast, rugged mountains with unique natural values. It is the largest indigenous forest remaining in the North Island, and has considerable significance to the ecology of New Zealand.

3.133. Following Captain Cook’s first voyage to New Zealand in the late eighteenth century, European ships carried multiple species of rat which have spread throughout the country and have had a devastating impact on native bird populations. In 1867, the Crown promoted the Protection of Animals Act which formally recognised the work of acclimatisation societies in introducing foreign species for farming, hunting, and because they felt nostalgic for the European environment they had left behind. Rabbits were introduced to be hunted; however, they quickly became a widespread pest. The Crown promoted the Rabbit Nuisance Act 1881 in order to reduce their numbers but, in protecting mustelids such as stoats and ferrets which were the “natural enemy” of the rabbit, the legislation enabled the spread of more pest species. Mustelids were a key agent in the

extinction of huia, whēkau (laughing owl), and kaoriki (bittern). Mustelids arrived on the East Coast from the south in the early twentieth century.

3.134. The acclimatisation societies also had a large role in introducing possums to New Zealand after 1870. Possums had previously been introduced by private parties with limited success to develop a fur industry. They became protected under the Animals Protection Act 1907 and its amendment in 1920. Possums have had a destructive impact on native forests, as well as native birds, as they eat flowers which stops the formation of seeds needed for regeneration. As the evidence of this mounted, the Crown prohibited acclimatisation societies from releasing possums from the 1920s but did not remove all their protections until 1946. By the 1950s, Te Whānau a Apanui recorded that possums had spread into the Raukūmara and they remain a problem.

3.135. Traditionally, Te Whānau a Apanui, along with their neighbours, used the land in the Raukūmara for hunting and gathering food, as well as refuge during times of war. However, by the late nineteenth century Te Whānau a Apanui had developed their agricultural practices and were able to buy European goods. In the early years of pastoral farming in the nineteenth century, cattle escaped the stations and established feral herds in the Raukūmara. By the time Te Whānau a Apanui attended the Native Land Court in the late nineteenth century to claim their inland Māori land blocks, there was limited permanent occupation of the area.

3.136. There are fourteen Māori land blocks whose boundaries contain some of the Raukūmara and the Native Land Court awarded all or part of the land to Te Whānau a Apanui in five of the fourteen blocks.

3.137. Te Whānau a Apanui shares in these five blocks comprised over 130,000 acres, including significant portions of the Raukūmara. While Te Whānau a Apanui have retained the majority of their coastal lands, there is little more than 13,000 acres, or 10%, of the inland blocks remaining in their ownership. As has been detailed in this account, between 1882 and 1913, the Crown and private parties purchased most of the land in these blocks.

3.138. The Crown had purchased the land in the Raukūmara in order to on-sell it for settlement. However, it did not sell the land and instead left it in a forested state. In 1912, the Crown established a forest reserve in the land it had purchased in the Te Kumi block.

3.139. Te Whānau a Apanui have been restricted from using the Raukūmara in their customary ways after the Crown purchased this land. For centuries, Te Whānau a Apanui have passed down their knowledge of plant and animal species and their uses in food, medicine, rituals, construction tools, dyes, clothing, and utensils. The Crown promoted the Wildlife Act 1953 which made it illegal for Te Whānau a Apanui to collect many indigenous flora and fauna species without the Crown's prior approval.

3.140. These restrictions, along with the plummeting local bird population, have meant that Te Whānau a Apanui no longer have access to the natural resources they need to create taonga such as korowai with the feathers of kākā, tūī, kiwi, and kūkupa/kererū. The impact of mammals, such as cattle and possums on plant species in the Raukūmara has also disrupted the ability of Te Whānau a Apanui to gather rongoā (medicine) species like kohekohe, makomako, patē, and puriri.

3.141. In 1979, the Crown established the Raukūmara Conservation Park of 111,021 hectares of the land it owned in the Raukūmara without consulting Te Whānau a Apanui, who have never agreed to the Park's establishment.

3.142. The Crown did not establish systematic monitoring of environmental degradation caused by pests, particularly in the interior where the land is difficult to access. Under the Crown's control, the Raukūmara has been left in a critical state of environmental decline with it now facing the possibility of forest collapse.

3.143. There is virtually no part of the Raukūmara that is unaffected by the proliferation of pest species. The range of pests now resident in the Raukūmara is vast and includes deer, possums, goats, pigs, cattle, rabbits, hares, stoats, weasels, cats, rats, mice, ferrets, and hedgehogs. They have had a significant impact on native populations of plants, birds, bats, lizards, frogs, and invertebrates. There are 45 notable native plants in the Raukūmara. Of these, 27 are at risk and 16 are threatened. Of the 36 indigenous birds, 13 are at risk and three are threatened. In particular, the whio and kiwi are in a perilous state. If there continues to be limited predator control, the whio will likely become extinct in the Raukūmara. The short-tailed bat is at risk in the Raukūmara, and the long-tailed bat is threatened. There are eight species of lizards, four of which are at risk. The Raukūmara is one of the few homes for the Hochstetter's frog; however, it is at risk and declining. Finally, there are 28 invertebrate species found in the Raukūmara and eleven of them are at risk while nine are threatened.

3.144. Increasing sedimentation as a result of the environmental decline of the Raukūmara ki uta has been a consequential negative factor in severe sedimentation in ngā awa with sediment flowing out to sea.

3.145. Though the land passed out of Te Whānau a Apanui ownership in the late nineteenth and early twentieth centuries, the iwi have maintained their connection to the land to the present day. The Crown did not provide a role for Te Whānau a Apanui in the administration of the Park during the period of New Zealand Forest Service control from 1979, nor that of the Department of Conservation from 1987. Due to the interconnected nature of people and land, Te Whānau a Apanui consider the environmental degradation of the Raukūmara harms their cultural, spiritual, and physical well-being.

Ngā Awa

3.146. The awa of the Te Whānau a Apanui rohe are the heke (rafters) of Te Whare o Te Whānau a Apanui which connect to the tāhuhu (ridgepole) of the Raukūmara. They are the lifeblood and veins of the iwi as well as their kapata kai. The rivers are central to hapū identity and well-being, connecting them to the land, sea, and airspace in their rohe. Te Whānau a Apanui exercise their tikanga in connection with the awa in their rohe including practices relating to the huamata, pure and the placing of rāhui (Ringatū planting rites, the ceremony to remove tapu, and temporary prohibitions).

3.147. There are six awa nui (large rivers) in the rohe of Te Whānau a Apanui with associated tributaries, puna (springs), and aquifers. These awa are of particular significance to those hapū that exercise kaitiakitanga over them. The awa nui include:

3.147.1. The Whangaparāoa River on the eastern side of the Te Whānau a Apanui rohe, known as the landing place of the Tainui waka. Its source is in the Raukūmara and it was used as a track to Awatere. It is a wide river and an important source of tuna, upokororo, and kokopu (eels, grayling, and cockabully) for hapū. There is a substantial moki fishery at the river mouth.

3.147.2. Moving west through the Te Whānau a Apanui rohe, the next river is the Raukōkore. It is a braided river and its course has fluctuated over time. The Raukōkore catches the headwaters of the Raukūmara, and is an "ara tipuna" (ancestral trail) between Te Whānau a Apanui and Ngati Porou. Throughout

history it has been used as a pathway for both warfare and whanaungatanga and takes its name from this history.

3.147.3. The Kereu River is also a particularly significant river. Tribal tradition recalls that a taniwha called Ruamano lives at the river mouth. The Kereu is considered to be an ara tipuna. Kahawai spawn in the summer and are fished from the Kereu River mouth.

3.147.4. The Hāparapara River traces its origin back to the ancestral story of Te Whai a Kāwa, the atua and kaitiaki of this awa. Te Whai a Kāwa and her two mōkai (companions) in the form of whai (stingray) descended from the upper realms to ensure that the natural resources of kahawai, īnanga, mārearea, kokopū (white-bait species) and kuku (mussel) provide sustenance for hapū. The presence of these mōkai is still felt today as flat rocks that exist in the shape of a whai, one in the upper reaches of the Hāparapara, and the other in and among the kuku rocks near its mouth. The Hāparapara is well used as a wāhi kaukau (swimming area) and also an ara tipuna.

3.147.5. The largest of the Te Whānau a Apanui rivers is the Mōtū. The original name is Te Motuhia ā Te Mimi ā Paoa. This derives from the tipuna Paoa who stopped for a mimi while he was racing Rongokako to Whakaari. The name of the river mouth is Matarau, which means “of many faces”, and it is said that three taniwha live at each of three river mouths of the Mōtū. It is a significant food source for kahawai, mārearea, tuna, kanae, pātiki, and īnanga (grey mullet, flounder, whitebait).

3.147.6. Finally, on the far western side of the Te Whānau a Apanui rohe is the Hawai River. Tribal tradition has it that a taniwha or kaitiaki whose form is unknown lives at the mouth of the river and is called Nōhea. Īnanga and tuna are caught in the Hawai River, with stingray, pātiki, and crabs also at the river mouth. The riparian land has been an important place for māra kai (food cultivations), where whānau once grew kūmara, rīwai (potatoes), watermelon, squash, and tree tomatoes.

3.148. Te Whānau a Apanui consider the rivers and associated tributaries in their rohe to be indivisible living entities. However, the common law applied in Courts established by the Crown legally distinguishes flowing water from the riverbed over which it flows as well as from riverbanks. The right to use water in the common law has traditionally been considered distinct from ownership of associated land.

3.149. In 1903, Parliament enacted the Water-power Act and the Coal Mines Act Amendment Act which vested in the Crown the sole right to use water for electricity generation and the ownership of the riverbeds of all navigable rivers respectively. The Crown did not consult Te Whānau a Apanui prior to promoting this legislation which Te Whānau a Apanui have never agreed with. The Coal Mines Act Amendment Act 1903 did not explicitly define which rivers were navigable, this remained to be tested on a case-by-case basis. This left a great deal of uncertainty for Te Whānau a Apanui over the impact of the statutory regime in respect of the rivers in their rohe.

3.150. Parliament went on to pass laws that gave regional and local councils the right to manage the natural and physical resources within the Te Whānau a Apanui rohe. This included having the power to make decisions that directly impacted the rivers of Te Whānau a Apanui, including the use of water as well as the use of land adjacent to rivers. This denied the hapū of Te Whānau a Apanui their rangatiratanga and ability to exercise decision-making authority over the awa in their rohe within the parameters of the law.

3.151. In 1957 the Crown began considering the viability of the Mōtū River as a source of hydro-electric power. The following year, the Houpoto management committee permitted the Ministry to establish a camp on 4 acres of the Houpoto Te Pua No. 1 block for workers involved in the hydro investigations. With the government's focus changing to South Island hydroelectric power generation and alternative energy sources, the Mōtū scheme was shelved in 1965, but the Mōtū was included in the Crown's 1976 power plan, which indicated the Mōtū hydroelectric scheme would be producing power by 1986.

3.152. However, in 1982, the Queen Elizabeth II National Trust applied for a Conservation Order covering the Mōtū River. A committee established by the Water and Soil Conservation Authority heard evidence regarding the scenic and recreational benefits of the Mōtū River and its importance as a wildlife habitat. No Te Whānau a Apanui witnesses appeared before the committee, and their interests were largely ignored in written submissions. In 1984, with no apparent consultation with Te Whānau a Apanui, the Crown issued a Water Conservation Order over the Mōtū River and its tributaries to preserve it in its "natural state".

3.153. Te Whānau a Apanui remain concerned over the environmental degradation of their awa since 1840. Hapū have recorded concerning impacts from farming, forestry work, and agriculture. They have watched riverbanks become eroded, flooding, and an increase in sedimentation. As the waterways run brown, Te Whānau a Apanui have recorded the harm to the aquatic ecosystems and fish life. For example, Te Manihera Waititi tells of the upokororo that used to be abundant in the Whangaparāoa and Raukōkore rivers but is now extinct. Te Whānau a Kaiaio and Te Whānau a Kahurautao have also reported that after a rubbish dump was established on the banks of the Kereu River in the 1980s, the kahawai population went into decline and only recovered after the dump was closed. The degradation of the awa in their rohe and their associated marine life has had an adverse impact on customary practices and the ability of Te Whānau a Apanui to derive both physical and spiritual nourishment from the waters in their rohe and the life living within them.

Te Moana

3.154. Te Whānau a Apanui are people of the sea. Their primary relationship with Tangaroa is grounded in whakapapa and their identity is therefore intimately interwoven with the moana. The moana is significant to Te Whānau a Apanui as a source of cultural, spiritual, physical and economic sustenance. Te Whānau a Apanui consider the moana, and their relationship with it, to be a taonga. Because Te Whānau a Apanui mostly liveon a strip of coastal land, the ocean is also their māra (front garden) and a part of everyday hapū life. Te Whānau a Apanui sustainably managed and regulated the coastal marine area in their rohe through their tikanga and kawa, for many generations, including through the use of rāhui.

3.155. Te Whānau a Apanui have developed extensive mātauranga in relation to the moana that informs their relationship with it. They recall that Rehua (a deity) gave Te Whānau a Apanui special fish, including maomao and kahawai, to care for and to feed their whānau and hapū. The moki is another special fish and strict tikanga around its collection and use (such as only hanging it by its tail because of the tapu nature of its head) has developed.

3.156. Te Whānau a Apanui oral history records that they have utilised the bounty of the sea since their ancestors first arrived on the shores of their rohe. This continued after the signing of Te Tiriti o Waitangi. In the nineteenth century, for example, Te Whānau a Apanui developed whaling stations at Maraenui, Ōmaio, Te Kaha and Whangaparāoa. By 1900, whaling was a major economic activity for Te Whānau a Apanui. Te Whānau a Apanui

have also utilised the moana for travel, transportation, communications and trade activities.

3.157. The coastal marine area contains a unique but fragile ecosystem. All organisms within the moana, and the water itself, are part of an interconnected framework that the hapū of Te Whānau a Apanui want to ensure is maintained. Te Whānau a Apanui have actively discouraged activities which threaten the biodiversity of an area or a species. This includes commercial fisheries that, over the years, have gone on to adversely impact on fish stocks and food sources. Before 1937, there was no attempt by the Crown to restrict entry to commercial fisheries. By 1940 a licence was required. A new permit and registration system was adopted by Parliament through the Fisheries Amendment Act 1963 that contained a system which removed restrictions on licensing and opened commercial fishing to all applicants.

3.158. The Crown did not approach Te Whānau a Apanui to consult them about its legislative and regulatory system for the moana and kaimoana. They have never agreed with this system and consider that it has failed to sustainably protect their moana and its resources and has not appropriately recognised or provided for their customary practices. For example, some members of Te Whānau a Apanui recall being apprehended and charged by Crown officials when they have been gathering kaimoana for marae, tangi, or for distribution among the hapū. Another example is that in 1989, a rāhui was declared at Cape Runaway to protect mussel stocks. The rāhui later included the moki and pāua fisheries, while an iwi ban on netting extended from Cape Runaway along the coast to Tōrere. The Ministry of Fisheries publicly declared that this rāhui had no legal standing and advised that its fisheries officers were ignoring the rāhui. The lack of recognition of the Te Whānau a Apanui relationship with the moana, including their authority, kaitiakitanga obligations, and tikanga, has been a source of grievance for Te Whānau a Apanui for many years.

Urupā and wāhi tapu

3.159. Te Whānau a Apanui consider that all land in their rohe has cultural significance and is tapu. The iwi believes this land to be an intrinsically interconnected part of their complete cultural landscape.

3.160. As a predominantly coastal people, there is an intense concentration of Te Whānau a Apanui settlements, pā sites, wāhi tapu and urupā located either along or near the coastline of the north-eastern Bay of Plenty. However, due to the tumultuous history of Māori settlement within the Te Whānau a Apanui rohe, kōiwi (human remains) are not always located within defined burial grounds but remain significant to the iwi.

3.161. In the twentieth century the Crown constructed a number of roads for which it took land from multiple blocks in the Te Whānau a Apanui rohe. As most settlements were located along the narrow coastal belt between the steep, inland blocks and the sea, in many cases roads in the region either passed close to pā, wāhi tapu and urupā, or went through them. The degradation of sites of cultural importance was compounded by an increase in tourism with the public often ignoring tikanga. In some cases, this has led to the desecration of wāhi tapu and urupā.

3.162. The Crown promoted the Historic Places Act 1954, which provided for “the preservation and marking of places and things of national or local historic interest”. However, by 1954 roading activities in the Te Whānau a Apanui rohe meant that the region’s cultural landscape had already undergone alteration without consideration of Te Whānau a Apanui tikanga.

3.163. Te Whānau a Apanui consider legislative attempts to provide protection for sacred sites to have been wholly inadequate.

TE PATU WAIRUA, TE TAKAHI TAPU | SPIRITUAL OPPRESSION, SACRED DESECRATION

3.164. Te Whānau a Apanui do not see colonisation as a series of transactions but as a systematic and intentional process. The iwi have experienced colonisation in a deeply personal way that has impacted beyond the physical and material state of Te Whānau a Apanui. The Crown's acts and omissions have not been confined to lands and territories, and impacted on Te Whānau a Apanui social, economic, justice and wellbeing systems. The Crown aimed to assimilate Te Whānau a Apanui into British culture and introduced laws and policies that have sought to replace, undermine or render obsolete the traditional social, cultural and economic structures on which the iwi depended for its cohesion and wellbeing.

Education

3.165. When Te Whānau a Apanui signed Te Tiriti o Waitangi in 1840 the iwi had its own inter-generational education systems in place. These systems were underpinned by Te Whānau a Apanui hapū mātauranga and tikanga. These knowledge systems have been transmitted inter-generationally and continued, uninterrupted, from Hawaiki and when Te Whānau a Apanui ancestors first settled their lands. Te Whānau a Apanui indigenous mātauranga system is multi-faceted, and includes science, technology, language, ritual, genealogy, leadership, sustainability, creativity, law and sociology.

3.166. The Crown did not establish any schools in the Te Whānau a Apanui rohe for several decades after 1840. It was not until 1867 that Parliament enacted legislation to provide for the establishment of primary schools for Māori.

3.167. The Crown intended Native Schools to teach a curriculum in English that would eventually facilitate the complete assimilation of Te Whānau a Apanui children into British culture. A Crown official described the use of te reo Māori in schools as an "obstacle in the way of civilization". The Native Schools Act 1867 stipulated that school funding was provisional on the English language being taught and instruction being conducted as far as practicable in English. A code developed for native schools required that senior classes be taught only in English, whilst teachers of junior classes should try "to dispense with the use of Māori as soon as possible".

3.168. In the face of British colonisation, Te Whānau a Apanui supported the establishment of five native schools in their rohe. Te Whānau a Apanui rangatira and whānau provided land for a school at Te Kaha in 1875, and at Ōmaio in 1879. Te Whānau a Apanui rangatira and whānau also provided further land for a school at Raukōkore in 1886. Later, the Crown also permanently reserved a site at Whangaparāoa for a native school in 1931, and in 1945 it took land under the Public Works Act for Maraenui Native School.

3.169. The Crown education system had low expectations for Māori. The Crown's priority was to teach skills for Māori to enter the colonial economy. Beyond basic reading, writing and mathematics, the focus in native schools was on domestic or manual skills. In the early 1930s, the Crown Director of Education believed the Māori education system should lead to a male student becoming "a good farmer" and a female student becoming "a good farmer's wife". He added that "manual arts should be given prominence in all native schools".

3.170. On top of this, the prioritisation of European culture and language within the schooling system contributed to the disconnection of Te Whānau a Apanui children from mātauranga Māori and their language base. Te Whānau a Apanui children were actively discouraged for many decades from speaking their own language in Crown schools and at times were punished for doing so. The native school system contributed to a steady decline over time in the number of te reo Māori speakers within Te Whānau a Apanui. In 1931 the Crown Director of Education claimed the "natural abandonment of the native tongue inflicts no loss on the Maori".

3.171. The devaluing of Te Whānau a Apanui cultural identity, their tikanga and their traditional way of life led some Te Whānau a Apanui to conclude there was no future in which being Māori was valued.

3.172. It was not until the 1930s that, with mixed success, Māori arts and crafts were introduced in the native schools due to the influence of Apirana Ngata. Nevertheless, the marginalisation of te reo Māori continued. By 1950 "Maori" was classified as a foreign language among School Certificate subjects.

3.173. The Crown has never established a secondary school in the Te Whānau a Apanui rohe. Higher educational options therefore had to be pursued through correspondence or outside of the rohe. As late as the 1950s, some whānau who were dissatisfied with the educational options available to them sent their children to Māori church boarding schools. This was not just about access to better education, but also religious instruction and education in aspects of te ao Māori such as te reo Māori and kapa haka – mostly untaught in mainstream schools. Although a small number of Māori students received scholarships to support their education, the cost of sending children to boarding school was expensive for Te Whānau a Apanui whānau. The move out of the rohe for schooling also contributed to the urbanisation of Te Whānau a Apanui. After secondary school, many students pursued further training and career opportunities in the city. Many have not returned.

3.174. The state education system failed to assist many Te Whānau a Apanui to achieve their full potential as culturally connected citizens within the Te Whānau a Apanui cultural worldview or to achieve success within the assimilationist curriculum. In the 1990s, Māori students' literacy scores and their academic achievements in mathematics and science were lower than other non-Māori students.

Te Parekura

3.175. In the early 1900s there was no school at Maraenui, a Te Whānau a Apanui coastal settlement south-west of the Mōtū River. This meant that children from that area had to travel twelve kilometres to attend Ōmaio Native School. This required crossing the unbridged Mōtū River by ferry each way.

3.176. The Crown had been aware of the dangers involved in crossing the Mōtū River as early as 1861. At the time a Crown official described the river as "only just crossable at the best of times" and noted "[t]his is a dangerous river to cross". In 1893, the Lands Department was reportedly providing a £5 subsidy for a Mōtū River canoe ferry service.

3.177. On 5 August 1900, tragedy struck when the canoe carrying 16 school children between the ages of 5 and 13 travelling from Maraenui to Ōmaio capsized. All the children perished in the accident, together with the ferryman and a Te Whānau a Apanui woman whose clothes were later found on the riverbank having gone to the children's assistance. In several cases, families lost more than one child.

Source: 'Maraenui Marae Memorials', URL: https://nzhistory.govt.nz/media/photo/maraenui-marae-memorials, (Ministry for Culture and Heritage), updated 17-Feb-2017.

3.178. The impact of the tragedy was profound and far-reaching.

3.179. After the drownings, Te Whānau a Apanui followed their tikanga by placing rāhui over the fishing grounds in the area, which denied the iwi one of their primary sources of food. A rāhui lasting a year was placed over the coastal waters from Te Kaha to Ōpape, while a four-year rāhui was placed over the area "between Te Raputa and Whitianga Points".

3.180. The profound impact of the tragedy was also enduring, and it changed the relationship Te Whānau a Apanui had with the Mōtū River. Te Whānau a Apanui living in the area of the drownings reportedly destroyed their boats following the accident and, for a time, declined to ferry travellers across the Mōtū. Others never again ate fish from the area where the accident occurred.

3.181. In the months following the accident, the drownings caused tensions between Te Whānau a Apanui and iwi from as far afield as Poverty Bay and Tauranga. Māori from adjoining areas, some of whom were angry at what they perceived as the failure of Te Whānau a Apanui to take adequate care of the children who lost their lives, descended on Ōmaio

and Maraenui. This placed an additional burden on Te Whānau a Apanui who provided food and accommodation for the "multitudes" of visitors, despite this severely reducing their own food resources. Ngati Porou exacted muru, blaming Te Whānau a Apanui for the children's deaths and removing items of value at Whitianga.

3.182. Reflecting the enormity of their loss and as a tribute to those who died, several Te Whānau a Apanui hapū changed their names following the calamity. Te Whānau a Hikarukutai became Te Whānau a Horomoana (the lives that were swallowed by the sea), Te Whānau a Nuku at Ōmaio became Ngāti Horowai (taken by the waters), Te Whānau a Tuahiawa became Ngāti Paeakau (cast along the beaches), and Te Whānau a Rutaia of Ōtūwhare became Ngāti Terewai (drifting or floating away). The rāhui prevented Te Whānau a Apanui from harvesting seafood, and the iwi became known as kaikānga (corn-eaters) as this became their primary food source.

3.183. As well as being widely reported in New Zealand newspapers, with the Poverty Bay Herald noting that crossing the Mōtū was "extremely treacherous", the disaster was also covered in the Australian and British press.

3.184. On 13 August 1900, Paora Ngamoki and 197 others including members of other iwi petitioned the Government requesting that a bridge be built over the Mōtū River. Ngamoki's petition warned that unless a bridge was constructed over the Mōtū, "others may hereafter perish there – Maori and Europeans – for the Motu is one of the worst rivers in New Zealand". The petitioners noted that: "[t]his is the first request of any importance that we, the chiefs, the hapus, and the tribes of the East Coast have made to you, our Government, viz: to have this bridge made". Ngamoki also asked that the bridge be constructed to commemorate the children's deaths.

3.185. Although the Native Affairs Committee recommended that the petition be forwarded to the Government for "favourable consideration", the cost of construction meant the bridge was not built.

3.186. In late May 1901, a Native School inspector reported that the ferry across the Mōtū was still not operating. Two months later the Ōmaio schoolmaster noted the impact of both the tragedy and the rāhui in a letter to the Secretary of Education, in which he described children staying home from school "in their half-starved condition".

3.187. In 1905, the Member of the House of Representatives for Eastern Māori raised the need for a bridge over the Mōtū in Parliament. The Government also received petitions from the Ōpōtiki County Council requesting the bridging of the Mōtū in 1914 and improvements to the Gisborne-Whakatāne road in 1919. In the 1914 petition, the Council Clerk informed the Prime Minister that the Mōtū River was "a very dangerous one and many lives have been lost at the crossing". However, he added that due to the "the large area of native land in this District not yet taken up by Europeans and therefore not as yet paying rates" the Council was unable to provide funding for construction of a bridge. Nonetheless, in the early 1920s, Crown officials continued to highlight the considerable expense involved in constructing a bridge.

3.188. In September 1924, the Crown considered an approach from the Bay of Plenty Development League about building a bridge over the Mōtū River. In response, the Minister of Public Works, J.G. Coates, declined to include funds to construct a bridge, estimated at £30,000, in the yearly budget:

> *Owing to this extreme cost and to the limited amount of European settlement that will be served, and also the fact that the road to the river will still have to be further*

provided for, I regret to say that I do not feel justified in providing any sum on the current year's estimates, even to make a commencement on this large work.

3.189. Public pressure, improvements to the coast road, and increased traffic and tourism contributed to the Crown finally constructing a bridge over the Mōtū River in 1929, almost 30 years after the 1900 tragedy. As the Crown did not establish a school at Maraenui until 1928, for almost three decades children from the settlement either continued to cross the dangerous river or stopped attending Ōmaio School.

3.190. For Te Whānau a Apanui, the impact of the drownings endures. It is memorialised in waiata, haka, placenames, the names of people, tikanga, and in the hearts of the hapū affected. Te Whānau a Apanui still have a rāhui relating to the drownings remaining in place today.

Te Hauora o Te Tangata, Te Oranga o Te Whānau | Health of People, Livelihood of the Collective

3.191. When Te Whānau a Apanui signed Te Tiriti o Waitangi the iwi had a fully functioning tikanga-based system to ensure well-being. This was based on both collective and individual wellbeing and was anchored in self-sufficiency, sustainability, and inter-relationships (both with each other and with the natural world). The Te Whānau a Apanui perception of health and wellbeing is holistic and an all-embracing concept that includes te taha wairua, te taha whānau, te taha hinengaro and te taha tinana (spiritual, familial, mental and physical wellbeing). For Te Whānau a Apanui, whenua, reo, te ao tūroa and te whānau whānui (land, language, the environment, and the broader collectives to which they belong) are also central to health and wellbeing.

3.192. With the arrival of Europeans in New Zealand, Māori were exposed to infectious diseases to which they had no immunity, including typhoid, measles, tuberculosis, and influenza. Te Whānau a Apanui record that this resulted in sickness, death and a decline of the Te Whānau a Apanui population.

3.193. While Te Whānau a Apanui continued to embrace their traditional health practices, from at least the 1870s some members of the iwi accepted Crown medical assistance. Even so, the remoteness of the Te Whānau a Apanui rohe meant the iwi had limited access to such medical services. Following an 1872 outbreak of smallpox in Auckland, 248 Te Whānau a Apanui were vaccinated in their settlements. When the medical officer was unable to go to the more remote areas of their rohe, Te Whānau a Apanui were provided with the vaccine, instructed in its use, and then vaccinated their own people from Ōmaio to Cape Runaway. Beginning in the late nineteenth century and continuing until at least the 1930s, native school teachers administered Government medicines to Māori in the Te Whānau a Apanui rohe.

3.194. In 1874 a Crown official noted there was no "medical man" from Tūranga to Ōpōtiki, a distance of approximately 140 kilometres. European medical practices were slow to reach the Te Whānau a Apanui rohe, and the comparative geographical isolation of the iwi combined with poor quality roads and unbridged rivers impacted on the Crown's limited provision of health care and its understanding of Te Whānau a Apanui health. By the late 1920s, a Crown report noted that significant numbers of Māori still lived in remote districts not easily accessible to doctors. There were no hospitals in the Te Whānau a Apanui rohe, with the nearest established at Te Puia in 1907, in Ōpōtiki shortly before the First World War, and in Whakatāne in 1923.

3.195. In 1907 Parliament enacted the Tohunga Suppression Act. The Act authorised the prosecution of anyone "who misleads or attempts to mislead any Māori by professing or

pretending to profess supernatural powers in the treatment or cure of any disease…" Although the Crown did little to enforce the Act, Te Whānau a Apanui consider it created a stigma around traditional knowledge, much of which has now been lost. They see the Act as forming part of the systemic and persistent manner in which the Crown undermined tribal authority and forced their knowledge systems underground.

3.196. In addition to the stigma attached to traditional Māori health-care practices, and limited access to Crown health-care facilities, barriers also existed for members of Te Whānau a Apanui who wished to contribute to the public health system. For example, those who sought to train as nurses faced difficulties as health authorities were often reluctant to admit them to training schools and those who were accepted were often posted to other regions. When Ākenehi Hei completed her training as a nurse in 1908 she was posted outside the Te Whānau a Apanui rohe.

3.197. By the first decades of the twentieth century outbreaks of poverty-related diseases such as typhoid in the Te Whānau a Apanui rohe were comparatively common. Eighteen deaths occurred at Te Kaha during a 1911 outbreak of an unknown fever, and in 1918 the "Spanish flu" influenza was rife within the region. In a single week in November 1918 the number of people with influenza in the Ōmaio area rose from 104 to 141 (including two nurses). Of these, three died at Ōmaio and six died at Maraenui. A newspaper report suggests that by December 1918 the disease had already killed at least 57 Māori between Ōpape and Raukōkore, though the disease continued to ravage the area. Mass graves throughout the Te Whānau a Apanui rohe contain Te Whānau a Apanui fatalities of the influenza epidemic.

3.198. In 1928, a report for the Ministry of Health on the prevention and treatment of pulmonary tuberculosis included a map showing hospitals and sanatoria for tuberculosis sufferers. The map demonstrated that no such facilities existed between Ōpōtiki and Te Araroa. The report included statistics about deaths from the disease which took "no account" of Māori. It attributed the lack of reliable information on Māori deaths from the disease to the majority of Māori living in remote districts. The report also claimed that the remote areas in which many Māori lived were "inaccessible to doctors and inspectors".

3.199. The Crown only began to collect statistics for infant mortality in 1930. By the late 1940s, Māori infant mortality was increasing and Māori deaths from diseases such as typhoid, diphtheria, influenza, and tuberculosis remained "markedly and consistently" higher than European deaths from these illnesses. In 1950 a Crown official reported that the number of Māori children who died in the first year of their life was higher than it had been for Pākehā at the turn of the century.

3.200. In 1960, the Māori mortality rate was still approximately twice that of non-Māori. Māori were also affected more than non-Māori by conditions such as cancer, heart disease, diabetes and stroke. The Crown's limited provision of health-care facilities in the eastern Bay of Plenty drove some whānau away from living in the rohe.

3.201. In 1985, the Crown established the Te Kaha Special Medical Area which included the majority of the Te Whānau a Apanui rohe. Special medical areas were established in regions with high health needs arising from factors such as remoteness or poor access to medical services. In the same year the trustees of Te Kaha Marae provided two rooms in a building on the marae for the Te Kaha Medical Clinic. By May 1986, construction of Te Kaha Clinic was complete.

3.202. Other outlying clinics in the rohe maintained by local communities were located at Maraenui, Ōmaio, Raukōkore and Cape Runaway. In 1985 a regional doctor noted that although the clinic at Ōmaio was the second busiest, it was in the worst state of repair. As

Te Kaha Clinic at Te Kaha Marae was small and lacked adequate facilities, it was later replaced by Te Kaha Medical Centre/Te Whānau a Apanui Community Health Centre situated on land gifted by local whānau.

3.203. The Crown did not ordinarily collect health data specific to Te Whānau a Apanui before the 1990s. Today, Crown health statistics show that Māori health, including that of Te Whānau a Apanui, remains consistently worse than that of other New Zealanders.

Criminal justice system

3.204. The tikanga of Te Whānau a Apanui involved systems of accepted rules and conventions by which behaviour was regulated and governed. These systems were deeply relational and driven by the need to maintain an equilibrium. Tikanga presumed a collective responsibility for offending and restoration and generally focussed on reconciliation and restoring relationships.

3.205. From the 1840s the Crown began establishing a system of justice in Aotearoa based on British ideology. Over time this was gradually extended over the rohe and people of Te Whānau a Apanui. This system of justice was based on principles, values and practices that were fundamentally incompatible with tikanga. For example, British justice punished individual offenders for wrongs done to the state. It generally sought to punish perpetrators through processes from which the victims of crime were excluded. It also often incarcerated perpetrators and therefore separated them from their whānau, sometimes for prolonged periods.

3.206. Te Whānau a Apanui initially had little contact with the justice system the Crown was trying to impose. The first recorded visit of a Resident Magistrate to Te Whānau a Apanui did not occur until early 1861. Another Resident Magistrate visiting the Te Whānau a Apanui rohe in December 1861 reported that Te Whānau a Apanui had rūnanga at Omaio, Te Kaha and Raukōkore, working to settle disputes and deal with misdemeanours. The rūnanga carried out this work in consultation with Te Tatana Ngatawa, whom the Crown had appointed as Native Assessor.

3.207. From the early 1870s, the Te Whānau a Apanui rohe was included in the district covered by the Resident Magistrate at Ōpōtiki. In May 1874, the Resident Magistrate reported he had held courts at Maraenui, Te Kaha and Raukōkore, but it is not clear how often such sessions occurred. In the 1870s and 1880s, the Ōpōtiki-based Resident Magistrates consistently reported few crimes occurring among Māori in the Ōpōtiki district, including Te Whānau a Apanui. At this time, the tikanga-based justice system of Te Whānau a Apanui continued.

3.208. The first permanent police presence in the Te Whānau a Apanui rohe came with the stationing of a single “Native Constable” at Ōmaio, from 1906 through to 1911. From 1911 through to 1917 a Native Constable was based at Te Kaha. The police were unable to recruit a replacement after the resident Native Constable died. This meant there was no constable stationed in the Te Whānau a Apanui rohe from 1918 through to late 1922. During those years any police intervention in the rohe had to come from officers based at either Ōpōtiki or Te Araroa, requiring long and difficult travel from either town.

3.209. In September 1922, a Native Constable was sworn in, with a police residence provided at Te Kaha. In 1945, a police station was built at Te Kaha, and from June of that year the part-time Native Constable was replaced by a full-time Police Constable based there. There were few arrests in the Te Whānau a Apanui rohe; the cells at the Te Kaha Police Station did not have their first overnight occupant until January 1948.

3.210. The majority of arrests in the Te Whānau a Apanui rohe were for minor offences. Any person having to answer charges before a Magistrates' Court, Police Court or Children's Court usually had to travel to the nearest Court at Ōpōtiki. Sometimes cases were heard in more distant centres such as Gisborne or Auckland. Serious charges such as murder were heard at the Supreme Court in Gisborne or Auckland. Regardless of Court decisions, the expenses and travel time would have made engagement with the criminal justice system costly for members of Te Whānau a Apanui.

3.211. With urbanisation following the Second World War, Te Whānau a Apanui, along with other Māori urban migrants, became much more caught up in the criminal justice system. Throughout the nineteenth century Māori had usually made up less than 3% of the total prison population. From the early twentieth century the proportion of Māori imprisoned increased, but remained relatively low until the 1930s. In 1945 Māori made up 21% of those admitted to prison, despite making up only around 6% of the total population of Aotearoa New Zealand. With urbanisation the proportion of Māori in the prison population increased dramatically. By 1985 Māori made up 50% of the adult prison population, while making up approximately 10% of the total population. The Crown did not maintain records of which iwi Māori in prison were affiliated to, but Te Whānau a Apanui individuals were subject to the criminal justice system and Te Whānau a Apanui whānau were therefore impacted by it.

3.212. The Crown also came to be far more likely to hold Māori youth in custody than non-Māori during the twentieth century. For example, in 1975 twice as many Māori youth as Europeans were remanded in social welfare custody. Māori have continued to be starkly over-represented in the state care system, but the full extent of this over-representation is unknown.

3.213. By the mid-1980s the Crown was investigating new approaches in relation to Māori in the criminal justice system. The Crown commissioned a report to assess its existing approach and develop new research methodologies to help understand Māori interaction with the justice system. The resulting report, Maori and the Criminal Justice System, concluded that the Crown's policies were grounded in monocultural ideology. It said that Crown justice officials judged Māori actions in terms of European ideology with little regard for Māori cultural values and circumstances. The report concluded that institutional racism was deeply embedded in the justice system. It recommended that a parallel system of justice be established for Māori.

3.214. The Minister of Justice rejected the proposal to set up a separate legal system for Māori. He said that the Crown would not tolerate any departure from the principle of equality of justice, which he described as the "greatest hallmark of the legal system".

3.215. The criminal justice system, which continues to operate today, was imposed by the Crown with little or no input from Te Whānau a Apanui. This system undermined traditional Te Whānau a Apanui social and criminal justice, including criminalising some actions Te Whānau a Apanui saw as consistent with their tikanga, such as carrying out the traditional practice of muru.

3.216. Māori are still over-represented in the criminal and youth justice systems today. Despite being 15% of the population, Māori make up 37% of people proceeded against by police, 45% of those convicted, and 52% of people in prison. The Crown's most recent information shows that its youth justice system still processes Māori youth at more than twice the rate of non-Māori.

Urbanisation and socioeconomic deprivation

3.217. For over 15 generations Te Whānau a Apanui were able to sustain themselves on their own lands, living adjacent to the bountiful sea and with the hinterlands of the Raukūmara within reach of their hapū villages. Utilising traditional science and nurturing a relationship with te ao tūroa, the iwi lived in harmony with the natural world whilst sustaining themselves. Through the inter-generational transmission of knowledge, the hapū of Te Whānau a Apanui employed mātauranga and tikanga to ensure their customary practices maintained inter-generational equity, and that the natural environment would sustain future generations in perpetuity.

3.218. In the decades that followed 1840 Te Whānau a Apanui ran successful whaling and fishing operations and developed bountiful agricultural production. In 1873 and 1880 Crown officials reported the successes of Te Whānau a Apanui agricultural production, whaling and fishing. Te Whānau a Apanui enterprise was highlighted in 1907 when Crown-appointed land commissioners reported that certain hapū of Te Whānau a Apanui were "among the most industrious" in New Zealand. In the 1920s, Māori developed a dairy industry in the Te Whānau a Apanui rohe and established the Te Kaha Dairy Factory in 1925.

3.219. In 1900 the Crown had responded to Māori calls for greater self-government by promoting legislation that provided for elected Māori Councils to make by-laws to address a range of local issues in their communities, including housing and sanitation. The Horouta Māori Council was subsequently established with authority to exercise these powers from Waipiro Bay to Ōpōtiki. However, the Horouta Council, like similar Councils established in other districts, suffered from limited financial resources and constrained authority. By the beginning of the First World War, the influence of these Councils had waned.

3.220. In the first decade of the twentieth century, the Crown began paying old-age pensions. In doing so the Crown discriminated against Māori. It explicitly used the lower standard of living Māori endured as justification for paying elderly Te Whānau a Apanui lower pensions. In 1937, one Crown official noted that:

> *In this matter questions of equity should be decided having regard to the circumstances, the needs and the outlook on life of the individuals concerned… the living standard of the Māori is lower – and after all, the object of these pensions is to maintain standards rather than to raise them.*

3.221. Until 1943, Te Whānau a Apanui pensioners were only considered eligible for full pensions if they provided proof they were living like a European. This was a difficult process which required a Department of Social Security inspection of their dwelling.

3.222. The Crown provided little in the way of direct welfare assistance for Te Whānau a Apanui or other New Zealand citizens before the 1930s. During the severe economic depression of the 1930s many Te Whānau a Apanui were living in dire circumstances. In 1933 a housing survey of Māori kāinga in the Waiapu district found that 60% of houses were overcrowded; 50% had unsafe water supplies; 50% of pit toilets were faulty; 30% had no toilet, and only 6% had a bath and 13% a sink.

3.223. In 1939 it was estimated that half of all Māori were inadequately housed. This included many Te Whānau a Apanui households, and the resulting prejudice was immense. For example, high rates of tuberculosis cases, such as in Te Kaha in the late 1930s, were attributed to poor housing conditions.

3.224. After the Second World War, many Te Whānau a Apanui whānau moved to urban centres in search of better job opportunities. Economic circumstances in the Te Whānau a Apanui rohe were deteriorating. A 1956 Crown economic survey of Te Whānau a Apanui found

that most households within the rohe had an "extremely low average income" per family. It was reported at this time that three quarters of the households in the rohe of Te Whānau a Apanui earned less than £1,500 per annum, with one quarter earning less than £520. Given that most households averaged 5 or 6 people these figures represented "an extremely low average per family". The reality was that the work which Te Whānau a Apanui could find in towns and cities was generally low-paid, "unskilled" labour.

3.225. In 1963, the Crown's housing policy was informed by a view that rural Māori staying in their rohe "creates special problems in providing improved housing". The Crown urged Māori to move to urban centres so that young Māori families particularly could "take advantage of improvements in housing and modern hygienic standards of living".

3.226. The Crown used urban migration as a technique to assimilate Te Whānau a Apanui into Pākehā ways of living. One way that it sought to promote this outcome was through a policy of "pepper-potting" the homes of urban Māori migrants among the homes of Pākehā.

3.227. The impact of urban migration and the separation of tangata whenua from their whenua has fundamentally torn the social fabric of Te Whānau a Apanui. Many Te Whānau a Apanui migrants found the experience of urban life isolating and unforgiving. Visits home were often infrequent and the connection of people to hapū, whānau, tikanga and te reo Māori was diminished. There were few people to step into the vital roles left vacant when kaumātua died. The iwi-based social support systems came under great pressure or broke down. Without the supportive safety net of tribal life, the conditions were set for increased economic disadvantage, social dislocation and cultural disconnection.

3.228. In 1988 the Royal Commission on Social Policy reported that urban Māori faced social problems with poverty, unemployment, housing, access to health services, educational opportunities, drug and alcohol abuse, the cost of living, homelessness, crime and delinquency. After the Department of Social Welfare was established in 1972, it provided benefits to disproportionately large numbers of Māori including Te Whānau a Apanui. In 1987 an advisory group for the Minister of Social Welfare concluded that in 1986 Māori people were "overwhelmingly in a state of dependency-mokai in their own land".

3.229. In the Te Whānau a Apanui rohe, the migration of many whānau to urban areas has had major economic implications. Especially since the 1980s, poverty within the Te Whānau a Apanui rohe has increased, due to the rise in unemployment, particularly for youth. The Crown's social welfare services were difficult to access in the Te Whānau a Apanui rohe. In the 1980s Te Whānau a Apanui in Te Kaha found that the cost of travelling and making phone calls to apply for benefits could sometimes almost equal the value of the benefit.

3.230. The Ministerial advisory group observed in 1987 that Māori, who would have included Te Whānau a Apanui, suffered a number of disadvantages in New Zealand society, including:

3.230.1. Just 45% of Māori owned houses compared to 73% of non-Māori;

3.230.2. The median income for Māori men was more than $2,000 lower than for non-Māori;

3.230.3. The unemployment rate for Māori was 14% as opposed to 3.7% for non-Māori.

3.231. The advisory group's Puao-te-ata-tu report concluded that the Crown's provision of welfare services was not meeting Māori needs, and that the Department of Social Welfare's approach to Māori issues was informed by monocultural Pākehā ideology, which resulted in institutional racism against Māori.

3.232. The advisory group criticised the way the Crown provided for the care of Māori children. For example, the Crown provided monetary benefits to assist the raising of children, but would not provide these benefits to members of extended whānau who were caring for children in place of their immediate parents. The Crown also removed children from the care of their extended whānau and placed them in foster care with non-Māori parents, to whom it would provide financial support.

3.233. The Puao-te-ata-tu report had a large influence on the development of the Children, Young Persons and their Families Act 1989, which was the most far-reaching reform of legislation in regard to children since 1925. Throughout the 1970s and 1980s more than 50% of children placed in state care by Court order were Māori. The 1989 Act sought to create a stronger presence for whānau, hapū and iwi in the care, protection and control of their children and young people. However, many of the recommendations of Puao-te-ata-tu were not implemented and institutional racism has continued to be a feature of the Crown's care and protection system. In 2019 tamariki Māori were 69% of the children in state custody, despite Māori being only 25% of all children in Aotearoa.

3.234. In 1988, the Crown agreed to hand over some degree of ownership and control of housing resources to iwi authorities, resulting in papakāinga housing schemes on Māori land with multiple titles or owners, as well as various other loan schemes. Around this time Housing New Zealand Corporation also started to take Māori cultural values into account when designing and assigning state houses for Māori. However, it was not until the 1990s that Māori were even consulted on Crown policies around building houses.

3.235. In 2013, the unemployment rate for Te Whānau a Apanui youth between the ages of 15 and 24 was 31.8%. Among the general population, the unemployment rate in 2013 was 7.1%. In 2018, the entire Te Whānau a Apanui area of interest was classified Decile 10 – a category reserved for areas with the highest level of socioeconomic deprivation in New Zealand. According to the 2018 census data, almost 60% of Te Whānau a Apanui reported a personal income of less than $30,000 per annum. In a 2020 Government report, those who remain in the Te Whānau a Apanui rohe were identified as amongst the poorest in New Zealand.

Infrastructure

3.236. From at least 1872, Te Whānau a Apanui expressed a willingness to contribute to the development of infrastructure within their rohe. By May 1874, iwi members, under the leadership of Te Tatana Ngatawa, had constructed an "excellent" bridle track through heavy bush from Maraenui to Ōmaio. Te Whānau a Te Ehutu were also eager to improve the "almost impassable track" from Te Kaha to Raukōkore, and by 1883 Māori from both localities had almost completed the work.

3.237. As discussed in the Public Works section, in the 20th century multiple pieces of Te Whānau a Apanui land were taken under Public Works legislation for roading purposes throughout the coastal areas of their rohe. In the early 1930s, Māori from Te Kaha and Raukōkore constructed, at their own expense and using borrowed Public Works Department equipment, a section of road that was then used by both Crown and private vehicles.

3.238. Despite improvements in roading, the isolation of the Te Whānau a Apanui rohe meant that from the 1890s until at least 1920 communities in the region largely relied on coastal steamers for both the delivery of supplies and shipping their produce to urban centres. When the Governor and Apirana Ngata visited Whangaparāoa and Te Kaha in 1909, they travelled to the region by sea.

3.239. Although the New Zealand Railways system serviced large areas of New Zealand by the late 1920s, no rail link was ever established in the Te Whānau a Apanui rohe. For Te Whānau a Apanui, Ōpōtiki remained the closest connection to the national rail system. A 1930 Transport Department report showed there was also no regular passenger or freight service for most of the Te Whānau a Apanui rohe. These limited transport options further compounded the isolation of the rohe.

3.240. As well as dividing communities when in flood, the unbridged rivers in the Te Whānau a Apanui rohe were also a significant impediment to transport and economic development. Although the Hawai River was bridged in 1927, the Mōtū River bridge was finally constructed in 1929, and the Hāparapara River bridge was completed in 1931, other rivers in the rohe were not bridged until the late 1930s.

3.241. Following engineering difficulties with its construction, a permanent bridge over the Kereu River opened for traffic in early 1939. Bridges over the Raukōkore and Whangaparāoa rivers were opened later that year. During the Raukōkore bridge opening ceremony, Apirana Ngata noted that the lack of a bridge had resulted in "considerable loss" to farmers in the region and the Te Kaha Dairy Factory. At the time, it was noted that the swift-flowing rivers in the Te Whānau a Apanui rohe had been responsible for the loss of many lives.

3.242. In the early 1900s, Te Whānau a Apanui took a leading role in bringing telephone communications to their rohe. In 1906 the Horouta Māori Council passed a resolution to contribute £25 as a subsidy toward a telephone line from Waiapu on the East Coast to Te Kaha. Te Whānau a Apanui contributed £27 towards the cost of a telephone connection between the East Coast and Orete. A Crown official noted in 1907 that Māori had completed a telephone connection from Waiomatatini on the East Coast, where the government line ended, to Te Kaha using material they had provided. The following year, Māori from Gisborne to Whakatāne contributed a further £387 following a meeting at Te Kaha to raise funds for the extension of the telephone line to Tōrere and Ōpōtiki. A telephone exchange opened in Ōpōtiki in 1908, with 37 subscribers, so that local calls were possible at any time. However, long-distance calls still depended on the telegraph service, so were only possible after midnight or on Sundays, meaning most Te Whānau a Apanui whānau further up the coast did not benefit.

3.243. During the Governor's 1909 visit he relied on the "excellent system" of Māori telephone communications to maintain contact with his officials. Te Whānau a Apanui were still erecting their own telephone lines in 1911, using posts split in the local timber industry in Okahuteraakeake and Otamahaki; some posts were sold to local Europeans, and the rest were used for telephone wires.

3.244. Nonetheless, telephone infrastructure remained an issue for many decades. In 1949, the Postmaster General assured the Member of the House of Representatives for Bay of Plenty that telephone communications between Ōpōtiki, Te Kaha and Cape Runaway would be "improved considerably", although due to a shortage of power poles he was unable to say when the work would take place. By 1954, telephone communication may have improved, as local government officials could use the phone to make official reports. However, this was still limited to a "party line", which remained the only form of telephone communication in the area around Cape Runaway until at least the 1970s, even though the telephone exchange in Ōpōtiki, the nearest town, opened a new exchange with modern equipment in 1963. Even up until 1985, access to telephones was still not universal, as a regional doctor noted that a large number of people at Ōmaio had no telephones.

3.245. In 2006, the eastern Bay of Plenty had a higher proportion of people with no telecommunications access than other regions, with 9.5% of whānau in the Ōpōtiki district

having no access to telecommunications at all. In 2013, 4.1% of Te Whānau a Apanui lived in households with no access to telecommunication systems, including a telephone.

3.246. Despite Te Whānau a Apanui contributing to the development of the power network in their rohe, the lack of a power connection to the national grid was also an issue for Māori in the region. Although transmission lines to Te Kaha were commissioned in 1969, the more remote areas of the rohe remained without mains power for several years.

TE HĀPAITANGA O TE RIRI E TE WHĀNAU A APANUI | TE WHĀNAU A APANUI CONTRIBUTION TO MILITARY EFFORTS

3.247. Te Whānau a Apanui have a long and proud record of service in New Zealand's armed forces. This has included service in Volunteer corps, the 1899-1902 South African War, the Māori contingent sent to the coronation of Edward VII, and during World War One when Te Whānau a Apanui men served in Egypt, at Gallipoli and in Western Europe. World War One took a heavy toll on the iwi with whānau killed in action, wounded, dying of disease or killed in accidents.

3.248. World War Two also had a devastating impact on the lives of many Te Whānau a Apanui whānau. The majority of Te Whānau a Apanui servicemen served in C Company, 28th (Māori) Battalion and Te Whānau a Apanui servicemen were among the heavy casualties the battalion suffered during the war. Second Lieutenant Te Moana-nui-a-Kiwa Ngārimu, whose mother was Te Whānau a Apanui, was killed in action in Tunisia in 1943 and posthumously awarded the Victoria Cross. Ngārimu was the first Māori to receive the highest British award for valour. Of the five Distinguished Conduct Medals awarded to C Company, 28 (Māori) Battalion during the Second World War, four were presented to descendants of the Te Whānau a Apanui ancestor, Apanui Ringamutu.

3.249. Wartime losses had a disproportionate impact on the small settlements the soldiers came from. This was exacerbated when whānau lost more than one child. In one case, a widow, whose two sons were killed in action and died of disease after hostilities had ended, was left with diminished family support.

3.250. Within New Zealand, many iwi members served in the Home Guard during World War Two and from 1941 manned the Coast Watch Station at Cape Runaway. Te Whānau a Apanui women also actively contributed to the war effort. At least one Te Whānau a Apanui woman served in the New Zealand Army Nursing Service in Italy during the Second World War, and in 1943 Te Whānau a Apanui women helped to run the Red Cross and Patriotic Shop in Whakatāne.

3.251. At a Victoria Cross celebration in Ruatōria in October 1943, Apirana Ngata acknowledged the significant contribution that Te Whānau a Apanui had made to the wars when he said:

> *… it will be found at the end of this war when the awards are tallied up, for the numbers they sent overseas Te Whānau a Apanui gained more distinctions than any other Māori tribe in New Zealand. Kia mōhio ai ngā iwi o te motu, he iwi, he hunga torutoru tēnei i roto i tēnei pakanga ko te nuinga o ngā tohu mō tō rātou tokoiti i riro i a Te Whānau a Apanui …*

3.252. A similar sentiment was echoed by the Governor-General, Sir Cyril Newall, in July 1944 when he attended the opening of Tūkākī wharenui at Te Kaha. Māori Battalion, veterans formed a guard of honour, and during his speech Newall congratulated Te Whānau a Apanui on having "the highest percentage of men fighting for the Empire".

3.253. Te Whānau a Apanui military service continued after these global conflicts ended with members of the iwi serving in J-Force during the post-war occupation of Japan, and in Korea during the Korean War. Members of Te Whānau a Apanui also served in Asia during the Vietnam War and were among those exposed to toxic dioxins, including the defoliant Agent Orange.

3.254. For Te Whānau a Apanui, the sacrifice of military service has been profound and far-reaching. It has resulted in the loss of present or future iwi leaders and reduced the ability of Te Whānau a Apanui to administer and protect their land interests. Of those who did return, many bore permanent physical and emotional scars. Added to this, wartime losses diminished the ability of Te Whānau a Apanui to transmit inter-generational knowledge, te reo Māori and tikanga. For Te Whānau a Apanui, wartime service has adversely impacted whānau, hapū and iwi.

KEI TE HAERE TONU MAI NGĀ TURE

3.255. By 1992, Te Whānau a Apanui had been enduring prejudice as a result of the Crown's colonisation of Aotearoa for more than 150 years. The magnitude of that prejudice has affected every aspect of Te Whānau a Apanui life.

3.256. The phrase "Kei te haere tonu mai ngā ture" derives from the Te Kooti waiata "E pā tō reo" and references the ongoing and cumulative impact of colonial law. Te Whānau a Apanui view these waves of law as being unrelenting. They have negatively impacted their traditional social structures, their language, their inter-generational transmission of knowledge, their health and wellbeing and their relationships with each other.

3.257. Te Whānau a Apanui see colonisation as a violence to the soul. They consider the iwi have endured inter-generational colonial violence through the systemic and intentional acts of the Crown between 1840 and 1992 that have targeted not just their lands and territories but the totality of who they are. Te Whānau a Apanui understand their exposure to colonial violence continues to have an ongoing impact within the iwi, despite Treaty guarantees that their possession of their lands and territories would be "full, exclusive and undisturbed".

3.258. Te Whānau a Apanui have actively sought to uphold their rangatiratanga and repeatedly pressed the Crown to honour its obligations under Te Tiriti o Waitangi/the Treaty of Waitangi. However, it was not until 1975 that a rising tide of Māori protests led to the establishment of the Waitangi Tribunal to inquire into Māori grievances that the Crown was not upholding its duties under Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. It was another ten years before Parliament empowered the Waitangi Tribunal to inquire into historical Māori grievances.

3.259. By the final decade of the twentieth century generations of Te Whānau a Apanui had suffered immense prejudice as a result of Crown acts and omissions. Long-lasting and severe prejudice caused by the Crown continues to be felt by Te Whānau a Apanui to the present day.

4 NGĀ WHAKAMIHA | ACKNOWLEDGEMENTS

4.1. The historical account has been agreed between the Crown and ngā hapū o Te Whānau a Apanui. The Crown acknowledges that it reflects the Crown's best understanding of its history with Te Whānau a Apanui.

4.2. The Crown acknowledges that Te Whānau a Apanui have fulfilled their obligations as a partner, under Te Tiriti o Waitangi/the Treaty of Waitangi. The Crown further acknowledges

the strong efforts by Te Whānau a Apanui over many years to have the Crown uphold all of its Treaty duties towards them, and the toll this has taken on many Te Whānau a Apanui.

Rangatiratanga

Tino Rangatiratanga and Te Tiriti o Waitangi/the Treaty of Waitangi

4.3. The Crown acknowledges the tino rangatiratanga of ngā hapū o Te Whānau a Apanui who were fully in charge of their own affairs in 1840. The Crown further acknowledges that:

4.3.1. it promised in Te Tiriti o Waitangi/the Treaty of Waitangi that ngā hapū o Te Whānau a Apanui would retain tino rangatiratanga;

4.3.2. Te Whānau a Apanui understandings of Te Tiriti o Waitangi/the Treaty of Waitangi were based solely on the Māori text; and

4.3.3. various Crown acts and omissions since 1840 have undermined the tino rangatiratanga of ngā hapū o Te Whānau a Apanui.

4.4. The Crown acknowledges that its acts and omissions that have undermined the tino rangatiratanga of ngā hapū o Te Whānau a Apanui have caused great harm to Te Whānau a Apanui. The Crown has breached its duties under Te Tiriti/the Treaty and its principles in a number of ways, and has failed to address the legitimate and longstanding grievances of Te Whānau a Apanui in an appropriate manner for far too long.

Assimilation

4.5. The Crown acknowledges that:

4.5.1. before establishing a presence in the rohe of ngā hapū o Te Whānau a Apanui it began promoting laws in the 1840s that were intended to facilitate the eventual assimilation of Māori into European culture;

4.5.2. it did not establish self-governing Māori districts that section 71 of the Constitution Act 1852 provided for;

4.5.3. the assimilation of Te Whānau a Apanui continued to be a Crown objective for many years during the twentieth century; and

4.5.4. the Crown's assimilationist policies have had negative impacts on the well-being of Te Whānau a Apanui by contributing to the erosion of their social structures, tribal government, and mātauranga (traditional knowledge).

Te Ture Kai Whenua

4.6. The Crown acknowledges that ngā hapū o Te Whānau a Apanui were in occupation of their traditional lands and territories in 1840 and administered them in accordance with their tikanga. The Crown further acknowledges that various Crown acts and omissions since 1840 have undermined the tikanga of ngā hapū o Te Whānau a Apanui in relation to their lands and territories, and caused or contributed to the alienation of some of these traditional lands and territories.

The 1866 confiscation proclamations

4.7. The Crown acknowledges that, despite having a minimal presence in the north-eastern Bay of Plenty before the 1860s, one of the Crown's first actions directly in relation to the

Te Whānau a Apanui rohe was to send a gunboat carrying a significant military force to Orete where Te Whānau a Apanui were threatened with land confiscation if they did not swear an oath of allegiance to the Crown. This was closely followed by a proclamation in 1866 of the confiscation of a large area in the eastern Bay of Plenty which included some land in which Te Whānau a Apanui had interests. The Crown did not enforce the portion of this confiscation which extended into the rohe of ngā hapū o Te Whānau a Apanui, but acknowledges the uncertainty and trepidation that Te Whānau a Apanui must have felt as a result of the Crown's proclamation.

Native land laws

4.8. The Crown acknowledges that it did not consult Te Whānau a Apanui before introducing native land laws in the 1860s which were to have a significant impact in the rohe of Te Whānau a Apanui. In particular, the Crown acknowledges that:

4.8.1. the individualisation of title introduced by these laws was inconsistent with Te Whānau a Apanui tikanga;

4.8.2. Te Whānau a Apanui had no choice but to participate in the Native Land Court system to protect their land against claims from others and to integrate land into the modern economy;

4.8.3. the Native Land Court title determination process could be long, complex and expensive. The significant costs at times contributed to the alienation of Te Whānau a Apanui land;

4.8.4. one of the long-term objectives of the native land laws was to detribalise Te Whānau a Apanui and assimilate them into European culture;

4.8.5. the operation and impact of the native land laws made the lands of Te Whānau a Apanui more susceptible to partition, fragmentation and alienation; and

4.8.6. this contributed to the erosion of ngā hapū o Te Whānau a Apanui tribal structures which were based on the collective ownership of land. The Crown failed to take adequate steps to actively protect these tribal structures. This had a prejudicial effect on ngā hapū o Te Whānau a Apanui and was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

4.9. The Crown acknowledges that its failure to provide a legal means for Te Whānau a Apanui lands to be held in a collective title before 1894 breached Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Aggressive Crown negotiation tactics

4.10. The Crown acknowledges that much of the land it purchased in the Te Whānau a Apanui rohe was never used for settlement and remains in Crown ownership as part of the public conservation estate. The European population in the rohe has always been comparatively small, and this reduced the Crown's willingness to build economic infrastructure in the region.

4.11. The Crown acknowledges that the combined effect of:

4.11.1. its use of advance payments before title to the Puketauhinu block had been determined by the Native Land Court;

4.11.2. its use of monopoly powers in negotiations to acquire part of the block; and

4.11.3. its aggressive exploitation of the straitened economic circumstances of Te Whānau a Apanui to complete the purchase for less money than it had agreed to pay, and without paying the survey costs as it had previously agreed;

meant that, when purchasing a significant portion of the Puketauhinu block, the Crown did not act in good faith and failed to actively protect Te Whānau a Apanui interests in land they may otherwise have wished to retain, and these failures were a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Public works

4.12. The Crown acknowledges that some of the Te Whānau a Apanui land it has compulsorily taken for public works purposes such as roads has:

4.12.1. included wāhi tapu;

4.12.2. not been used for the purpose for which it was acquired; and

4.12.3. has caused the disconnection of some Te Whānau a Apanui from their ancestral lands.

Compulsory acquisition of 'uneconomic' land interests

4.13. The Crown acknowledges that the disruptive legacy of the native land laws on Te Whānau a Apanui culture continued throughout the twentieth century. Between 1953 and 1974, the Crown sought to address the fragmentation of Māori land tenure caused by the individualisation of titles introduced in the nineteenth century through legislative provisions that empowered the Māori Trustee to compulsorily acquire Te Whānau a Apanui land interests that were legally defined as uneconomic. The Crown acknowledges that this was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles and caused some Te Whānau a Apanui to lose connections to ancestral lands.

4.14. The Crown acknowledges that much of those lands Te Whānau a Apanui retain today are held in trusts, as Māori freehold land or as individual shareholdings in incorporations and not in tribal title. This is inconsistent with and does not adequately provide for or reflect ngā hapū o Te Whānau a Apanui tikanga.

Slow provision of infrastructure

4.15. The Crown acknowledges its slowness to build infrastructure in the eastern Bay of Plenty, and that one of the justifications the Crown used for this was the low numbers of Pākehā settlers in the district. A factor contributing to the low number of Pākehā settlers was the unwillingness of Te Whānau a Apanui to open most of their coastal lands up for sale.

Te Parekura and the bridging on the Mōtū River

4.16. The Crown acknowledges that:

4.16.1. it was aware that crossing the Mōtū River was potentially dangerous and that Te Whānau a Apanui children from Maraenui had to cross the river to attend Ōmaio Native School;

4.16.2. it was aware of the tragic loss of life that occurred in 1900 when 16 children and two adults of Te Whānau a Apanui drowned after a canoe capsized carrying the children across the Mōtū River to attend a Sunday church service at their school in Ōmaio;

4.16.3. despite Te Whānau a Apanui and other Māori petitioning the Crown in 1900 to have a bridge constructed across the Mōtū, a number of other requests to bridge the Mōtū during the first two decades of the twentieth century, and Te Whānau a Apanui placing a rāhui over the area following the drownings that caused great hardship to the iwi, the Crown failed to bridge the river until 1929; and

4.16.4. it discriminated against Te Whānau a Apanui when, in 1924, one of the reasons for declining to include funding in that year's budget for a bridge across the Mōtū that was desperately needed by the iwi was the limited amount of European settlement in the area. This breached Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Te Ao Tūroa

Degradation of the Raukūmara Range and awa

4.17. The Crown acknowledges the special relationship of ngā hapū o Te Whānau a Apanui to the environment in their rohe, and that:

4.17.1. Te Whānau a Apanui consider the Raukūmara Range, the awa and the moana in their rohe to be taonga; and

4.17.2. the degradation of the Raukūmara Range as a result of introduced pests and the sedimentation of some of the awa has caused a sense of grievance within Te Whānau a Apanui that is still held today.

Te Hauora o Te Tangata, Te Oranga o Te Whānau I Health of people, livelihood of collective

Education and Te Reo Māori

4.18. The Crown acknowledges the importance of education to Te Whānau a Apanui, and that:

4.18.1. the native schools established by the Crown in the late nineteenth and early twentieth centuries aimed to promote the assimilation of Te Whānau a Apanui children into European culture;

4.18.2. the Crown required the schools it established to teach in English as far as practical, and Te Whānau a Apanui children were at times punished at school for speaking their own language; and

4.18.3. its failure to actively protect te reo Māori and encourage its use by iwi and Māori was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

4.19. The Crown acknowledges that, for a number of decades, the state school system had lower expectations for the academic achievement of Māori children than for Pākehā children. The Crown further acknowledges that experiences in the education system have contributed to the erosion of cultural identity and understanding of tikanga and mātauranga for some members of Te Whānau a Apanui, and have been a factor in the poorer socio-economic circumstances that many Te Whānau a Apanui have lived with.

Socio-economic circumstances

4.20. The Crown acknowledges that Te Whānau a Apanui have suffered socio-economic deprivation for too long, and that too many children of Te Whānau a Apanui have grown

up with fewer opportunities in life than many other New Zealanders. In particular, the Crown acknowledges that:

4.20.1. Te Whānau a Apanui have long experienced low standards of housing, which has contributed to significant health issues;

4.20.2. for many years the health of Te Whānau a Apanui living in their north-eastern Bay of Plenty rohe has been worse than that of many other New Zealanders; and

4.20.3. despite this, during the second half of the twentieth century it did not provide funding for health services in the eastern Bay of Plenty to the same extent as many other more urbanised areas of New Zealand.

4.21. The Crown acknowledges that ngā hapū o Te Whānau a Apanui were not consulted about Crown policies that might be detrimental to their health, education, economic development or cultural practices.

Discrimination in the payment of old-age pensions

4.22. The Crown acknowledges that some Te Whānau a Apanui suffered discrimination through receiving lower old-age pensions than many other New Zealanders during the first four decades of the twentieth century, and that by discriminating against Te Whānau a Apanui in this manner it breached Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Urbanisation and the loss of Mātauranga

4.23. The Crown acknowledges that a lack of economic opportunity led many whānau and working-age Te Whānau a Apanui to leave their rohe. This was encouraged by the Crown, and the displacement of Te Whānau a Apanui people impeded inter-generational transfer of mātauranga, eroded the cohesion of the iwi and the social structures it relied upon to maintain its tribal systems, and resulted in some Te Whānau a Apanui people being disconnected from their tribal collective, sometimes permanently.

Contribution to the nation

4.24. The Crown acknowledges that ngā hapū o Te Whānau a Apanui have made significant contributions to the development of New Zealand, including the provision of land for roads and the construction of infrastructure.

4.25. The Crown acknowledges Te Whānau a Apanui military service for New Zealand in many parts of the world, including South Africa, Gallipoli, western Europe, Greece, Crete, Italy, North Africa, Japan, Korea and Vietnam. The Crown pays tribute to the contribution made by Te Whānau a Apanui to the defence of the nation and the sacrifice this service entailed. This included the devastating impact of casualties on small communities in the Te Whānau a Apanui rohe, and the ongoing effects of military service on the lives of veterans and their whānau.

Resilience

4.26. The Crown acknowledges that despite Crown acts and omissions which have eroded Te Whānau a Apanui mātauranga, spiritual hauora and rangatiratanga, ngā hapū o Te Whānau a Apanui have remained resilient and retained their tino rangatiratanga, tribal identity and mana motuhake to the present day.

5 TE WHAKAPĀHA | APOLOGY

5.1. To ngā hapū o Te Whānau a Apanui, to your tūpuna, your rangatira, your kaumātua, your tamariki and your mokopuna, ki a koutou katoa o Te Whānau a Apanui, the Crown makes this long-overdue apology.

5.2. Before you signed Te Tiriti o Waitangi, Te Whānau a Apanui exercised tino rangatiratanga over your affairs. The Crown guaranteed in Te Tiriti o Waitangi/the Treaty of Waitangi that Te Whānau a Apanui would retain tino rangatiratanga. Instead, the Crown has promoted laws and policies that have undermined Te Whānau a Apanui tino rangatiratanga, and this has wrought immense harm on your iwi. For this the Crown sincerely apologises.

5.3. The Crown deeply regrets that its policies to colonise and assimilate Māori into European culture have caused prejudice to generations of Te Whānau a Apanui. Crown policies have contributed to the socio-economic marginalisation of too many Te Whānau a Apanui, and the disconnection of Te Whānau a Apanui from mātauranga Māori and your taonga, te reo Māori. For this the Crown profoundly apologises.

5.4. The Crown apologises for its breaches of Te Tiriti o Waitangi/the Treaty of Waitangi, which have tarnished its honour and brought great harm to Te Whānau a Apanui. The Crown is deeply sorry for its failures to protect the tamariki of Te Whānau a Apanui, the times it has discriminated against Te Whānau a Apanui, and the disconnection Te Whānau a Apanui have suffered from some important parts of your whenua.

5.5. The Crown pays tribute to Te Whānau a Apanui resilience during your long struggle for justice, and recognises the contribution Te Whānau a Apanui have made to the development of New Zealand and the nation's defence. The Crown also recognises the prominence of the descendants of Te Whānau a Apanui today in many spheres of New Zealand life, including politics, law, sport and visual and performing arts. The Crown sees the settlement we sign today as heralding a new beginning for the partnership between Te Whānau a Apanui and the Crown based on good faith, mutual respect, and Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

6 TE TIROHANGA TŌMUA | COMMITMENT GOING FORWARD

6.1. The parties agree that Te Tiriti o Waitangi/the Treaty of Waitangi lays an important foundation for the conduct of the present and on-going relationship between the parties. They look forward to building an enduring relationship of mutual trust and co-operation based on Te Tiriti o Waitangi/the Treaty of Waitangi.

E. TOITŪ TE AO TŪROA

7 TE AO TŪROA | THE NATURAL WORLD

7.1. It is the shared aim of ngā hapū o Te Whānau a Apanui and the Crown that these arrangements will respect and support the authority and mana of ngā hapū o Te Whānau a Apanui to apply their own tribal laws and tikanga, to maintain their unique cultural and spiritual systems, and to control their own social and economic development with reasonably maximum autonomy, while:

7.1.1. recognising and managing the relationship between, on the one hand, the tribal laws, tikanga, and unique cultural and spiritual systems of ngā hapū o Te Whānau a Apanui and, on the other hand, the general laws and policy frameworks applying to all New Zealanders, so each can operate together without undermining the integrity of either; and

7.1.2. providing the most effective mechanisms for ngā hapū o Te Whānau a Apanui to participate in the development of policy and the management of resources and systems.

7.2. It remains the aspiration of ngā hapū o Te Whānau a Apanui to again, one day, be an autonomous people living in and administering their traditional territories.

7.3. Part D Toitū Te Ao Tūroa includes:

7.3.1. the Te Ao Tūroa framework;

7.3.2. arrangements in respect of freshwater;

7.3.3. a Crown acknowledgement in respect of ngā awa (the rivers) of Te Whānau a Apanui;

7.3.4. arrangements in respect of the takutai moana; and

7.3.5. arrangements in respect of the Raukūmara.

8 TE ARA O TE AO TŪROA | TE AO TŪROA FRAMEWORK

8.1. The arrangements in this subpart (**Te Ao Tūroa Framework**) are guided by the aims and considerations in clauses 7.1 and 7.2.

8.2. Te Ao Tūroa Framework is designed to work as a single integrated framework whose components are not severable.

TE WHĀNAU A APANUI VALUES

8.3. The following set of values is intrinsic to the relationship ngā hapū o Te Whānau a Apanui have with te ao tūroa:

1. Toitū te Mana Atua

Ngā hapū o Te Whānau a Apanui have unbroken, inalienable and enduring mana in relation to their rohe and the resources within. The source of this mana is te Atua / the Creator. The spiritual integrity of this relationship maintains and protects,

according to tikanga and traditional matauranga, the manner in which ngā hapū o Te Whānau a Apanui live in balance with their rohe moana, and by which the balance between the hapū, the natural world and the spiritual realm is maintained.

2. Toitū te Ao Tūroa

The tikanga of ngā hapū o Te Whānau a Apanui provides the framework for protecting and managing te ao tūroa. According to their tikanga, ngā hapū o Te Whānau a Apanui exist within an interconnected world that is protected and maintained by respecting the mana, oranga, mauri and tapu of the natural world. The relationship between ngā hapū o Te Whānau a Apanui and the natural world is based on whakapapa and a need to live in balance with the natural world. This manifests itself in whanaungatanga and kaitiakitanga rights and responsibilities.

3. Toitū te Mana o Nga Hapū

Ngā hapū o Te Whānau a Apanui are collective groups that each possess their own mana and express their own world-view, tikanga and kawa within their respective hapū territory. There is a complex set of whakapapa relationships between hapū that mean they are distinct, but they also have collective obligations to preserve the unity and mana of the tribe and the wise management of the entire tribal territory.

4. Toitū Oranga Whanui o Nga Whānau

The management of te ao tūroa cannot be separated from the oranga of the people. The two are symbiotic.

Ngā hapū o Te Whānau a Apanui have the right to ensure their oranga whānau, the sustenance and livelihood of their whānau, through the maintenance and continued exercise of their tikanga and customary practices.

Ngā hapū o Te Whānau a Apanui have the right to exercise influence over persons carrying out activities within, or impacting upon, te ao tūroa.

5. Toitū Te Tiriti o Waitangi

Ngā hapū o Te Whānau a Apanui and the Crown are bound by the framework established in the sacred covenant signed between them in 1840, Te Tiriti o Waitangi/the Treaty of Waitangi.

In the context of te ao tūroa, the guarantee of tino rangatiratanga committed to in Te Tiriti o Waitangi obliges the Crown to protect the ability of ngā hapū o Te Whānau a Apanui, as kaitiaki and rangatira, to protect, control and regulate their taonga including the natural world. That relationship is a core aspect of their tikanga and culture.

RESPECTING NGĀ HAPŪ O TE WHĀNAU A APANUI VALUES

8.4. The significance of te ao tūroa to ngā hapū o Te Whānau a Apanui and the intrinsic values that represent the essence of the relationship ngā hapū o Te Whānau a Apanui have with te ao tūroa are described in clause 8.3 (**ngā hapū o Te Whānau a Apanui values**).

8.5. The Crown acknowledges ngā hapū o Te Whānau a Apanui values.

8.6. Any question as to the meaning and effect of the arrangements in relation to Te Ao Tūroa Framework is to be resolved and determined in a manner that best furthers ngā hapū o Te Whānau a Apanui values.

8.7. The settlement legislation will:

8.7.1. record ngā hapū o Te Whānau a Apanui values and the Crown's acknowledgement of them;

8.7.2. specify that when, under the Resource Management Act 1991, local authorities are required by section 6(e) of that Act to recognise and provide for the relationship of ngā hapū o Te Whānau a Apanui and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, they must do so in light of ngā hapū o Te Whānau a Apanui values; and

8.7.3. specify that when, under the Resource Management Act 1991, local authorities are required by section 7 of that Act to have particular regard to kaitiakitanga, they must do so in a way that best furthers ngā hapū o Te Whānau a Apanui values.

8.8. The local authority agreement will record how relevant local authorities will consider and apply ngā hapū o Te Whānau a Apanui values when carrying out a function or exercising a power within, or applying to, the area of interest.

8.9. The settlement legislation will provide that ngā hapū o Te Whānau a Apanui values will also be a relevant consideration where the following applications are being considered under section 44 of the Heritage New Zealand Pouhere Taonga Act 2014:

8.9.1. applications for an authority to undertake an activity that will or may modify or destroy any archaeological sites within the area of interest;

8.9.2. applications for an authority to undertake an activity that will or may modify or destroy any recorded archaeological sites within the area of interest; and

8.9.3. applications for an authority to conduct a scientific investigation of any archaeological site within the area of interest.

LOCAL AUTHORITY AGREEMENT

8.10. The Bay of Plenty Regional Council, Gisborne District Council and Ōpōtiki District Council (**relevant local authorities**) and Te Taumata will enter into a relationship agreement (**local authority agreement**).

8.11. The settlement legislation will:

8.11.1. require the local authority agreement to be entered into;

8.11.2. provide that the matters included at clauses 8.13, 8.14, 8.16, and 8.18.3 must be addressed in the local authority agreement and schedules; and

8.11.3. provide for periodic reviews of the functioning and effectiveness of the agreement and whether it is achieving its purpose.

8.12. The purpose of the local authority agreement will be to:

8.12.1. enable a collaborative and enduring working arrangement for ngā hapū o Te Whānau a Apanui and the relevant local authorities; and

8.12.2. provide a framework within which the tribal laws, tikanga, and unique cultural and spiritual systems of ngā hapū o Te Whānau a Apanui and the policy and legal regimes applying to the relevant local authorities are able to relate to each other.

8.13. To this end, the local authority agreement will provide for Te Taumata and relevant local authorities to discuss, agree, and record:

8.13.1. how the relevant local authorities will:

(a) recognise and provide for the relationship of ngā hapū o Te Whānau a Apanui and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;

(b) support the exercise of kaitiakitanga by ngā hapū o Te Whānau a Apanui; and

(c) promote cultural, economic, environmental, and social issues of significance to ngā hapū o Te Whānau a Apanui;

8.13.2. how Te Taumata and/or hapū will participate in the resource management, governance and decision-making processes of the relevant local authorities; and

8.13.3. how the relevant local authorities and Te Taumata will communicate with each other, share information and expertise, and prioritise the mahi they will focus on.

8.14. The key principles underpinning the local authority agreement will include:

8.14.1. respect for the mana of ngā hapū o Te Whānau a Apanui;

8.14.2. promotion of the wellbeing of te ao tūroa;

8.14.3. consistency with ngā hapū o Te Whānau a Apanui values;

8.14.4. the principles of Te Tiriti o Waitangi; and

8.14.5. the principles of local government described in section 14 of the Local Government Act 2002.

8.15. The local authority agreement may include:

8.15.1. provisions of general application to the way in which the relevant local authorities and governance entity agree to collaborate and work together;

8.15.2. provisions applying to the way the relevant local authorities and governance entity agree to collaborate and work together in connection with specific local authority functions and powers under:

(a) the Resource Management Act 1991;

(b) the Local Government Act 2002;

(c) any other statute under which a local authority exercises functions or powers; and

(d) any other process undertaken by a local authority.

8.16. The local authority agreement must cover the following matters:

8.16.1. how the key principles set out in clause 8.14 are to be reflected in the working arrangement between the relevant local authorities, ngā hapū o Te Whānau a Apanui and Te Taumata;

8.16.2. how the relevant local authorities, ngā hapū o Te Whānau a Apanui and Te Taumata will manage the processes required in relation to ngā hapū o Te Whānau a Apanui rohe document, such as the co-authoring of measures in the Bay of Plenty regional policy statement (**regional policy statement**) referred to in clause 8.22.1;

8.16.3. how ngā hapū o Te Whānau a Apanui and Te Taumata will be able to contribute to:

(a) setting priorities and methods for the monitoring required under section 35 of the Resource Management Act 1991 and analysing the results of the monitoring; and

(b) identifying activities, outcomes and other matters referred to in section 93(6) of the Local Government Act 2002 when council long-term plans are being developed;

8.16.4. how the relevant local authorities, ngā hapū o Te Whānau a Apanui and Te Taumata will collaborate to share and exchange information and provide technical and practical support to each other to carry out functions under Te Ao Tūroa Framework;

8.16.5. how information that is shared between the parties will be used and appropriately protected;

8.16.6. how any disputes between the relevant local authorities and Te Taumata will be resolved;

8.16.7. how the relevant local authorities and Te Taumata will work together to identify the relevant hapū of ngā hapū o Te Whānau a Apanui for the purpose of clause 8.27; and

8.16.8. a process for reviewing and, if appropriate, altering the content of, or any provision in, the agreement.

8.17. The local authority agreement will:

8.17.1. be a single agreement:

(a) signed by the parties specified in clause 8.10; and

(b) endorsed by ngā hapū o Te Whānau a Apanui;

8.17.2. contain overarching provisions of universal application to the relationship between ngā hapū o Te Whānau a Apanui, Te Taumata and the relevant local authorities;

8.17.3. contain schedules for each relevant local authority with provisions applying specifically to the relationship between that local authority, the relevant hapū of ngā hapū o Te Whānau a Apanui and Te Taumata (**schedules**); and

8.17.4. not be able to be terminated unless the relevant local authorities, relevant hapū of ngā hapū o Te Whānau a Apanui and Te Taumata agree to terminate the whole agreement and/or certain schedules.

8.18. The schedules for each relevant local authority:

8.18.1. may include specific provisions, in addition to the overarching provisions of the relationship agreement, addressing how the relevant local authority, the relevant hapū of ngā hapū o Te Whānau a Apanui and Te Taumata agree to collaborate and work together;

8.18.2. must record how the relevant local authority and governance entity will:

(a) establish and maintain communication pathways and points of contact between them;

(b) actively manage a 'no surprises/early advice' policy;

(c) facilitate participation in processes in which they have shared interests;

(d) facilitate the early and constructive resolution of any issues, if they arise, including an agreed dispute resolution process that will be followed if the parties are unable to resolve any disagreements or differences of view;

(e) identify areas of shared interest and prioritise activities; and

(f) ensure relationships are maintained when people, positions and structures change; and

8.18.3. must record how the relevant local authority will consider and apply ngā hapū o Te Whānau a Apanui values when carrying out a function or exercising a power within, or applying to, the area of interest.

TE WHĀNAU A APANUI ROHE DOCUMENT

8.19. The settlement legislation will provide for ngā hapū o Te Whānau a Apanui to prepare a rohe document (**rohe document**) as set out in clauses 8.20 to 8.25 of this deed.

8.20. Ngā hapū o Te Whānau a Apanui may prepare, in accordance with their tikanga and own processes, a rohe document.

8.21. The rohe document:

8.21.1. may include a statement of the significance of te ao tūroa to ngā hapū o Te Whānau a Apanui; and

8.21.2. will set out their tikanga and kaupapa for:

(a) respecting the mana, oranga, mauri and tapu of the natural world;

(b) protecting the integrity of the relationship ngā hapū o Te Whānau a Apanui have with the natural world; and

(c) promoting the sustainable management of natural and physical resources and the preservation of their regenerative qualities.

8.22. If Te Taumata lodges the rohe document with the Bay of Plenty Regional Council:

8.22.1. when the regional policy statement is being prepared, reviewed, varied or changed in a manner that applies to the rohe or to natural and physical resources within the rohe:

(a) to the extent that proposed objectives, policies and methods have application within the area of interest, the regional policy statement must include measures that enable the policies and methods to apply in a manner that:

(i) is consistent with the tikanga and kaupapa of the rohe document; and

(ii) provides support for the tikanga and kaupapa of the rohe document;

(b) those measures must:

(i) be prepared jointly (**co-authored**) by Te Taumata and the Bay of Plenty Regional Council in consultation with Ōpōtiki District Council;

(ii) be specifically focussed on the rohe; and

(iii) add to or modify the objectives, policies and methods to the extent necessary to ensure that those provisions:

A. achieve the purpose of the Resource Management Act 1991 in a manner that is consistent with, and supports, the tikanga and kaupapa of the rohe document; and

B. enable the regional policy statement to be given effect by the Ōpōtiki district plan in a manner that is consistent with, and supports, the tikanga and kaupapa of the rohe document;

8.22.2. when a proposed regional policy statement includes co-authored measures in accordance with clause 8.22.1(b)(i):

(a) Te Taumata must be invited to participate in any pre-notification consultation or other process on the proposed regional policy statement;

(b) the Bay of Plenty Regional Council must consult with Te Taumata when preparing its evaluation report in accordance with section 32 of the Resource Management Act 1991 and must include in the evaluation report any statement provided by Te Taumata in relation to the co-authored measures;

(c) Te Taumata and the Bay of Plenty Regional Council must agree the final text and form of the co-authored measures prior to notification of the proposed regional policy statement or notification of a change or variation;

(d) Te Taumata must be given notice of any dispute resolution meeting or mediation with a person who has made a submission on, or that affects, any co-authored measure in the proposed regional policy statement and Te Taumata is entitled to attend the meeting or mediation as if it were a party to any relevant process or proceeding;

(e) whether in response to submissions, or otherwise, the Bay of Plenty Regional Council may not make a decision to delete a co-authored measure without the agreement of Te Taumata, but may make a decision to amend or replace a co-authored measure provided that the amendment or replacement measure is co-authored by Te Taumata, the Bay of Plenty Regional Council and the Ōpōtiki District Council;

(f) any appeal to the Environment Court on a co-authored provision must be served on Te Taumata, and Te Taumata has the right to join that appeal as a party under section 274 of the Resource Management Act 1991;

(g) if, in relation to a freshwater planning instrument, an appeal to the High Court is made pursuant to part 4 of schedule 1 of the Resource Management Act 1991:

(i) the Bay of Plenty Regional Council must, on receiving a copy of the notice of appeal, provide a copy to Te Taumata;

(ii) the High Court may, if an application is made by Te Taumata, grant leave to Te Taumata to intervene in the appeal; and

(iii) the High Court may only grant leave under clause 8.22.2(g)(ii) if it is satisfied that the provision or matter that is the subject of the appeal relates to a co-authored measure;

(h) the Bay of Plenty Regional Council must notify Te Taumata if the Environment Court, after hearing an appeal in relation to the provisions of the proposed regional policy statement, directs the Bay of Plenty Regional Council to prepare changes to an objective, policy or method that has application within the area of interest, and:

(i) if the direction requires a change to a co-authored measure, any changes to address matters identified by the court, or to give effect to the court's direction, must be co-authored by Te Taumata, the Bay of Plenty Regional Council and the Ōpōtiki District Council;

(ii) if the direction requires a change to an objective, policy or method that was not co-authored:

A. the Bay of Plenty Regional Council and Te Taumata must determine whether any new measures are needed to satisfy the criteria in clause 8.22.1(a) in light of the changes directed; and

B. if that assessment concludes that the criteria in clause 8.22.1(a) are met, additional co-authored measures, consistent with the

direction of the Environment Court, may be included as part of the changes (as if they had been directed by the Environment Court);

(i) to avoid doubt, any changes to co-authored measures or additions of new co-authored measures under clause 8.22.2(h) must comply with the processes for co-authored measures in clauses 8.22.2(a) to 8.22.2(e); and

(j) the provisions in this clause 8.22 apply, with necessary modification, to a proposed change or variation to the operative or proposed regional policy statement.

8.23. In the course of a local authority's decision-making process in relation to a matter that will, or is likely to, affect the customary and traditional practices of ngā hapū o Te Whānau a Apanui and the exercise of kaitiakitanga by members of the hapū:

8.23.1. when taking into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga for the purposes of section 77 of the Local Government Act 2002, the local authority must consider the tikanga and kaupapa of the rohe document;

8.23.2. for the purposes of section 78 of the Local Government Act 2002, ngā hapū o Te Whānau a Apanui are to be treated as persons likely to be affected by, or to have an interest in, the subject-matter of the decision;

8.23.3. in giving consideration to the views and preferences of ngā hapū o Te Whānau a Apanui, the local authority, in addition to any other ways in which it ascertains those views and preferences, must consider the tikanga and kaupapa of the rohe document; and

8.23.4. for the purposes of section 79 of the Local Government Act 2002, the tikanga and kaupapa of the rohe document are relevant matters and the local authority must have regard to those matters.

8.24. The rohe document may, in relation to customary marine title areas within ngā rohe moana o ngā hapū, set out any matters that could otherwise be included in a planning document under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011.

8.25. If the rohe document sets out the matters specified in clause 8.24, a Te Whānau a Apanui customary marine title hapū may adopt the rohe document as that group's planning document for the purposes of the Marine and Coastal Area (Takutai Moana) Act 2011 by lodging the rohe document in accordance with section 86 of that Act.

8.26. In this part, **ngā rohe moana o ngā hapū**, **Te Whānau a Apanui customary marine title area** and **Te Whānau a Apanui customary marine title hapū** have the meanings set out in clause 11.13.

PARTICIPATION ARRANGEMENTS

8.27. Whenever the Bay of Plenty Regional Council or the Ōpōtiki District Council receives a resource consent application to do something within, adjacent to, or directly affecting the rohe (including ngā rohe moana o ngā hapū) of one or more hapū of ngā hapū o Te Whānau a Apanui (the **relevant hapū**) the council:

8.27.1. if the application is publicly notified:

(a) must treat each relevant hapū as a prescribed person for the purposes of public notification; and

(b) must engage with Te Taumata before appointing commissioners to hear the application and, if requested by Te Taumata, must appoint at least one qualified commissioner (who holds a qualification approved and notified under section 39A of the Resource Management Act 1991) nominated by Te Taumata; and

8.27.2. if the application is not publicly notified, must treat each relevant hapū as an affected person under section 95B of the Resource Management Act 1991.

8.28. Clause 8.29 applies to any proceedings before the Environment Court in respect of the whole or any part of a decision of a consent authority on:

8.28.1. an application for a resource consent to do something within, adjacent to, or directly affecting the rohe (including ngā rohe moana o ngā hapū) of a relevant hapū; or

8.28.2. an application for a change of consent conditions for a resource consent to do something within, adjacent to, or directly affecting the rohe (including ngā rohe moana o ngā hapū) of a relevant hapū; or

8.28.3. a review of consent conditions for a resource consent to do something within, adjacent to, or directly affecting the rohe (including ngā rohe moana o ngā hapū) of a relevant hapū.

8.29. In any proceedings of the kind referred to in clause 8.28, for the purposes of section 274(1) of the Resource Management Act 1991 each relevant hapū is a person who has an interest in the proceedings that is greater than the interest that the general public has.

8.30. A Minister or Ministers making a direction under section 142(2)(a) or 147(1)(a) of the Resource Management Act 1991 to refer a matter within the rohe (including ngā rohe moana o ngā hapū) of ngā hapū o Te Whānau a Apanui to a board of inquiry must:

8.30.1. give Te Taumata a copy of the direction and consult Te Taumata on the terms of reference (if any) for the board of inquiry;

8.30.2. ask Te Taumata to nominate an individual (who need not be a member of ngā hapū o Te Whānau a Apanui) to be a member of the board of inquiry and discuss the suitability of that nominee with Te Taumata;

8.30.3. following the process in clause 8.30.2, appoint an individual nominated by Te Taumata to be a member of the board of inquiry; and

8.30.4. in making that appointment, consider the need for the membership of the board of inquiry to have the skills, knowledge and experience required pursuant to section 149K(4) of the Resource Management Act 1991.

8.31. In nominating an individual under clause 8.30.2, Te Taumata must consider the need for members of the board of inquiry to have the skills, knowledge, knowledge of tikanga and experience required for such a role.

8.32. For the purposes of sections 45(4)(b), 56(5)(b)(ii), 58(1), and 59(1)(a)(iv) of the Heritage New Zealand Pouhere Taonga Act 2014, each relevant hapū must be treated as a person

directly affected by a decision of, or the exercise of a power by, Heritage New Zealand Pouhere Taonga if the decision, or the exercise of the power, relates to the rohe (including ngā rohe moana o ngā hapū) of the relevant hapū.

UNDERTAKING CULTURAL ASSESSMENTS

8.33. Clause 8.34 applies where, in relation to a site within land owned by members of ngā hapū o Te Whānau a Apanui in the area of interest:

8.33.1. an assessment described in section 46(2)(g) of the Heritage New Zealand Pouhere Taonga Act 2014 is undertaken for the purposes of an application under that Act; or

8.33.2. an assessment of any effect on natural and physical resources having historical, spiritual or cultural value is undertaken for the purposes of a resource consent application or notice of requirement for a designation under the Resource Management Act 1991.

8.34. An assessment referred to in clause 8.33 must be undertaken by or on behalf of Te Taumata. To avoid doubt, where appropriate, Te Taumata may direct that a hapū entity is the appropriate entity to undertake that assessment.

9 WAI MĀORI | FRESH WATER

9.1. The settlement legislation will provide the following arrangements relating to freshwater in the area of interest.

9.2. For the purposes of these arrangements, the area of interest:

9.2.1. will be treated as a freshwater management area (**ngā hapū o Te Whānau a Apanui freshwater management area**); and

9.2.2. will contain six freshwater catchment units, being each of the catchment-based parts of the freshwater management area identified in the map at part 5 of the attachments (**freshwater catchment units**).

9.3. A freshwater management group will be established for ngā hapū o Te Whānau a Apanui freshwater management area (**freshwater management group**).

9.4. The following provisions will apply to the freshwater management group:

9.4.1. the freshwater management group will have 12 members;

9.4.2. ngā hapū o Te Whānau a Apanui will each appoint one member using the process that each hapū determines in accordance with their tikanga;

9.4.3. the members of the freshwater management group will elect one of the members to chair the group;

9.4.4. the functions of the freshwater management group will be to:

(a) work with the hau kāinga and other members of the community resident within ngā hapū o Te Whānau a Apanui freshwater management area to identify and prioritise:

(i) the values, uses and demands for freshwater within ngā hapū o Te Whānau a Apanui freshwater management area; and

(ii) the issues affecting freshwater quality and quantity within ngā hapū o Te Whānau a Apanui freshwater management area;

(b) with the support of Bay of Plenty Regional Council, develop a freshwater management plan for ngā hapū o Te Whānau a Apanui freshwater management area;

(c) promote freshwater management within ngā hapū o Te Whānau a Apanui freshwater management area that gives effect to the freshwater management plan and is consistent with the purpose of the Resource Management Act 1991 and any applicable national policy statement;

(d) prior to the lodgement of an application for a resource consent for certain activities within a ngā hapū o Te Whānau a Apanui freshwater catchment unit, and upon request from the applicant, assess and report on that application;

(e) the activities referred to in clause 9.4.4(d) are as follows:

(i) taking, using, damming or diverting water;

(ii) discharging water or any contaminant into water;

(iii) discharging any contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water;

(iv) the activities listed in section 13(1) of the Resource Management Act 1991; and

(v) the activities listed in section 13(2A) of the Resource Management Act 1991; and

(f) provide dispute resolution assistance to the parties referred to in clause 9.4.5(a) to resolve disputes:

(i) in accordance with, as far as possible, the relevant tikanga and values and protocols, both as to process and to substance; and

(ii) in a manner that maintains or enhances the relationships among water users, Māori land owners, the hau kāinga and members of the relevant hapū;

9.4.5. in clause 9.4.4(f):

(a) **the parties** mean:

(i) participants in a dispute concerning the use or regulation of freshwater, access to freshwater or the application of the relevant tikanga and kaupapa to freshwater bodies and the use of freshwater; and

(ii) members of ngā hapū o Te Whānau a Apanui who are unable to agree on a matter concerning freshwater management within a freshwater catchment unit with which the hapū is/are associated;

(b) **relevant tikanga** means the tikanga of the hapū associated with the freshwater body or freshwater that is the subject of the dispute or the hapū associated with the relevant freshwater catchment unit; and

(c) **values and protocols** mean the values and protocols that are derived from or are consistent with the relevant tikanga;

9.4.6. when carrying out its functions, the freshwater management group:

(a) will be guided by ngā hapū o Te Whānau a Apanui values;

(b) may take into account:

(i) te mana o te wai and the taonga status of wai māori;

(ii) mana whakahaere and the role of kaitiaki;

(iii) customary uses and mahinga kai; and

(iv) mātauranga Māori; and

(c) must, when developing the freshwater management plan and assessing and reporting on resource consent applications:

(i) do so from the perspective of each catchment-based freshwater catchment unit; and

(ii) engage with, and be guided by, the hapū associated with the relevant freshwater catchment unit.

9.5. The following provisions apply to the freshwater management plan prepared by the freshwater management group:

9.5.1. the freshwater management plan must align with and give effect to:

(a) ngā hapū o Te Whānau a Apanui rohe document; and

(b) co-authored measures in the regional policy statement;

9.5.2. the freshwater management plan may:

(a) describe freshwater management issues for each freshwater catchment unit;

(b) describe cultural, environmental, social and economic values relating to freshwater within the relevant freshwater catchment unit;

(c) include measures for incorporating the following matters into freshwater planning, management, decision-making and monitoring to reflect:

(i) te mana o te wai and the taonga status of wai māori;

(ii) mana whakahaere and the role of kaitiaki;

(iii) customary uses and mahinga kai; and

(iv) mātauranga Māori;

(d) include any matters that a regional plan would be required to address under the direction of an operative national policy statement on freshwater management;

(e) establish freshwater objectives in light of:

(i) any identified implications for protecting the mauri of waterbodies within the freshwater catchment unit;

(ii) priorities for restoring any degraded waterbodies within the freshwater catchment unit;

(iii) the current state of the freshwater catchment unit and its anticipated future state on the basis of past and current resource use;

(iv) any choices between values that would be required;

(v) any implications for freshwater users, including implications for actions, investments, ongoing management changes and any cultural, social or economic implications;

(vi) the extent to which maintaining the supply of potable water is an issue;

(vii) the reasonably foreseeable effects of climate change; and

(viii) any other matters identified by the freshwater management group for which objectives are relevant and reasonably necessary;

(f) identify environmental flows and levels for rivers, streams, lakes and aquifers within the relevant freshwater catchment unit that:

(i) are based on the freshwater values and objectives;

(ii) reflect ngā hapū o Te Whānau a Apanui values;

(iii) will sustain life-supporting ecosystems; and

(iv) take into account the reasonably foreseeable impacts of climate change;

(g) identify water allocation and water quality limits for rivers, streams, lakes and aquifers based on the freshwater values and objectives, in light of:

(i) the mauri of the water body;

(ii) the level of reliability for extraction;

(iii) the protection of significant values of wetlands and outstanding freshwater bodies;

(iv) whether water is to be allocated to a particular type of use or value;

(v) the connection between land use, water quantity and water quality;

(vi) the connection between water bodies;

(vii) the connection between freshwater bodies and coastal water;

(viii) the connection between freshwater bodies and environmental and other factors affecting their sources and flow within the Raukūmara Conservation Park; and

(ix) the reasonably foreseeable impacts of climate change; and

9.5.3. the Bay of Plenty Regional Council will participate with, and support, the freshwater management group with the preparation of, and the process for finalising, freshwater management plans.

9.6. The freshwater management plan will not replace or form part of regional and district plans within the meaning of section 43AA of the Resource Management Act 1991, but if the requirements of clause 9.7 are met, the freshwater management plan will have the effect described in clause 9.9.

9.7. If the freshwater management group lodges the proposed freshwater management plan with the Bay of Plenty Regional Council:

9.7.1. the Bay of Plenty Regional Council will:

(a) give notice of the proposed freshwater management plan to the following persons in ngā hapū o Te Whānau a Apanui freshwater management area:

(i) each Māori incorporation in which any land within the freshwater management area is vested;

(ii) the trustees of each of the trusts in which any Māori freehold land within the freshwater management area is vested, including trusts constituted or continued under Te Ture Whenua Māori Act 1993;

(iii) owners of land within the freshwater management area which is not vested in the persons to be notified under any of the previous two subclauses;

(iv) an occupier within the freshwater management area who will not be notified under any of the previous three subclauses;

(v) ratepayers in respect of land within the freshwater management area who will not be notified under any of the previous four subclauses; and

(vi) the Director-General of Conservation;

(b) publicly notify the operative date in accordance with clause 20 of Schedule 1 of the Resource Management Act 1991;

9.7.2. the persons referred to in clause 9.7.1 and any member of a hapū having customary associations within the freshwater management area may make a submission on the proposed freshwater management plan;

9.7.3. for the purpose of clarifying or facilitating the resolution of any matter relating to a proposed freshwater management plan, the Bay of Plenty Regional Council may:

(a) if requested, or on its own initiative, invite anyone who has made a submission on a proposed freshwater management plan to meet with the council and the freshwater management group; and

(b) with the agreement of the submitter, refer the issues raised by the submitter to the freshwater management group to provide dispute resolution assistance in accordance with clause 9.4.4(f);

9.7.4. provision will be made for a hearing into the submissions of those submitters who request one and the freshwater management group and Bay of Plenty Regional Council may jointly appoint qualified hearing commissioners for that purpose;

9.7.5. decisions on matters raised in submissions and any consequential alterations to a proposed freshwater management plan are to be made jointly by the freshwater management group and Bay of Plenty Regional Council; and

9.7.6. following completion of the processes in clauses 9.7.1 to 9.7.5, the freshwater management group will approve the freshwater management plan and it will then become operative on the date that it is publicly notified.

9.8. In clause 9.7.1(a)(iv), **occupier** means:

9.8.1. an inhabitant occupier of land; and

9.8.2. includes those who occupy land under a lease or licence to occupy, or as grantee of a forestry right or *profit à prendre*, even if they are occupying with the grantor's consent after the interest or right has ended.

9.9. From the date of approval of the freshwater management plan under clause 9.7, the following provisions will apply when a person applies to the Bay of Plenty Regional Council for a resource consent for any of the activities referred to in clause 9.4.4(e) within the freshwater management area:

9.9.1. in addition to any matter required by section 88 of the Resource Management Act 1991, the application must include an assessment of the proposed activity against the provisions of the freshwater management plan that complies with the following requirements:

(a) the assessment must be prepared by the freshwater management group (in conjunction with the relevant hapū as required by clause 9.4.6(c));

(b) the assessment must confirm either that:

(i) the proposed activity will not have, or will not be likely to have, effects:

A. that would be inconsistent with any freshwater objectives in the freshwater management plan that apply in the relevant catchment;

B. that would compromise or exceed environmental flows and levels for rivers, streams, lakes and aquifers included in the freshwater management plan for the relevant catchment;

C. that would compromise or exceed water allocation and water quality limits for rivers, streams, lakes and aquifers included in the freshwater management plan for the relevant catchment; or

(ii) the proposed activity will have, or be likely to have, one or more of the effects referred to in clause 9.9.1(b)(i) unless conditions are imposed under section 108 of the Resource Management Act 1991;

9.9.2. if the assessment is that the proposed activity will have, or be likely to have, one or more of the effects referred to in clause 9.9.1(b)(i) unless conditions are imposed under section 108 of the Resource Management Act 1991, a resource consent may not be granted without conditions to address those adverse effects;

9.9.3. an application for resource consent for any of the activities referred to in clause 9.4.4(e) must not be accepted by the local authority:

(a) without an assessment that meets the requirements of clause 9.9.1; and

(b) with an assessment that the proposed activity will have, or will be likely to have, one or more of the effects referred to in clause 9.9.1(b)(i) where that effect, or those effects, cannot be addressed through conditions; and

9.9.4. the consent authority deciding an application to the Bay of Plenty Regional Council for a resource consent for any of the activities referred to in clause 9.4.4(e) must have regard to the freshwater management plan if the consent authority considers that the freshwater management plan is relevant and reasonably necessary to determine the application in accordance with section 104(1)(c) of the Resource Management Act 1991.

9.10. The freshwater management group is independent of, and is not required to accept direction from, the Bay of Plenty Regional Council.

9.11. A member of the freshwater management group is not liable for anything done or omitted in the performance of the functions of the group or committee if done or omitted in good faith.

10 NGĀ AWA | RIVERS

CROWN ACKNOWLEDGMENT IN RELATION TO RIVERBEDS

10.1. The Crown acknowledges that, according to their tikanga, ngā hapū o Te Whānau a Apanui:

10.1.1. have an unbroken and enduring sacred relationship with lands, waters and other resources within their rohe;

10.1.2. exist within a sacredly interconnected world in which respect for the mana, oranga, mauri and tapu of all other living beings, natural resources and their habitats is paramount; and

10.1.3. have kaitiaki responsibilities to protect both the physical and spiritual wellbeing of taonga within their rohe, including the waterways, for the present and future generations.

10.2. The Crown acknowledges that the relationship and interconnectedness between ngā hapū o Te Whānau a Apanui and, among other things, waterways, and the kaitiaki responsibilities exist independently of the legal ownership of riverbeds or land adjoining rivers.

10.3. The Crown is committed, within the framework of the principles of the Treaty of Waitangi, to better recognise the rights and interests in freshwater held by ngā hapū o Te Whānau a Apanui, including their kaitiakitanga and rangatiratanga in relation to waterways in their rohe.

10.4. Te Ao Tūroa Framework set out in this part includes participation arrangements in relation to wai māori. Those arrangements apply regardless of any question of ownership of riverbeds and apply to land and water in the rohe.

10.5. No conclusive assessment or determination of the ownership of beds of waterways within the rohe of ngā hapū o Te Whānau a Apanui has been undertaken for the purposes of this settlement. The settlement will not transfer or vest any bed of a waterway unless it is included within a specified Crown property that the Crown has agreed will vest as commercial or cultural redress.

10.6. Nothing in this settlement of historical claims will prevent ngā hapū o Te Whānau a Apanui from pursuing any claims to extant customary or aboriginal title or rights in relation to rivers or riverbeds in the rohe, including the lagoon at the mouth of the Raukōkore River, or from further engagement with the Crown on those questions. The settlement will not extinguish any extant customary or aboriginal right or title that may exist (including in respect of water). Ngā hapū o Te Whānau a Apanui do not accept that there has been an extinguishment of any such rights or title. These acknowledgements are not an acceptance by the Crown that any such rights or title exist.

11 TAKUTAI MOANA | MARINE AND COASTAL AREA

BACKGROUND

11.1. Ngā hapū o Te Whānau a Apanui entered into negotiations with the Crown in respect of their takutai moana interests in 2003.

11.2. In 2008, the Crown signed Heads of Agreement with the hapū.

11.3. The 2008 Heads of Agreement recorded the following:

The Crown recognises that:

(a) the hapū of Te Whānau a Apanui continue to assert that they have ongoing and enduring ownership interests unbroken by the Act; and

(b) the mana of the hapū of Te Whānau a Apanui in relation to te rohe mana moana o Te Whānau a Apanui is:

(i) unbroken, inalienable and enduring; and

(ii) held and exercised by the hapū of Te Whānau a Apanui as a collective right.

Te Tiriti o Waitangi/the Treaty of Waitangi lays an important foundation for the conduct of the present and ongoing relationship between the parties.

The parties wish to ensure the continuation, recognition and legal protection of a way of life that is based on the fundamental spiritual, cultural, economic and political relationship between the hapū of Te Whānau a Apanui and te rohe mana moana o Te Whānau a Apanui, which is an integral and inalienable part of their tribal territory; inherited through whakapapa as a taonga tuku iho of the hapū of Te Whānau a Apanui.

The parties also wish to encourage and protect the cultural distinctiveness and social well-being of the hapū of Te Whānau a Apanui.

The parties wish to achieve certainty with respect to their relationships with each other, and the inter-relationship with the public at large, in respect of te rohe mana moana o Te Whānau a Apanui.

The parties acknowledge that resolution of their positions is best achieved through negotiation and agreement.

Accordingly, the parties have, in a spirit of co-operation and good faith, agreed to enter into this deed.

11.4. The 2008 Heads of Agreement also recorded that:

The following principles underlie the legal expression, protection and recognition of the mana of the hapū of Te Whānau a Apanui in relation to te rohe mana moana o Te Whānau a Apanui, as expressed in this deed:

Toitū te Mana Atua (principle 1)

It is acknowledged that the hapū of Te Whānau a Apanui have, in accordance with their tikanga, an unbroken, inalienable and enduring sacred relationship with their rohe moana. This relationship acknowledges the Creator is the spiritual source of life, tapu, mauri and mana. The hapū of Te Whānau a Apanui view that sacred relationship as the source of their mana.

The spiritual integrity of this relationship maintains and protects, according to tikanga and traditional matauranga, the manner in which the hapū of Te Whānau a Apanui live in balance with their rohe moana, and by which the balance between the hapū, the natural world and the spiritual realm is maintained.

Toitū te Ao Tūroa (principle 2)

This deed recognises that the hapū of Te Whānau a Apanui have unbroken, inalienable and enduring mana in relation to their rohe moana. This mana, according to their tikanga, places the hapū of Te Whānau a Apanui within a sacredly interconnected world. This deed recognises the tikanga of the hapū of Te Whānau a Apanui which protects and maintains this interconnection by

respecting the mana, oranga, mauri and tapu of all other living beings, natural resources and their habitats within the tribal territory.

Toitū te Mana Tangata (principle 3)

Toitū Te Mana o Ngā Hapū

This deed recognises the hapū of Te Whānau a Apanui as collective groups legitimately possessing their own mana and expressing their own worldview, tikanga and kawa within their respective hapū territory. This deed recognises that this mana is ongoing, enduring and inalienable.

This deed recognises that the hapū of Te Whānau a Apanui have a complex set of whakapapa based inter-relationships existing between each of the hapū and they, in turn, have collective obligations to each other to preserve the unity and the mana of the tribe, and ensure the wise management of the entire tribal territory.

Toitū te Oranga Whanui o Nga Whānau

This deed recognises that the hapū of Te Whānau a Apanui have the right to ensure their oranga whanui, the sustenance and livelihood of their whanau through the maintenance and continued exercise of their tikanga and customary practices.

This deed further recognises that the hapū of Te Whānau a Apanui have the right to exercise influence over persons carrying out activities within, or impacting upon, the rohe moana.

Toitū te Tiriti o Waitangi (principle 4)

This deed acknowledges that the hapū of Te Whānau a Apanui and the Crown are bound by the framework established in the sacred covenant signed between them in 1840, te Tiriti o Waitangi/the Treaty of Waitangi. It further acknowledges that, consistent with the partnership principle underlying te Tiriti o Waitangi/the Treaty of Waitangi, the hapū of Te Whānau a Apanui and the Crown have entered into this deed in good faith and as equals.

The parties acknowledge that, consistent with that Treaty, they are obliged to give effect to this deed (in the manner described in this deed) and to act in good faith, fairly, reasonably and honourably towards each other.

11.5. The 2008 Heads of Agreement with ngā hapū o Te Whānau a Apanui included agreement from the Crown to:

11.5.1. recognise the mana of the hapū and the special status of ngā hapū o Te Whānau a Apanui in their rohe moana;

11.5.2. ensure the rohe moana of ngā hapū o Te Whānau a Apanui is administered with reference to the worldview, tikanga and ture of the hapū of ngā hapū o Te Whānau a Apanui;

11.5.3. ensure that the hapū can continue their customary practices;

11.5.4. ensure that sites of cultural significance are protected;

11.5.5. establish a forum for regular, ongoing discussions between Treaty partners;

11.5.6. create relationship instruments between the hapū of Te Whānau a Apanui and key departments;

11.5.7. propose customary fishing regulations and bylaws can be established by hapū;

11.5.8. restore traditional ngā hapū o Te Whānau a Apanui names to places in the rohe;

11.5.9. provide for pouwhenua to be installed within the rohe moana of ngā hapū o Te Whānau a Apanui; and

11.5.10. require hapū permission for certain activities including in relation to resource consents over petroleum related activities.

11.6. Some of these instruments were subject to certain conditions being met, including the High Court confirming territorial customary rights areas, which was a requirement under the Foreshore and Seabed Act 2004.

11.7. The parties acknowledge that as part of these negotiations the Crown agreed to honour the 2008 Heads of Agreement.

11.8. The rights and interests of ngā hapū o Te Whānau a Apanui that were recognised and guaranteed to Te Whānau a Apanui in the 2008 Heads of Agreement are given expression in various places throughout this deed and the settlement legislation, as well as rights provided, or which may be provided, under the Marine and Coastal Area (Takutai Moana) Act 2011 (**Te Takutai Moana Act**), including the:

11.8.1. statutory overlays (in the form of coastal statutory acknowledgements under clause 11.67);

11.8.2. environmental covenant (through the rohe document prepared under clauses 8.20 to 8.25);

11.8.3. protected customary activities (provided for by sections 51 to 57 of Te Takutai Moana Act);

11.8.4. wāhi tapu (provided for by sections 78 to 81 of Te Takutai Moana Act);

11.8.5. relationship instruments (provided for through the relationship redress at part 22);

11.8.6. conservation mechanisms (provided under clauses 11.24 to 11.51);

11.8.7. fisheries mechanism (provided in the section on customary fishing at clauses 12.2 to 12.65);

11.8.8. a resource management permission right and rights in relation petroleum-related activities (provided by sections 66 to 70 of Te Takutai Moana Act and clauses 11.52 to 11.66);

11.8.9. place name changes (provided for by clause 11.10); and

11.8.10. pou whenua (provided for by clauses 14.4 to 14.7).

11.9. This deed does not provide ngā hapū o Te Whānau a Apanui with implementation funding for these takutai moana arrangements. Nothing in this deed prevents ngā hapū o

Te Whānau a Apanui from discussing implementation funding for these takutai moana arrangements with the Crown in the future.

11.10. Ngā hapū o Te Whānau a Apanui may, at any time, propose traditional place names for places in their rohe in accordance with the processes provided for under the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008.

TAKUTAI MOANA ARRANGEMENTS

11.11. In 2009 ngā hapū o Te Whānau a Apanui agreed to put takutai moana negotiations on hold while the government undertook a review of the Foreshore and Seabed Act 2004. Following the review, the Foreshore and Seabed Act 2004 was repealed and replaced by Te Takutai Moana Act. The parties acknowledge that a separate process will occur under Te Takutai Moana Act to determine areas where customary marine title or protected customary rights exist.

11.12. The settlement legislation will provide that:

11.12.1. Te Takutai Moana Act must be read in conjunction with the settlement legislation, and in the event of conflict, the settlement legislation will prevail;

11.12.2. this deed does not have the effect of granting, creating, or providing evidence of interests that may be recognised under Te Takutai Moana Act;

11.12.3. nothing in this deed is intended to prejudice ngā hapū o Te Whānau a Apanui in seeking recognition of customary marine title or protected customary rights through the High Court or Crown engagement pathways under Te Takutai Moana Act;

11.12.4. ngā hapū o Te Whānau a Apanui are entitled to participate in the conservation processes set out in clauses 11.24 to 11.42 in respect of ngā rohe moana o ngā hapū;

11.12.5. ngā hapū o Te Whānau a Apanui are entitled to develop and implement customary fishing regulations as set out in the section on customary fishing at clauses 12.2 to 12.65; and

11.12.6. if a Te Whānau a Apanui customary marine title area is recognised under section 94 of Te Takutai Moana Act over an area of ngā rohe moana o ngā hapū then:

(a) the relevant group for that area will have the rights of a customary marine title group under Te Takutai Moana Act; and

(b) the relevant hapū entity for the Te Whānau a Apanui customary marine title area will also have the right to:

(i) participate in the additional conservation processes for Te Whānau a Apanui customary marine title areas as set out in clauses 11.43 to 11.51;

(ii) exercise the permission right in relation to resource consents over petroleum related activities as set out in clauses 11.52 to 11.66; and

(iii) exercise the functions and powers set out in the section on customary fishing at clauses 12.2 to 12.65.

DEFINITIONS

11.13. In this part:

11.13.1. **concession** means a concession granted following the process required by Part 3B of the Conservation Act 1987;

11.13.2. **conservation process** has the meaning given by clause 11.43;

11.13.3. **court** means the High Court;

11.13.4. **Crown** has the meaning given by section 2 of the Public Finance Act 1989;

11.13.5. **customary marine title group** has the meaning given by section 9 of Te Takutai Moana Act;

11.13.6. **Director-General** means the Director-General of Conservation;

11.13.7. **hapū** means the hapū listed at paragraph 8.6.2 of the general matters schedule and recorded in the table in part 6 of the attachments;

11.13.8. **hapū entity** means an entity who is representative of a hapū and whose details are specified in the table in part 6 of the attachments and will be listed in a schedule to the settlement legislation;

11.13.9. **marine and coastal area** has the meaning given by section 9 of Te Takutai Moana Act;

11.13.10. **marine mammal** has the meaning given by section 2 of the Marine Mammals Protection Act 1978;

11.13.11. **marine mammal matter** means the bones, teeth, and baleen of a dead marine mammal;

11.13.12. **marine mammal sanctuary** means a marine mammal sanctuary declared under section 22 of the Marine Mammals Protection Act 1978;

11.13.13. **ngā rohe moana o ngā hapū**:

(a) means the area that is the combination of each area described in part 6 of the attachments; and

(b) to avoid doubt, includes any Te Whānau a Apanui customary marine title areas within the areas covered by clause 11.13.13(a); and

(c) is intended to be shown by the map provided at part 7 of the attachments, but to the extent that there is any inconsistency between that map and the definition in clause 11.13.13(a), that definition prevails;

11.13.14. **relevant hapū**, in relation to a thing or matter under this part, means the 1 or more hapū that are affected by the thing or matter;

11.13.15. **relevant hapū entity**, in relation to a thing or matter under this part, means the 1 or more hapū entities that are affected by the thing or matter;

11.13.16. **responsible Minister** has the meaning given by section 9 of Te Takutai Moana Act;

11.13.17. **rohe moana o te hapū** means the zone of the marine and coastal area of each hapū, as shown on the map at part 7 of the attachments;

11.13.18. **Te Whānau a Apanui customary marine title area** means an area in ngā rohe moana o ngā hapū in which 1 or more members of ngā hapū o Te Whānau a Apanui, or a whānau, hapū, or group holds customary marine title under Te Takutai Moana Act, but does not include an area in which customary marine title results from descent from an ancestor who is not referred to in paragraph 8.6.1 of the general matters schedule;

11.13.19. **Te Whānau a Apanui customary marine title hapū** means the 1 or more hapū of ngā hapū o Te Whānau a Apanui who holds customary marine title under Te Takutai Moana Act;

11.13.20. **wildlife** has the meaning given by section 2 of the Wildlife Act 1953, but does not include the wildlife specified in Schedules 1 (game) and 5 (wildlife not protected) of that Act; and

11.13.21. **wildlife matter** means any body or body part of dead wildlife.

HAPŪ ENTITIES

11.14. Each hapū has established the hapū entity named in the table in part 6 of the attachments.

11.15. A hapū entity whose details are specified in the table in part 6 of the attachments represents the hapū named in the relevant row of that table in respect of the area of ngā rohe moana o ngā hapū described in the relevant row of that table.

11.16. For the avoidance of doubt, hapū entities will exercise their rights and responsibilities under this deed in accordance with the tikanga of Te Whānau a Apanui.

Delegation of rights or responsibilities by hapū entities

11.17. A hapū entity may delegate to any persons any rights or responsibilities that it exercises or performs on behalf of a hapū of ngā hapū o Te Whānau a Apanui.

11.18. The rights or responsibilities must be delegated by written notice to the responsible Minister specifying:

11.18.1. the rights or responsibilities that are delegated; and

11.18.2. the persons to whom the rights or responsibilities are delegated; and

11.18.3. the date on which the rights or responsibilities are delegated, which must be after the date on which the Minister is given the notice; and

11.18.4. if applicable, the date on which the delegation ends.

11.19. A hapū entity may, at any time, end the delegation of rights or responsibilities by written notice to the Minister specifying:

11.19.1. the rights or responsibilities that were delegated; and

11.19.2. the persons to whom the rights or responsibilities were delegated; and

11.19.3. the date on which the delegation ends.

11.20. A hapū entity may continue to exercise or perform the rights or responsibilities it has delegated.

11.21. A hapū entity remains responsible for the exercise or performance of the rights or responsibilities it has delegated.

Changes to hapū entities

11.22. The Governor-General may, by Order in Council made on the recommendation of the responsible Minister:

11.22.1. amend the settlement legislation to change the hapū entity for a hapū of ngā hapū o Te Whānau a Apanui; and

11.22.2. if necessary, amend the settlement legislation to set out transitional provisions for the change (such as provisions for a new hapū entity to take over processes started by a previous hapū entity).

11.23. The responsible Minister must make a recommendation for the purposes of clause 11.22 if satisfied that:

11.23.1. the hapū entity has provided written notice to the responsible Minister that:

(a) confirms that, in accordance with the constitution of the hapū entity, the hapū entity has decided that the statutory functions it exercises under the settlement legislation should be transferred to a new hapū entity;

(b) identifies the new hapū entity; and

(c) provides any other information the responsible Minister will need to be satisfied of the requirements in clauses 11.23.2 to 11.23.5; and

11.23.2. to the extent that it has changed, the new hapū entity is appropriate to exercise the rights and responsibilities of a hapū entity under this deed and the settlement legislation;

11.23.3. to the extent that it has changed, the new hapū entity is of a nature that is capable of suing and being sued in relation to their rights and responsibilities under this deed and the settlement legislation;

11.23.4. to the extent that it has changed, the new hapū entity has a structure that:

(a) provides for transparent decision making;

(b) represents, and is accountable to, the members of the relevant hapū; and

(c) includes a dispute resolution process; and

11.23.5. to the extent that it has changed, the new hapū entity provides for the relevant hapū to be the decision-maker in relation to their interests within ngā rohe moana o ngā hapū under this deed and the settlement legislation.

HAPŪ PARTICIPATION IN CONSERVATION PROCESSES

Concession applications

11.24. In clauses 11.25 to 11.30, **concession application** means a complete application for a concession.

11.25. The relevant hapū entity has the right to participate in concession applications in ngā rohe moana o ngā hapū in accordance with clauses 11.26 to 11.30.

Notification

11.26. The Minister of Conservation (or delegate), as the case may be, must give notice to the relevant hapū entity if a concession application is made in respect of an area that is within, adjacent to, or directly affecting ngā rohe moana o ngā hapū.

11.27. The notice must be given as soon as practicable after the Minister of Conservation (or delegate) receives the concession application.

11.28. If the concession application is made in respect of an area within ngā rohe moana o ngā hapū, the notice must:

11.28.1. be in writing;

11.28.2. state that the relevant hapū entity may provide its views on the concession application;

11.28.3. specify a reasonable time frame within which the hapū entity may provide its views on the concession application; and

11.28.4. provide sufficient information about the subject matter and scope of the concession application:

(a) to assist the hapū entity to decide whether it wishes to provide its views on the concession application; and

(b) to advise where further information on the concession application may be viewed.

11.29. If the concession application is made in respect of an area adjacent to or directly affecting ngā rohe moana o ngā hapū, the notice must:

11.29.1. be in writing; and

11.29.2. inform the relevant hapū entity that the concession application has been received.

Obligation to have particular regard to views

11.30. In considering a concession application, the Minister of Conservation (or delegate) must have particular regard to any views provided by the relevant hapū entity within the time frame specified by the notice.

Applications to possess marine mammal matter and wildlife matter

11.31. If the Minister of Conservation or Director-General receives an application for a permit to possess marine mammal matter under section 5 of the Marine Mammals Protection Act 1978 or wildlife matter pursuant to the Wildlife Act 1953 found within ngā rohe moana o ngā hapū, the Minister of Conservation or Director-General may consider the application only if:

11.31.1. the relevant hapū entity has consented in writing to the application; or

11.31.2. the Minister of Conservation or Director-General has decided in accordance with clause 11.34 that the applicant's possession of the marine mammal matter or wildlife matter (as applicable) is essential for the conservation of the species or subspecies to which the marine mammal or wildlife belongs.

11.32. If the Minister of Conservation or Director-General receives an application of a kind described in clause 11.31 and a relevant hapū entity has neither consented to the application nor declined to consent to it, the following process will apply:

11.32.1. as soon as practicable after receiving the application, the Minister of Conservation or Director-General must refer it to the relevant hapū entity to decide whether it wishes to consent to the application. Referral must be made:

(a) orally, if the application is urgent (but written confirmation of it must be given as soon as practicable); or

(b) by written notice, if the application is not urgent, together with a copy of:

(i) the application; and

(ii) the details provided by the applicant;

11.32.2. on receiving an application, the hapū entity must either consent to the application or decline to consent to it;

11.32.3. if the Minister of Conservation or Director-General has referred the application:

(a) orally, the relevant hapū entity must give its response under clause 11.32.2 as soon as practicable and, in any event, no later than 24 hours after receiving the application; or

(b) by written notice, the relevant hapū entity must give its response under clause 11.32.2 no later than 40 working days after receiving the application;

11.32.4. if the relevant hapū entity does not respond in the time specified in clause 11.32.3, the relevant hapū entity will be treated as having given its consent to the application; and

11.32.5. in deciding whether to consent to an application, the relevant hapū entity is not required to have regard to any of the provisions of the Marine Mammals Protection Act 1978 or the Wildlife Act 1953 (as applicable).

11.33. If the relevant hapū entity has consented to an application in accordance with clause 11.32.3, the Minister of Conservation or the Director-General (whichever is making the decision) must not grant the permit for that application on terms different from those in the

application unless:

11.33.1. the relevant hapū entity has consented in writing to the different terms; or

11.33.2. the Minister of Conservation or the Director-General decides in accordance with clause 11.34 that the different terms are essential for the conservation of the species or subspecies to which the marine mammal or wildlife belongs.

11.34. The Minister of Conservation or the Director-General must make a decision for the purposes of clause 11.31.1 or clause 11.33.2 by:

11.34.1. seeking the views of the relevant hapū entity and taking any views provided into account; and

11.34.2. taking into account the following in relation to the species or subspecies of the marine mammal or wildlife:

(a) its taxonomic status;

(b) its threatened status or rarity;

(c) the current state of knowledge about it and whether any information gained as a result of granting the application would be an important addition to that knowledge;

(d) whether its population is being actively managed;

(e) whether it is included in a species recovery plan; and

(f) any other matter similar in nature to the matters set out in clauses 11.34.2(a) to 11.34.2(e).

11.35. For the purposes of clause 11.34, the Minister of Conservation or the Director-General:

11.35.1. must seek the views of each hapū entity by written notice that specifies a reasonable time frame within which the hapū entity must provide its views; and

11.35.2. need only take into account views provided within the specified time frame.

11.36. The Minister of Conservation or the Director-General must provide the relevant hapū entity with written notice of:

11.36.1. a decision made under clause 11.34; and

11.36.2. the reasons for the decision.

Costs

11.37. A hapū entity of ngā hapū o Te Whānau a Apanui may not charge for the exercise of its rights under clauses 11.24 to 11.36.

Possession of marine mammal matter by ngā hapū o Te Whānau a Apanui or Director-General

11.38. Ngā hapū o Te Whānau a Apanui may possess marine mammal matter that has been lawfully obtained within ngā rohe moana o ngā hapū without a permit under the Marine

Mammals Protection Act 1978.

11.39. For each piece of matter possessed under clause 11.38, Te Taumata must keep a written register containing a current and accurate record that includes:

11.39.1. the name of the person who possesses the matter;

11.39.2. a description of the marine mammal from which the matter was obtained; and

11.39.3. where and when the marine mammal was obtained.

11.40. If requested by the Director-General in writing, Te Taumata must enable the Director-General to:

11.40.1. access the register held under clause 11.39; and

11.40.2. access the marine mammal matter possessed by ngā hapū o Te Whānau a Apanui under clause 11.38; and

11.40.3. collect data about, and samples from, the marine mammal matter if the Director-General considers that to do so is essential for the conservation of the species to which the animal belongs.

11.41. If the Director-General comes into possession of marine mammal matter that has been obtained within ngā rohe moana o ngā hapū, the Director-General must:

11.41.1. give Te Taumata written notice of the possession of that matter, including details of the matter; and

11.41.2. if the Director-General wishes to dispose of the matter, offer to gift it to ngā hapū o Te Whānau a Apanui (and receive written notice from Te Taumata refusing the offer) before disposing of it in any other way.

11.42. Clauses 11.39 and 11.40 apply to any marine mammal matter that ngā hapū o Te Whānau a Apanui receives as a result of clause 11.41.

CONSERVATION PROCESSES WITHIN TE WHĀNAU A APANUI CUSTOMARY MARINE TITLE AREAS

11.43. In clauses 11.44 to 11.51, **conservation process** means any of the following applications or proposals:

11.43.1. complete applications for concessions;

11.43.2. proposals under section 22 of the Marine Mammals Protection Act 1978 to define and declare or extend a marine mammal sanctuary; and

11.43.3. applications made under regulation 12 of the Marine Mammals Protection Regulations 1992 for permits authorising commercial operations.

11.44. If an application or proposal for a conservation process is made in respect of a Te Whānau a Apanui customary marine title area, the Minister of Conservation or the Director-General must not consider the application or proposal without the written permission of the relevant hapū entity.

11.45. The Minister of Conservation or the Director-General must refer an application or a proposal for a conservation process to the relevant hapū entity for the Te Whānau a Apanui customary marine title area concerned unless:

11.45.1. the person making the application or proposal has already sought permission from the relevant hapū entity for the Minister of Conservation or the Director-General to consider the application or proposal; and

11.45.2. the relevant hapū entity has given or declined that permission.

11.46. In referring the application or proposal, the Minister of Conservation or the Director-General must:

11.46.1. in the case of a proposal for a marine mammal sanctuary, also refer details of the management activities that may be undertaken in the proposed marine mammal sanctuary; and

11.46.2. in the case of an application for a concession, or an application for a permit authorising a commercial operation, also refer all the relevant details that the Minister of Conservation or the Director-General has available.

11.47. The relevant hapū entity must, no later than 40 working days after it receives an application or a proposal for its consideration under clauses 11.45 and 11.46:

11.47.1. decide whether to give or decline permission for the Minister of Conservation or the Director-General to consider the application or proposal; and

11.47.2. give written notice of that decision to the Minister of Conservation or the Director-General.

11.48. The relevant hapū entity is to be treated as having given its permission if notice of its decision is not received within the time frame specified in clause 11.47.

11.49. Permission given by the relevant hapū entity cannot be revoked.

11.50. If the relevant hapū entity has given its permission for an application or a proposal under clause 11.47, the Minister of Conservation or the Director-General must not grant the application or approve the proposal on terms different from those in the application or proposal.

11.51. The relevant hapū entity may not charge for the exercise of its rights under clauses 11.43 to 11.50.

PERMISSION RIGHT IN RELATION TO RESOURCE CONSENTS OVER PETROLEUM RELATED ACTIVITIES

11.52. In clauses 11.53 to 11.66:

11.52.1. **Council** means Bay of Plenty Regional Council;

11.52.2. **EPA** means Environmental Protection Authority;

11.52.3. **petroleum related activity** means prospecting, exploration, mining or mining operations in respect of petroleum as defined in section 2(1) of the Crown Minerals Act 1991; and

11.52.4. **Council or EPA**, in relation to a resource consent application, means whichever of the Council or the EPA receives the application.

Applications to be considered only in certain circumstances

11.53. If the Council or the EPA receives a resource consent application for a proposed petroleum related activity in a Te Whānau a Apanui customary marine title area, it may consider, process, or act on the application under the Resource Management Act 1991 only if the relevant hapū entity has given permission in writing to the proposed petroleum related activity.

11.54. Permission given by the relevant hapū entity cannot be revoked, but may be given for a limited duration specified in the permission.

11.55. The process under clause 11.53 applies despite any other enactment, including (to avoid doubt) sections 87A(2)(a) and 104A of the Resource Management Act 1991.

Further restrictions on applications

11.56. If the Council or EPA is prevented by clause 11.53 from considering, processing, or acting on a resource consent application under the Resource Management Act 1991, no other person may consider, process, or act on the application under that Act.

11.57. Without limiting clause 11.56, a Minister may not take the following steps under Part 6AA of the Resource Management Act 1991 in relation to the resource consent application:

11.57.1. decide whether it is, or is part of, a proposal of national significance; or

11.57.2. make a direction to refer it to a board of inquiry or the Environment Court for decision.

Referral of applications to the relevant hapū entity

11.58. If the Council or EPA receives a resource consent application for a proposed petroleum related activity in a Te Whānau a Apanui customary marine title area and the relevant hapū entity has not given permission in writing, or refused in writing to give permission, for the proposed petroleum related activity:

11.58.1. the Council or EPA must refer the application to the relevant hapū entity to determine whether it wishes to give permission for the proposed petroleum related activity for the purposes of clause 11.53; and

11.58.2. the application must be referred to the hapū entity as soon as practicable after it is received.

Relevant hapū entity to determine whether to give permission for activity

11.59. A relevant hapū entity may, by notice to the Council or EPA no later than 40 working days after the referral of a resource consent application under clause 11.58:

11.59.1. give permission in writing for the proposed petroleum related activity for the purposes of clause 11.53; or

11.59.2. decline in writing to give permission for the proposed petroleum related activity.

11.60. If the relevant hapū entity does not give notice by the deadline in clause 11.59, the relevant hapū entity is to be treated as having given its permission in writing for the proposed petroleum related activity for the purposes of clause 11.53.

Further information may be requested

11.61. If the Council or EPA has referred, under clause 11.58, a resource consent application for a proposed petroleum related activity in a Te Whānau a Apanui customary marine title area to the relevant hapū entity, the following subclauses will apply:

11.61.1. before determining whether to give permission, the relevant hapū entity may, by notice to the Council or EPA, seek further information of any type from the applicant to assist the hapū entity in determining whether to give permission;

11.61.2. on receipt of a request from the relevant hapū entity, the Council or EPA must promptly seek the further information from the applicant;

11.61.3. an applicant who receives a request from the Council or EPA seeking further information must, no later than 15 working days after receiving the request:

(a) provide the information to the Council or EPA; or

(b) advise the Council or EPA by written notice that the applicant agrees to provide the information; or

(c) advise the Council or EPA by written notice that the applicant refuses or is unable to provide the information;

11.61.4. if the Council or EPA receives a notice under clause 11.61.3(b), it must inform the applicant, by written notice, of the date by which the applicant is required to provide the information (being 30 working days later, or any earlier date required by the hapū entity);

11.61.5. the Council or EPA must promptly provide the hapū entity with information received from the applicant under this clause;

11.61.6. the time period between the following dates must be excluded from the deadline calculation described in clause 11.59:

(a) the date on which the Council or EPA receives the hapū entity's request for further information from the applicant;

(b) the date that, as the case may be:

(i) the Council or EPA provides the further information to the hapū entity; or

(ii) is 15 working days after the date of the request from the Council or EPA, where the applicant fails to respond to that request; or

(iii) the time limit expires under clause 11.61.4, if the applicant fails to provide the further information by that time limit; or

(iv) the Council or EPA gives notice to the hapū entity that the applicant refuses or is unable to provide the information; and

11.61.7. to avoid doubt, in relation to petroleum related consent applications in Te Whānau a Apanui customary marine title areas, clauses 11.61.1 to 11.61.6 apply instead of the Resource Management Act 1991 permission right under the Takutai Moana Act.

General provisions

11.62. If a hapū entity gives permission in writing for a proposed petroleum related activity for the purposes of clause 11.53, a consent authority must not grant a resource consent for a proposed petroleum related activity with a different scope to that in the application for the resource consent unless the hapū entity has consented in writing to the different scope.

11.63. To avoid doubt, in making decisions under clauses 11.53 to 11.66, a hapū entity is not limited by, or required to comply with, decision-making processes in the Resource Management Act 1991 that apply to a consent authority.

11.64. If the Council or EPA refers a resource consent application to a hapū entity under clause 11.58, the Council or EPA may require the applicant to pay the Council's or EPA's reasonable costs in complying with clauses 11.53 to 11.66 in relation to the application.

11.65. For any resource consent application for a proposed petroleum related activity in a Te Whānau a Apanui customary marine title area that is referred to a hapū entity for any purpose under clauses 11.53 to 11.66, the statutory time frames in the Resource Management Act 1991 that apply to the resource consent application are suspended until the hapū entity has exercised its rights under those clauses, including any rights of appeal or rehearing under that Act in relation to rights under those clauses.

11.66. This clause applies to a proposed activity in a Te Whānau a Apanui customary marine title area that requires the permission of the relevant hapū entity for the purposes of clause 11.53:

11.66.1. it is an offence to commence the activity in the area unless the relevant hapū entity has given permission for the purposes of clause 11.53;

11.66.2. a person who commits an offence against clause 11.66.1 is liable on conviction:

(a) in the case of a natural person, to imprisonment for a term not exceeding 2 years or a fine not exceeding $300,000; and

(b) in the case of a person other than a natural person, to a fine not exceeding $600,000;

11.66.3. a person convicted of an offence under this clause is also liable for the full value of:

(a) any revenue or profits earned by, or accruing to, the offender as a result of the offence; or

(b) any revenue or profits lost by the relevant hapū entity as a result of the offence; or

(c) any savings in costs made by, or accruing to, the offender as a result of the offence;

11.66.4. if a person is convicted of an offence under this clause and a fine is imposed, the court must:

(a) deduct 10% from the total sum of the fine imposed and the full amount payable under clause 11.66.3, to be credited to a Crown Bank Account nominated by the Minister of Finance for the purposes of this clause; and

(b) order that the balance of the total sum described in clause 11.66.4(a) be paid:

(i) in full to the relevant hapū entity that brought the prosecution; or

(ii) if another person brought the prosecution, to that person and the relevant hapū entity in any proportion that the court directs; and

11.66.5. proceedings under this clause must be heard:

(a) by an Environment Judge sitting alone; or

(b) in the District Court and, unless the Chief District Court Judge directs otherwise, by a District Court Judge who is an Environment Judge.

COASTAL STATUTORY ACKNOWLEDGEMENT

11.67. The settlement legislation will, on the terms provided by sections [x] to [x] of the draft settlement bill:

11.67.1. provide the Crown's acknowledgement of the statement by ngā hapū o Te Whānau a Apanui of their particular cultural, spiritual, historical, and traditional association with the coastal statutory acknowledgement area (as shown on deed plan OMCR-114-14);

11.67.2. require relevant consent authorities, the Environment Court, and Heritage New Zealand Pouhere Taonga to have regard to the coastal statutory acknowledgement;

11.67.3. require relevant consent authorities to forward to Te Taumata:

(a) summaries of resource consent applications for an activity within, adjacent to or directly affecting the statutory area; and

(b) a copy of a notice of a resource consent application served on the consent authority under section 145(10) of the Resource Management Act 1991; and

11.67.4. enable Te Taumata, and any member of ngā hapū o Te Whānau a Apanui, to cite the coastal statutory acknowledgement as evidence of the association of ngā hapū o Te Whānau a Apanui with the area, subject to clause 11.12.2.

11.68. The statement of association is set out in part 1 of the documents schedule.

12 TE MANAWA MOANA | FISHERIES MECHANISM

12.1. This deed sets out redress relating to the takutai moana and fisheries across several sections of the deed and related documents, as follows:

12.1.1. the Takutai Moana part of the deed (part 11) addresses the majority of the takutai moana related matters agreed in the agreement in principle;

12.1.2. this Fisheries Mechanism part of the deed (part 12) covers the remainder of the takutai moana related matters including customary fishing regulations and bylaws;

12.1.3. the Primary Industries Fisheries Protocol, in part 3.2 of the documents schedule, addresses the relationship between Te Whānau a Apanui and the Ministry for Primary Industries in relation to primarily takutai moana and fisheries-related issues; and

12.1.4. the Ministry for Primary Industries Relationship Instrument records how the Ministry for Primary Industries and Te Whānau a Apanui intend to work together more generally, not limited to takutai moana and fisheries related issues.

CUSTOMARY FISHING REGULATIONS

12.2. In clauses 12.3 to 12.15:

12.2.1. **customary fishing area of ngā hapū** means:

(a) the area of ngā rohe moana o ngā hapū;

(b) the extension of that area to the outer limit of the exclusive economic zone; and

(c) the New Zealand fisheries waters as defined in section 2 of the Fisheries Act 1996 within those areas;

12.2.2. **customary food gathering** means the traditional rights confirmed by the Treaty of Waitangi and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, being the taking of fish, aquatic life, or seaweed or managing of fisheries resources, as authorised by certain persons, to the extent that the gathering is consistent with tikanga Māori and is neither commercial in any way nor for pecuniary gain or trade;

12.2.3. **hapū customary fishing area** means:

(a) the relevant area of customary fishing area of ngā hapū for each hapū as shown on the map at part 7 of the attachments; and

(b) the extension of that area to the outer limit of the exclusive economic zone and inland to the border of the area of interest; and

12.2.4. **local resident population** means the local resident population who participate in customary food gathering.

12.3. The Ministry for Primary Industries will be required to:

12.3.1. develop the customary fisheries regulations in consultation with ngā hapū o Te Whānau a Apanui; and

12.3.2. use best endeavours to, within 18 months after the date this deed is signed, unless otherwise agreed between the parties, recommend to the Governor-

General the making of customary fisheries regulations, by Order in Council, under the settlement legislation and/or the Fisheries Act 1996 that are in accordance with those matters described in clauses 12.4 to 12.11.

12.4. The regulations are for the purposes of giving effect to the Crown's obligations to ngā hapū o Te Whānau a Apanui under section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, for the purposes of recognising and providing for the following matters:

12.4.1. customary food gathering by ngā hapū o Te Whānau a Apanui within the customary fishing area of ngā hapū; and

12.4.2. the special relationship between Te Whānau a Apanui customary marine title hapū and places of customary food gathering in their Te Whānau a Apanui customary marine title areas.

12.5. Without limiting clause 12.4, where recommendations are made under clause 12.3.2, the Minister for Oceans and Fisheries must recommend that those proposed regulations:

12.5.1. provide for the hapū entities of ngā hapū o Te Whānau a Apanui to appoint 1 or more fisheries management committees for the customary fishing area of ngā hapū, and provide for the appointment of members to, and removal of members from, the committees;

12.5.2. provide for the members of fisheries management committees to be able to;

(a) authorise the taking of fish;

(b) appoint other persons to issue, on behalf of the members of a fisheries management committee, all authorisations for the taking of fish or only authorisations of a certain type under clause 12.5.6; and

(c) remove those persons appointed under clause 12.5.2(b);

12.5.3. prescribe the functions and duties of fisheries management committees;

12.5.4. provide for fisheries management committees to make fisheries management plans for the customary fishing area of ngā hapū;

12.5.5. prescribe the matters to be included in fisheries management plans;

12.5.6. provide for fisheries management committee members and persons appointed by them to issue oral and written authorisations to take, hold, and distribute fisheries resources for customary food gathering purposes;

12.5.7. provide for the local resident population in the customary fishing area of ngā hapū to be able to take fisheries resources from within that area for customary food gathering purposes in accordance with tikanga without using the authorisation system referred to in clause 12.5.6;

12.5.8. provide for the Minister for Oceans and Fisheries to work with the relevant hapū and hapū entity where the Minister considers that a fisheries management committee is not managing all or some of the customary fishing area of ngā hapū in a manner that ensures sustainability while providing for utilisation of fisheries resources;

12.5.9. provide for fisheries management committees to propose bylaws for any of the following areas that are covered by a fisheries management plan:

(a) a Te Whānau a Apanui customary marine title area; and

(b) an area of the New Zealand fisheries waters in the relevant customary fishing area of ngā hapū;

12.5.10. provide for the Minister for Oceans and Fisheries to consider and, by notice in the *Gazette*, make bylaws that are proposed by a fisheries management committee, after the Minister satisfies the relevant requirements in this deed;

12.5.11. provide for record keeping, document management, and reporting requirements for fisheries management plans, written and oral authorisations, and bylaws to which this clause applies;

12.5.12. provide for offences, defences, and penalties;

12.5.13. provide for the establishment and management of pātaka which will enable Te Taumata or a hapū entity to place customary fishing authorisations on commercial fishing vessels, and to use that vessel's processing facilities;

12.5.14. provide, in certain situations, for arrangements (as defined in section 51(7)) that are made under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 within the customary fishing area of ngā hapū in respect of ngā hapū o Te Whānau a Apanui to be treated as arrangements under the regulations made under this clause; and

12.5.15. provide for any other matters contemplated by clauses 12.3 to 12.16 or necessary for giving it full effect.

12.6. The matters that the regulations will provide for are set out in clauses 12.18 to 12.65.

12.7. The regulations recommended by the Minister for Oceans and Fisheries under clause 12.3.2 must:

12.7.1. comply with the requirements of this deed;

12.7.2. support the values and principles of ngā hapū o Te Whānau a Apanui; and

12.7.3. support the purpose and principles of the Fisheries Act 1996.

12.8. Before making a recommendation under clause 12.3.2, the Minister for Oceans and Fisheries must consult ngā hapū o Te Whānau a Apanui.

12.9. Regulations made following the Minister for Oceans and Fisheries' recommendation under clause 12.3.2 must be treated for all purposes as having been made under section 186(1) and (2) of the Fisheries Act 1996, and that Act applies accordingly, except that:

12.9.1. section 186(3)(a) to (c) of that Act applies to bylaws made under the regulations as if:

(a) it referred to persons (including individuals and bodies corporate), not merely individuals; but

(b) it provided that the bylaws allow a person to take fisheries resources for the purpose of sustaining the functions of a marae in accordance with an authorisation granted for that purpose by a fisheries management committee; and

12.9.2. the notice in the *Gazette* for bylaws made under the regulations is not secondary legislation for the purposes of the Legislation Act 2019 and does not have to be presented to the House of Representatives under section 114 of that Act.

Performance of functions and exercise of powers under Fisheries Act 1996

12.10. A person, when performing a function or exercising a power under the Fisheries Act 1996, must recognise and provide for a fisheries management plan if the function to be performed or power to be exercised affects the area in which the plan applies.

12.11. In clause 12.10, **fisheries management plan** means a fisheries management plan made in accordance with regulations made following the Minister for Oceans and Fisheries' recommendation under clause 12.3.2.

Relationship between Te Whānau a Apanui customary fishing regulations and other regulations

12.12. In clauses 12.13 to 12.16:

12.12.1. **Te Whānau a Apanui customary fishing regulations** mean the regulations made following the Minister for Oceans and Fisheries' recommendation in clause 12.3.2; and

12.12.2. **non-customary fishing regulations** means:

(a) the Fisheries (Amateur Fishing) Regulations 2013; and

(b) any other regulations made under the Fisheries Act 1996 or the Fisheries Act 1983 other than regulations about customary fishing.

12.13. The Te Whānau a Apanui customary fishing regulations, and bylaws made under those regulations, prevail over non-customary fishing regulations:

12.13.1. in relation to any area within the customary fishing area of ngā hapū for which a fisheries management committee has been established under the Te Whānau a Apanui customary fishing regulations; but

12.13.2. only to the extent of any inconsistency.

12.14. However, the Te Whānau a Apanui customary fishing regulations or the bylaws may further restrict the areas for which, and the time from which, they prevail over non-customary fishing regulations.

12.15. This clause specifies how regulations about customary fishing apply to different hapū or persons in respect of any fisheries resources within the customary fishing area of ngā hapū:

12.15.1. the Te Whānau a Apanui customary fishing regulations apply instead of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 in respect of ngā hapū o Te Whānau a Apanui, but the Fisheries (Kaimoana Customary Fishing) Regulations 1998 continue to apply in respect of any other hapū or persons;

12.15.2. however, the Fisheries (Kaimoana Customary Fishing) Regulations 1998 continue to apply in respect of ngā hapū o Te Whānau a Apanui in the following ways:

(a) those regulations apply to any arrangements that were already made under them, or are made as a result of a process described in clause 12.15.2(b);

(b) any process for arrangements that is started under those regulations must be completed under them; and

(c) regulations 7 and 8, other than regulation 8(1)(b) and (3)(a), apply (covering submissions and dispute resolution about tangata whenua or an area/rohe moana, but not about Tangata Kaitiaki/Tiaki); and

12.15.3. notwithstanding clause 12.15.2, a Te Whānau a Apanui hapū that is managing and using customary fishing under the Fisheries (Kaimoana Customary Fishing) Regulations 1998, may choose to transfer the exercise of those rights to the Te Whānau a Apanui customary fishing regulations. When choosing to transfer the exercise of those customary fishing activities to the Te Whānau a Apanui customary fishing regulations, the relevant hapū entity must notify the Minister of Oceans and Fisheries of their decision and the Minister must make any necessary amendments to the Te Whānau a Apanui customary fishing regulations to achieve the transfer.

12.16. In clause 12.15.2, **arrangements** includes the following:

12.16.1. definition of a customary food gathering area/rohe moana;

12.16.2. confirmation of the tangata whenua of an area/rohe moana;

12.16.3. declaration of a mātaitai reserve;

12.16.4. appointment of a Tangata Kaitiaki/Tiaki;

12.16.5. authorisation to take fisheries resources;

12.16.6. preparation of a management plan or strategy for an area/rohe moana; and

12.16.7. bylaws restricting or prohibiting the taking of fisheries resources from within a mātaitai reserve.

CONTENTS OF CUSTOMARY FISHING REGULATIONS

12.17. The customary fisheries regulations referred to in clauses 12.3 to 12.11 must, as a minimum, cover the matters set out in clauses 12.18 to 12.65 below.

Fisheries management plan

12.18. Each hapū entity will be required to appoint a fisheries management committee to develop and approve, in consultation with hapū members and Te Taumata, a fisheries management plan for the hapū in relation to the hapū customary fishing area.

12.19. A fisheries management committee may prepare a single fisheries management plan on behalf of one or more hapū.

12.20. Te Taumata will be required to maintain a consolidated fisheries management plan that comprises each fisheries management plan for the customary fishing area of ngā hapū.

12.21. The purpose of fisheries management plans is to:

12.21.1. provide for utilisation of fisheries resources while ensuring sustainability;

12.21.2. recognise and provide for customary food gathering under the management of the hapū within the hapū fisheries area; and

12.21.3. recognise and provide for the special relationship between the hapū and places of importance for customary food gathering.

12.22. Fisheries management plans will be required to include:

12.22.1. the management objectives for fisheries resources within the hapū fisheries area, including the balance between the interests of the hapū in customary, commercial and recreational fishing;

12.22.2. a framework for the taking and utilisation of fisheries resources for customary food gathering purposes;

12.22.3. direction on how Te Taumata should notify details of the local resident population take to the relevant hapū, and local residents for the fisheries management plan area;

12.22.4. any limitations that the fisheries management committee considers should be applied to the allowing of customary food gathering; and

12.22.5. any limitations that may be applied in Te Whānau a Apanui customary marine title areas by using bylaws provided for in the regulations.

Authorisation of customary fishing

12.23. In clauses 12.24 to 12.48, **take**, **taken** or **taking** also means to possess or possession and distribution of fisheries resources that have been taken.

12.24. Members of each fisheries management committee will be able to:

12.24.1. allow the taking of fisheries resources, in accordance with their fisheries management plan, from or within the hapū fisheries area for customary food gathering purposes, including for the purpose of sustaining the functions of a marae within that area;

12.24.2. appoint other persons to issue, on behalf of the members of the fisheries committee, all authorisations for the taking of fisheries resources, or only authorisations of a certain type (written, electronic or oral) under clause 12.25; and

12.24.3. remove persons appointed by the fisheries management committee under clause 12.24.2.

12.25. Where the taking of fisheries resources does not fall under the local population take, the members or persons appointed by them will be able to allow the taking of fisheries

resources for customary food gathering purposes by using a written, electronic or oral authorisation system.

12.26. Where members of the fisheries management committee or persons appointed by them use a written authorisation system to allow the taking of fisheries resources, the authorisation will be required to include:

12.26.1. the dates on which the fisheries resources may be taken;

12.26.2. the persons who are allowed to take the fisheries resources;

12.26.3. the species that may be taken;

12.26.4. the quantities of each species that may be taken;

12.26.5. the methods by which each species may be taken;

12.26.6. the areas in which each species may be taken;

12.26.7. the purposes for which each species may be taken;

12.26.8. the venue or venues at which the catch may be held and/or used; and

12.26.9. any other matter considered relevant by the hapū entity member who is allowing the taking of fisheries resources.

12.27. Where members of the fisheries management committee or persons appointed by them use an oral authorisation system to allow the taking of fisheries resources, the fisheries management committee will be required to maintain, and keep up to date, a register that records those matters listed in clause 12.26 in respect of:

12.27.1. each person allowed to take fisheries resources; and

12.27.2. each circumstance where a person is allowed to take fisheries resources.

12.28. Members of the fisheries management committee or persons appointed by them will be required to provide copies of each authorisation issued in writing, as described in clause 12.26, or details of each authorisation issued orally, as described in clause 12.27 (as the case may be), to a fisheries officer on request.

12.29. Authorisation holders will be required to provide copies of written authorisations issued to them, as described in clause 12.26, or evidence of oral authorisations issued, as described in clause 12.27 (as the case may be), to a fisheries officer on request.

12.30. Each fisheries management committee will be required to:

12.30.1. keep records of the quantities of fisheries resources taken in accordance with the fisheries management plan;

12.30.2. annually, provide to Te Taumata and the hapū copies of the records described in clause 12.30.1 and information on customary fisheries management and activity generally in the hapū fisheries area, including the implementation of the fisheries management plan; and

12.30.3. each year hold a meeting with Te Taumata to generally report on those matters described in clause 12.30.2.

12.31. Each fisheries management committee will be required to provide to Fisheries New Zealand:

12.31.1. a copy of its fisheries management plan, in its original form and as that plan is amended from time to time; and

12.31.2. annually, a report on those matters described in clause 12.30.2 for the period since the customary fisheries regulations came into force or since the last report (whichever is the later).

Local resident take

12.32. The local resident population in the hapū fisheries area will be able to take fisheries resources from within the hapū fisheries area for customary food gathering purposes in accordance with tikanga without using the written or oral authorisation system described in clauses 12.25 to 12.31 (the **local resident population take**).

12.33. In accordance with hapū fisheries management plans, Te Taumata will be required to notify:

12.33.1. each hapū entity on behalf of the hapū;

12.33.2. all persons authorised by ngā hapū o Te Whānau a Apanui to take fisheries resources from or within the hapū fisheries area for customary food gathering purposes, as described in clause 12.32; and

12.33.3. the Minister for Oceans and Fisheries,

of the local resident population take (including any limit on the size and quantity of fisheries resources and any limit on the method, area, time period or season for taking those resources) and of any amendment made to the local resident population take from time to time.

12.34. When setting limits on the local resident population take, Te Taumata will be required to take into account any limitations on the allowing of customary food gathering that are set out in the hapū fisheries management plans.

12.35. The fisheries resources under local resident population take will be required to be taken, possessed and consumed:

12.35.1. in accordance with the notified limits set by Te Taumata, as described in clause 12.33; and

12.35.2. within the hapū fisheries area.

12.36. To avoid doubt, all persons authorised to take and consume fisheries resources under the local resident population take provisions, as described in clause 12.32, will be able to take those resources from all or any part of the hapū fisheries area.

12.37. Persons taking fisheries resources under local resident population take will be required to provide proof of identity and residence to a fisheries officer on request.

12.38. Te Taumata will be required to:

12.38.1. maintain and keep up to date a list of all persons who may take fisheries resources within a hapū fisheries area under the local resident population take;

12.38.2. provide to the Minister for Oceans and Fisheries a copy of the list described in clause 12.38.1, in its original form and as that list is updated from time to time;

12.38.3. keep records of the quantities of fisheries resources taken under local resident population take; and

12.38.4. on a quarterly basis, provide to the Minister of Fisheries copies of the records described in clause 12.38.3.

Actions where there are concerns about management of hapū fisheries areas

12.39. If the Minister for Oceans and Fisheries, after consulting the hapū entity in any hapū customary fishing area, considers a hapū customary fishing area is not, or may not, be being managed in a manner that ensures sustainability while providing for utilisation of fisheries resources (sustainable utilisation concerns), Fisheries New Zealand will provide such advice and assistance to the hapū entity as Fisheries New Zealand considers necessary to enable the hapū entity to support the fisheries management committee to remedy the sustainable utilisation concerns.

12.40. Where the hapū entity in that hapū customary fishing area and Fisheries New Zealand consider that the fisheries management committee is unwilling or unable to implement the advice and assistance described in clause 12.39, the hapū entity, fisheries management committee and Fisheries New Zealand will be required to develop a management strategy to address the sustainable utilisation concerns.

12.41. Where the fisheries management committee does not observe the management strategy described in clause 12.40, without limiting their general rights of revocation:

12.41.1. the hapū entity will be able to:

(a) revoke the appointment of some or all of the members of the fisheries management committee; or

(b) restrict the ability of those members to allow the taking of fisheries resources; and

12.41.2. the Minister for Oceans and Fisheries will be able to request that the hapū:

(a) revoke the appointment of some or all of the members of the fisheries management committee; or

(b) restrict the ability of those members to allow the taking of fisheries resources.

Offences

12.42. An offences and penalties regime applies where a person commits an offence against the regulations, including the taking or possessing of fisheries resources from an area covered by a fisheries management plan:

12.42.1. without a valid authorisation, as described in clauses 12.26 to 12.27; or

12.42.2. in a manner that is inconsistent with a valid authorisation; or

12.42.3. in contravention of a fisheries bylaw, as described in clause 12.45; or

12.42.4. in a manner inconsistent with the provisions of the local resident population take.

Defences

12.43. Defences in proceedings for offences described in clause 12.42 include where:

12.43.1. the person taking the fisheries resources had reasonable grounds for believing their activity was authorised by a member of the hapū entity;

12.43.2. the taking of those fisheries resources was consistent with the purpose, objectives and rules in the fisheries management plan for the area where the taking occurred; and

12.43.3. there was an error or omission by the relevant member of the hapū entity in the issuing or the recording of the authorisation.

Forms

12.44. The forms that the fisheries management committee will be required to use for the record keeping are described in clauses 12.26 to 12.27.

Bylaws

12.45. In Te Whānau a Apanui customary marine title areas, the fisheries management committee for that area is able to propose bylaws restricting or prohibiting fishing in those areas to provide for utilisation while ensuring sustainability or cultural reasons (**fisheries bylaws**).

12.46. The customary fisheries regulations will enable the making of fisheries bylaws in respect of Te Whānau a Apanui customary marine title areas that are covered by a fisheries management plan.

12.47. Fisheries bylaws will be able to be made for one or more of the following purposes where the fisheries management plan provides for that purpose:

12.47.1. to ensure sustainable utilisation of fisheries resources;

12.47.2. to provide for customary food gathering in accordance with the tikanga of the hapū in the Te Whānau a Apanui customary marine title area; and

12.47.3. for cultural reasons, including:

(a) to recognise a human death in the Te Whānau a Apanui customary marine title area;

(b) to recognise traditional management practices;

(c) to increase the availability of traditional species in a particular area; or

(d) to achieve any other purpose set out in a fisheries management plan.

12.48. In order to achieve the purposes described in clause 12.47, fisheries bylaws will be able to restrict or prohibit the taking of fisheries resources, by commercial, recreational and customary fishers, from or within the relevant Te Whānau a Apanui customary marine title areas or within the hapū area described at clause 12.2.3 These restrictions or prohibitions may relate to:

12.48.1. the species of fish, aquatic life, and seaweed that may be taken;

12.48.2. the quantities of each species that may be taken;

12.48.3. size limits for each species that may be taken;

12.48.4. the areas from which each species may or may not be taken;

12.48.5. the methods by which each species may be taken; and

12.48.6. any other matter that the hapū consider necessary to:

(a) provide for the sustainable utilisation of fisheries resources;

(b) recognise and provide for their customary food gathering;

(c) recognise and provide for the special relationship between the Te Whānau a Apanui customary marine title hapū and their places of importance for customary food gathering; and

(d) achieve any other purpose set out in a fisheries management plan.

12.49. The customary fisheries regulations will:

12.49.1. provide that a fisheries bylaw may specify the duration of the bylaw where the fisheries management committee on behalf of a hapū entity proposes that it apply for a fixed period of time; and

12.49.2. require that a fisheries bylaw apply equally to all persons fishing in the relevant Te Whānau a Apanui customary marine title area; but

12.49.3. provide that the requirement described in clause 12.49.2 will not apply to a fisher that is allowed to take fisheries resources, as described in clause 12.9.1(b) for the purpose of sustaining the functions of a marae within the hapū fisheries area.

12.50. The customary fisheries regulations will provide for, where a proposed fisheries bylaw is to come into force on the happening of a particular event (as described in clause 12.51.2(b)), limits to be imposed on the cumulative effect of the proposed fisheries bylaw to ensure that the proposed bylaw will not affect or prevent those matters described in clause 12.56.3 (for example, what percentage of a hapū customary fishing area that may be the subject of the bylaw at any given time).

Proposing and submitting a fisheries bylaw

12.51. The fisheries management committee will be able to propose a fisheries bylaw by written notice to the Minister for Oceans and Fisheries. The fisheries management committee will be required to include with that notice:

12.51.1. a copy of the proposed fisheries bylaw; and

12.51.2. a statement setting out:

(a) its reasons why the restriction or prohibition set out in the proposed fisheries bylaw will achieve one or more of the purposes described in clause 12.47;

(b) where the proposed bylaw is to come into force on the happening of a particular event, the specific circumstances in which that proposed bylaw would come into force, and evidence and information required to confirm that event. These circumstances may include evidence of and information on:

(i) a decline in the sustainability of fisheries resources in the Te Whānau a Apanui customary marine title area;

(ii) a decline in species which means that the availability of the species is insufficient to meet the customary needs of the relevant recognised Te Whānau a Apanui customary marine title hapū in their Te Whānau a Apanui customary marine title area;

(iii) a human death in the Te Whānau a Apanui customary marine title area;

(iv) a risk to the continued presence of traditional species in the Te Whānau a Apanui customary marine title area; and

(c) confirmation that the proposed fisheries bylaw is consistent with those matters described in clauses 12.56.1 and 12.56.2 and will not affect or prevent (as the case may be) those matters described in clause 12.56.3.

12.52. After receiving a proposed fisheries bylaw, the Minister for Oceans and Fisheries will be required to call for submissions to be made on whether the bylaw will affect or prevent (as the case may be) any of those matters listed in clause 12.56.3.

12.53. The Minister for Oceans and Fisheries will be required to conduct the submission process, as follows:

12.53.1. the Minister for Oceans and Fisheries will be required to publish a copy of the proposed fisheries bylaw on the Ministry for Primary Industries website and deposit a copy of the proposed fisheries bylaw:

(a) in the office of the Ministry for Primary Industries nearest the relevant Te Whānau a Apanui customary marine title area; and

(b) at a place designated by the Head of Fisheries New Zealand;

12.53.2. the places where the proposed fisheries bylaw will be deposited will be required to be open:

(a) during normal office hours; and

(b) for not less than 15 working days immediately before the closing date for submissions;

to enable:

(a) the proposed fisheries bylaw to be inspected by members of the public; and

(b) the Minister for Oceans and Fisheries to receive submissions on the proposed fisheries bylaw from members of the public;

12.53.3. the Head of Fisheries New Zealand will be required to notify in a newspaper circulating in the locality of the relevant Te Whānau a Apanui customary marine title area and on the website of the Ministry for Primary Industries:

(a) the fact that a proposed fisheries bylaw has been deposited; and

(b) the places where that proposed bylaw may be inspected.

12.54. The Minister for Oceans and Fisheries, with the assistance of the fisheries management committee, will be required to consult with the local community on the proposed fisheries bylaw at a meeting convened for this purpose before the closing date for submissions.

12.55. Any written submissions made by the public in respect of a proposed fisheries bylaw will be required to be sent to the fisheries management committee and Te Taumata by the Minister for Oceans and Fisheries and the fisheries management committee, and the governance entity on behalf of the hapū entity will be entitled to provide comment on those submissions.

Proceeding with a proposed fisheries bylaw

12.56. The Minister for Oceans and Fisheries will be required to publish a proposed fisheries bylaw in the *Gazette*, where the Minister for Oceans and Fisheries considers that the proposed bylaw:

12.56.1. will achieve one or more of the purposes described in clause 12.47;

12.56.2. is consistent with the relevant hapū fisheries management plan; and

12.56.3. will not:

(a) unreasonably affect the ability of the local community to take fisheries resources for non-commercial purposes; or

(b) unreasonably prevent persons taking fisheries resources for non-commercial purposes within the fisheries management area where the proposed fisheries bylaw would apply; or

(c) prevent other hapū from exercising their customary fishing rights of traditional use and management of fisheries resources; or

(d) prevent commercial fishers from taking a total allowable commercial catch for stock in the quota management area for that stock; or

(e) unreasonably prevent persons with a commercial fishing permit from taking non-quota management system species within the area for which the permit has been issued.

12.57. In exercising his or her discretion under clause 12.56, the Minister for Oceans and Fisheries will be required to:

12.57.1. act reasonably;

12.57.2. have particular regard to the ongoing mana of the Te Whānau a Apanui customary marine title hapū, as expressed, protected and recognised through the deed and the settlement legislation, and the allowances made for customary fishing under the Fisheries Act 1996; and

12.57.3. have regard to any submission received under the process described in clauses 12.53 to 12.55 and any comment provided by the relevant Te Whānau a Apanui customary marine title hapū in relation to that submission.

12.58. Where the Minister for Oceans and Fisheries:

12.58.1. does not consider that the proposed fisheries bylaw is consistent with those matters described in clauses 12.56.1 and 12.56.2; and/or

12.58.2. considers that the proposed fisheries bylaw will, or is likely to, affect or prevent (as the case may be) those matters described in clause 12.56.3,

he or she will be required to:

12.58.3. notify the fisheries management committee and governance entity in writing of this, including setting out the reasons for his or her view; and

12.58.4. where practicable, agree with the fisheries management committee amendments to the proposed fisheries bylaws to enable it to:

(a) be consistent with those matters described in clauses 12.56.1 and 12.56.2; and/or

(b) not affect or prevent (as the case may be) those matters described in clause 12.56.3.

12.59. Where the fisheries management committee agree to proposed amendments, the Minister for Oceans and Fisheries will be required to approve the bylaw and publish, as soon as practicable after the fisheries management committee confirm in writing their agreement, the amended fisheries bylaw in the *Gazette*.

12.60. Where the Minister for Oceans and Fisheries and the fisheries management committee are unable to reach agreement on amendments, the Minister will:

12.60.1. not have the power to publish the fisheries bylaw in the *Gazette*; and

12.60.2. be required to give, to the fisheries management committee, written notice confirming that the parties have been unable to reach agreement on the bylaw and setting out the reasons why the parties were unable to reach agreement.

12.61. To avoid doubt, where the Minister for Oceans and Fisheries and the fisheries management committee agree amendments to a proposed fisheries bylaw, as described in clause 12.58.4, the Minister for Oceans and Fisheries will not be required to follow the process described in clause 12.53 in respect of the amended proposed fisheries bylaw.

12.62. A fisheries bylaw published in the *Gazette* under clause 12.56 will take effect from the date specified in the *Gazette*.

Revoking a fisheries bylaw

12.63. At the fisheries management committee's direction, by written notice, the Minister for Oceans and Fisheries will be required to revoke a fisheries bylaw by publishing a notice of revocation in the *Gazette*.

Pātaka

12.64. The establishment and management of pātaka will enable the fisheries management committee to place customary fishing authorisations on commercial fishing vessels operated by a commercial fisher or commercial fishing entity, and to use that commercial fisher or commercial fishing entity, and to use its processing facilities to process, store and distribute fisheries resources for customary purposes.

12.65. These provisions in the regulations will be consistent with section 192(7) of the Fisheries Act 1996.

PRIMARY INDUSTRIES FISHERIES PROTOCOL

12.66. The primary industries fisheries protocol must, by or on the settlement date, be signed and issued to Te Taumata by the responsible Minister.

12.67. The primary industries fisheries protocol sets out how the Crown will interact with Te Taumata with regard to the matters specified in it.

12.68. The primary industries fisheries protocol will be:

12.68.1. in the form in part 3.2 of the documents schedule; and

12.68.2. issued under, and subject to, the terms provided by sections [x] to [x] of the draft settlement bill.

12.69. A failure by the Crown to comply with the primary industries fisheries protocol is not a breach of this deed.

LIMITATIONS

12.70. This deed does not create or confer any right, power, or privilege under the Fisheries Act 1996, Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, Māori Fisheries Act 2004 or Māori Commercial Aquaculture Claims Settlement Act 2004, except as provided in paragraph 3.7 of the general matters schedule in relation to the recognition of a mandated iwi organisation under the Māori Fisheries Act and an iwi aquaculture organisation under the Māori Commercial Aquaculture Claims Settlement Act.

SETTLEMENT LEGISLATION

12.71. The settlement legislation will, on the terms provided by sections [x] to [x] of the draft settlement bill, provide for the matters set out in clauses 11.12 to 11.66 and 12.2 to 12.65.

13 TE RAUKŪMARA

KIA KORI!!
Aue Taku Raukūmara e! Taku Raukūmara e!
Tiki-kapakapa, Tiki-tō-Hua e Tiki-kapakapa, Tiki-tō-hua e
Aue-Rehua, Rehua haramai Rehua – Ramrama, pānakenake, hei perepere hei!

(Haere mai rā!)
Haere mai e ngā iwi, Haere mai ngā iwi te kōrero
Te Aitanga-ā-Tiki, Matika mai I runga – whakarongo
Ki te reo e karanga atu nei, He karere nā te aroha
Taku Raukūmara e raru nei, Haere mai te iwi

Haere tāua, takahia atu ra Te Kereu ki Te Waiti e
Kia mārama rā Te Arawhata nā e kōpikopiko nei
Ko Tangiterau, ko Waitaputoa, Te Kaki o Te Moana
E rere Raukokore – taku awa e

Haere haere tāua
E piki ki Te Ranganui a Tao (a Toi)
Kei reira rā ngā kuri popoiatahi o Rongotaitimu e
Ka huri rā ki Pakihiroa – i hinga ai a Pararaki e
Taku Raukūmara nā Apanui
Nā Porou-ariki

Whītiki i tō kua, tō kura i hea? Tō kura i Mata-te-ra,
I mananea, i Hauruia – Pupungia tāua, nga ariki, nga mana
Kei whangaroa ki te kupu, Kei pāhika, ka ngaro e – aue

Tiki-kapakapa, Tiki-tō-hua e, Tiki-kapakapa, Tiki-tō-hua e

Haere mai e ngā iwi (Haere tāua, takahia atu rā)
Haeremai ngā iwi te kōrero (Te Kereu ki Te Waiti e)
Te Aitanga-ā-Tiki (Kia mārama rā Te Arawhata nā)
Matika mai I runga – whakarongo (E kōpikopiko nei)
Ki te reo e karanga atu nei (Ko Tangiterau, ko Waitaputoa)
He karere nā te aroha (Te Kaki o Te Moana)

Taku Raukūmara e raru nei
Haere mai te iwi
Haere mai te iwi
Haere mai te iwi
Taku Raukūmara e!
E Ramarama, pānakenake, hei perepere hei

13.1. For ngā hapū o Te Whānau a Apanui, the Raukūmara is:

13.1.1. the tāhuhu of their traditional lands;

13.1.2. a taonga protected by Te Tiriti o Waitangi;

13.1.3. an indivisible and interconnected whole;

13.1.4. a source of cultural, social and spiritual well-being; and

13.1.5. a place that has its own mana and mauri.

13.2. Ngā hapū o Te Whānau a Apanui are kaitiaki over that part of the Raukūmara that falls within their traditional territory. Ngati Porou are kaitiaki over that part of the Raukūmara that falls within their traditional territory. The Crown recognises that ngā hapū o Te Whānau a Apanui and Ngati Porou are kaitiaki and have customary associations with certain parts of the Raukūmara.

13.3. The ngā hapū o Te Whānau a Apanui position is that they exercise mana over all of their rohe, including the conservation lands and waters. Whilst the return of all conservation lands and waters is not possible in this settlement, ngā hapū o Te Whānau a Apanui and the Crown have agreed to enter into arrangements in relation to Te Raukūmara that better connect ngā hapū o Te Whānau a Apanui to the governance and management of the conservation lands and waters within their rohe.

13.4. Ngā hapū o Te Whānau a Apanui and Ngati Porou consider that the Te Tiriti o Waitangi/Treaty of Waitangi requires a mana ki te mana relationship between ngā hapū o Te Whānau a Apanui, Ngati Porou and the Crown.

13.5. Ngā hapū o Te Whānau a Apanui and Ngati Porou consider that the roles provided for the relevant conservation boards and the New Zealand Conservation Authority in these arrangements are inconsistent with a mana ki te mana relationship. Ngā hapū o Te Whānau a Apanui and Ngati Porou consider that these roles should rest with the Director-General of Conservation (**Director-General**) or the Minister of Conservation, as the representative of the mana of the Crown in the relationship with ngā hapū o Te Whānau a Apanui and Ngati Porou. The Crown acknowledges that these arrangements do not meet ngā hapū o Te Whānau a Apanui and Ngati Porou expectations in this respect. Both iwi wish to have this concern addressed as part of any future conservation legislation reform.

TE WHAKAHAERE TAKIRUA MŌ TE RAUKŪMARA

Te Whakahaere Takirua mō Te Raukūmara to be established

13.6. The Crown, ngā hapū o Te Whānau a Apanui and Ngati Porou agree to establish Te Whakahaere Takirua mō Te Raukūmara, a joint decision-making body in respect of the Raukūmara, in recognition that:

13.6.1. ngā hapū o Te Whānau a Apanui and Ngati Porou are connected by whakapapa;

13.6.2. the rohe of ngā hapū o Te Whānau a Apanui and Ngati Porou cover the vast majority of the Raukūmara;

13.6.3. the Raukūmara is a taonga to which both iwi have kaitiaki obligations; and

13.6.4. ngā hapū o Te Whānau a Apanui and Ngati Porou wish to work with the Department of Conservation to restore and protect the environmental health of the Raukūmara and their rohe.

Raukūmara area

13.7. Te Whakahaere Takirua mō Te Raukūmara will be established on the settlement date in

relation to:

13.7.1. the conservation areas, as defined in section 2 of the Conservation Act 1987, that are located within the area shown on deed plan OMCR-114-17 (**Raukūmara Lands**); and

13.7.2. the Raukūmara conservation management strategy area (as shown on deed plan OMCR-114-16) (**CMS area**).

Purpose and function

13.8. The purpose of Te Whakahaere Takirua mō Te Raukūmara is to restore and protect the health and well-being of the Raukūmara Lands for present and future generations.

13.9. The functions of Te Whakahaere Takirua mō Te Raukūmara will include:

13.9.1. preparing a new conservation management strategy for the CMS area (**Raukūmara CMS**) with the Director-General;

13.9.2. performing functions in relation to the preparation and joint approval of a conservation management plan over the Raukūmara Lands (**Raukūmara CMP**);

13.9.3. issuing an annual statement of priorities to the Director-General in relation to the Raukūmara Lands;

13.9.4. approving the annual operational plan prepared by the Director-General in relation to the Raukūmara Lands;

13.9.5. performing functions that are delegated by the Minister of Conservation or Director-General to Te Whakahaere Takirua mō Te Raukūmara in relation to the Raukūmara Lands;

13.9.6. providing advice to the Minister of Conservation, the Director-General, the New Zealand Conservation Authority and the conservation boards (**relevant conservation boards**) in relation to the Raukūmara Lands; and

13.9.7. performing any other relevant functions in accordance with the settlement legislation and this deed.

Appointment of members

13.10. Te Whakahaere Takirua mō Te Raukūmara will consist of six members appointed by the Minister of Conservation comprising:

13.10.1. two members nominated by the Te Taumata o Ngā Hapū o Te Whānau a Apanui;

13.10.2. two members nominated by Te Rūnanganui o Ngati Porou; and

13.10.3. two members nominated by the Director-General.

13.11. In nominating members, each nominator must be satisfied that the nominated persons have the mana, standing in the community, skills, knowledge, and experience necessary to enable Te Whakahaere Takirua mō Te Raukūmara to fulfil its functions.

13.12. The chair of Te Whakahaere Takirua mō Te Raukūmara will be appointed by Te Taumata o Ngā Hapū o Te Whānau a Apanui and Te Rūnanganui o Ngati Porou and must be an existing member of Te Whakahaere Takirua mō Te Raukūmara.

13.13. Each nominator will give notice in writing to the other nominators of any nomination under clauses 13.10 and 13.11.

13.14. Each member of Te Whakahaere Takirua mō Te Raukūmara:

13.14.1. will be appointed for a term of five years;

13.14.2. may be reappointed; and

13.14.3. may be removed by the appointer upon the request of the relevant nominator.

13.15. Where a member vacates their seat on or is removed from Te Whakahaere Takirua mō Te Raukūmara, the relevant nominator must nominate a replacement person, to be appointed by the Minister of Conservation, for the remainder of the term.

13.16. The Director-General will give public notice of any appointment under clauses 13.10 to 13.15 by way of notice in the *Gazette*.

Funding and remuneration

13.17. The members of Te Whakahaere Takirua mō Te Raukūmara are entitled to receive remuneration by way of salary, fees, or otherwise and travelling allowances or travelling expenses in accordance with the Fees and Travelling Allowances Act 1951 incurred in acting as members of Te Whakahaere Takirua mō Te Raukūmara, as if Te Whakahaere Takirua mō Te Raukūmara were a statutory board within the meaning of that Act.

13.18. The Crown will meet the reasonable administrative costs and expenses of Te Whakahaere Takirua mō Te Raukūmara.

Meetings and decision-making

13.19. Te Whakahaere Takirua mō Te Raukūmara must:

13.19.1. hold its first meeting no later than six months after the settlement date;

13.19.2. meet as required to perform its functions, but there must be no fewer than two meetings each year unless Te Whakahaere Takirua mō Te Raukūmara agrees otherwise;

13.19.3. have a quorum for any meetings of a minimum of one member from each of the three nominators; and

13.19.4. only make decisions by consensus of the members who are present and voting at a meeting.

13.20. A nominator may designate an alternate member to attend a meeting in a member's place provided they are satisfied that the delegate meets the criteria in clause 13.11.

Procedures

13.21. Except as otherwise provided, Te Whakahaere Takirua mō Te Raukūmara may regulate its own procedures.

13.22. In exercising its functions under clause 13.9, Te Whakahaere Takirua mō Te Raukūmara will consider, as appropriate, the extent to which the specific areas concerned fall within the respective rohe of ngā hapū o Te Whānau a Apanui and Ngati Porou.

New Raukūmara CMS

13.23. One of the functions of Te Whakahaere Takirua mō Te Raukūmara will be to prepare, with the Director-General, a new Raukūmara CMS for the CMS area.

13.24. This arrangement replaces the current status quo where the Bay of Plenty Conservation Board and the East Coast Hawke's Bay Conservation Board are responsible for preparing, with the Director-General, separate conservation management strategies that apply to the CMS area. The role of those conservation boards in the preparation of the Raukūmara CMS will be a consultative one under clause 13.35.1.

Raukūmara CMS area

13.25. The Raukūmara CMS will apply to the CMS area, which is an administrative boundary for the purposes of the ngā hapū o Te Whānau a Apanui deed of settlement and the Ngati Porou deed of settlement. The Raukūmara CMS is not intended to create rights or interests in respect of the CMS area outside of those settlements and the Conservation Act 1987.

13.26. The Raukūmara CMS will apply to the CMS area and will include:

13.26.1. objectives, policies and outcomes that apply to the CMS area as a whole, in order to implement the Conservation General Policy and establish objectives for integrated conservation management; and

13.26.2. objectives, policies and outcomes for places (within the meaning of the Conservation General Policy) within the CMS area which will only apply to those places.

13.27. Consistent with clause 13.22, the Te Whakahaere Takirua mō Te Raukūmara will, in accordance with the tikanga of ngā hapū o Te Whānau a Apanui and Ngati Porou:

13.27.1. engage directly with Te Taumata o Ngā Hapū o Te Whānau a Apanui when preparing that part of the Raukūmara CMS that relates to the area that is solely within the rohe of Te Whānau a Apanui;

13.27.2. engage directly with Te Runanganui o Ngati Porou when preparing that part of the Raukūmara CMS that relates to the area that is solely within the rohe of Ngati Porou, including Nga Paanga Whenua o Ngati Porou; and

13.27.3. engage with both Te Taumata o Ngā Hapū o Te Whānau a Apanui and Te Runanganui o Ngati Porou when preparing that part of the CMS that relates to the area that is shared by ngā hapū o Te Whānau a Apanui and Ngati Porou.

13.28. The hapū with acknowledged interests in Puhi Kai Iti (also known as Kaitī and shown on deed plan OMCR-114-16) are Ngāti Oneone, Ngai Tawhiri and Te Whānau a Iwi, with the ahi kaa or mana whenua being held by Ngāti Oneone, a hapū of Ngati Porou.

13.29. To reflect this:

13.29.1. Te Whakahaere Takirua mō te Raukūmara will engage directly with Ngāti Oneone, Ngai Tawhiri and Te Whānau a Iwi when preparing the part of the Raukūmara CMS that relates to Puhi Kai Iti; and

13.29.2. the position of Ngāti Oneone, as the hapū with ahi kaa and mana whenua over Puhi Kai Iti, will be recognised in any engagement undertaken with those hapū.

Effect of conservation management strategy

13.30. The Raukūmara CMS is a conservation management strategy for the purposes of section 17D of the Conservation Act 1987 and has the same effect as if it were a conservation management strategy prepared and approved under that Act.

13.31. Except as otherwise provided for in the settlement legislation and this deed, the Conservation Act 1987 applies to the preparation and approval of the Raukūmara CMS, including section 4 of the Conservation Act 1987.

13.32. Sections 17F, 17H, and 17I of that Act do not apply to the preparation, approval, review, or amendment of the Raukūmara CMS, but in all other respects the provisions of the Conservation Act 1987 apply to the Raukūmara CMS.

13.33. In clauses 13.34 to 13.70 and 13.75 to 13.126, references to the Minister of Conservation or Director-General include a delegate of that person.

Preliminary agreement

13.34. Before Te Whakahaere Takirua mō Te Raukūmara and the Director-General commence preparation of the draft Raukūmara CMS, they must meet to develop a plan covering:

13.34.1. the principal matters to be addressed in the draft Raukūmara CMS;

13.34.2. the manner in which those matters are to be addressed; and

13.34.3. the practical steps that Te Whakahaere Takirua mō Te Raukūmara and the Director-General will take in preparing and seeking approval of the draft Raukūmara CMS.

Preparation of draft conservation management strategy

13.35. Not later than 12 months after settlement date, Te Whakahaere Takirua mō Te Raukūmara and the Director-General must commence preparation of a draft Raukūmara CMS in consultation with:

13.35.1. the relevant conservation boards; and

13.35.2. any other persons or organisations that the parties agree are appropriate.

13.36. Te Whakahaere Takirua mō Te Raukūmara and the Director-General may agree a later date to commence preparation of the draft Raukūmara CMS.

13.37. Despite clause 13.35, the Raukūmara CMS may be prepared by other persons or entities where that is agreed between Te Whakahaere Takirua mō Te Raukūmara and the Director-General.

13.38. The parties must use best endeavours to reach an agreement under clause 13.37, including by using the mediation process set out in clause 13.61.

Notification

13.39. As soon as is practicable, but not later than 12 months after the date when preparation of the draft Raukūmara CMS commences, the Director-General must:

13.39.1. notify the draft Raukūmara CMS in accordance with section 49(1) of the Conservation Act 1987 as if the Director-General were the Minister of Conservation for the purposes of that section; and

13.39.2. give notice of the draft Raukūmara CMS to appropriate regional councils, territorial authorities and iwi authorities.

13.40. The notices under clause 13.39 must:

13.40.1. state that the draft Raukūmara CMS is available for inspection at the places and times specified in the notice; and

13.40.2. invite submissions from the public, to be lodged with the Director-General before the date specified in the notice, which must be at least 40 working days after the date of the notice.

13.41. The draft Raukūmara CMS must continue to be available for public inspection after the date it is notified, at the places and times specified in the notice, with publicity to encourage public participation in the development of the draft Raukūmara CMS.

13.42. Te Whakahaere Takirua mō Te Raukūmara and the Director-General may seek views on the draft Raukūmara CMS from any person or organisation that they consider appropriate and, in doing so:

13.42.1. may agree and determine any other processes they consider appropriate to promote awareness of, and obtain views on, the draft Raukūmara CMS; and

13.42.2. must keep a summary of any meetings held, and any views obtained.

Submissions

13.43. Any person may lodge a written submission on the draft Raukūmara CMS with the Director-General before the date specified in the notice referred to in clause 13.40.2.

13.44. A submission may state that the submitter wishes to be heard in support of their submission.

13.45. The Director-General must provide copies of any submissions to Te Whakahaere Takirua mō Te Raukūmara within five working days of receiving the submission.

Hearings

13.46. Persons wishing to be heard must be given a reasonable opportunity to appear before a meeting of representatives of:

13.46.1. Te Whakahaere Takirua mō Te Raukūmara; and

13.46.2. the Director-General.

13.47. The relevant conservation boards may also join Te Whakahaere Takirua mō Te Raukūmara and the Director General to hear submitters under clause 13.46.

13.48. The representatives of Te Whakahaere Takirua mō Te Raukūmara, the Director-General, and, if clause 13.47 applies, the relevant conservation boards, may hear any other person or organisation whose views on the draft Raukūmara CMS were sought under clause 13.42.

13.49. The hearing of submissions must be concluded not later than 40 working days after the date specified in the notice referred to in clause 13.40.2.

13.50. Te Whakahaere Takirua mō Te Raukūmara and the Director-General must jointly prepare a summary of:

13.50.1. submissions on the draft Raukūmara CMS; and

13.50.2. any other views on it made known to Te Whakahaere Takirua mō Te Raukūmara and the Director-General pursuant to clause 13.42.

Revision of draft conservation management strategy

13.51. Te Whakahaere Takirua mō Te Raukūmara and the Director-General must, after considering the submissions heard and other views received, revise the draft Raukūmara CMS, if they consider it appropriate.

Provision of draft conservation management strategy to relevant conservation boards

13.52. Te Whakahaere Takirua mō Te Raukūmara and the Director-General must, not later than six months after the hearing of submissions is concluded, provide to the relevant conservation boards:

13.52.1. the draft Raukūmara CMS, including as revised in accordance with clause 13.51; and

13.52.2. the summary prepared under clause 13.50.

13.53. After considering the draft Raukūmara CMS and the summary received under clause 13.52, the relevant conservation boards may request Te Whakahaere Takirua mō Te Raukūmara and the Director-General to further revise the draft Raukūmara CMS.

13.54. After receipt of a request under clause 13.53, Te Whakahaere Takirua mō Te Raukūmara and Director-General must:

13.54.1. provide the relevant conservation boards with the revised draft (if one has been produced) and a summary of the changes made (or not) in response to their request; and

13.54.2. invite the relevant conservation boards to provide them with a summary of any matters that they consider remain unresolved.

Provision of draft conservation management strategy to New Zealand Conservation Authority

13.55. Te Whakahaere Takirua mō Te Raukūmara and the Director-General must send the draft Raukūmara CMS to the New Zealand Conservation Authority for its approval, together with:

13.55.1. a written statement on any matters that Te Whakahaere Takirua mō Te Raukūmara, the Director-General and the relevant conservation boards are not able to agree; and

13.55.2. a copy of the summary provided to the relevant conservation boards under clause 13.54.1.

13.56. Te Whakahaere Takirua mō Te Raukūmara and the Director-General must send the draft Raukūmara CMS to the New Zealand Conservation Authority not later than six months after that draft document was provided to the relevant conservation boards under clause 13.54, unless a later date is directed by the Minister of Conservation.

Approval of conservation management strategy

13.57. The New Zealand Conservation Authority:

13.57.1. must consider the draft Raukūmara CMS and any relevant information provided to it under clause 13.55; and

13.57.2. may consult with any person or organisation that it considers appropriate, including:

(a) Te Whakahaere Takirua mō Te Raukūmara;

(b) relevant conservation boards; and

(c) the Director-General.

13.58. After considering the draft Raukūmara CMS and any relevant information provided under clause 13.55, the New Zealand Conservation Authority must:

13.58.1. make any amendments to the draft Raukūmara CMS that it considers appropriate; and

13.58.2. provide the draft Raukūmara CMS and other relevant information to the Minister of Conservation and Te Whakahaere Takirua mō Te Raukūmara.

13.59. The Minister of Conservation and Te Whakahaere Takirua mō Te Raukūmara must jointly:

13.59.1. consider the draft Raukūmara CMS; and

13.59.2. return the draft Raukūmara CMS to the New Zealand Conservation Authority with any written recommendations the Minister of Conservation and Te Whakahaere Takirua mō Te Raukūmara consider appropriate.

13.60. The New Zealand Conservation Authority, after having regard to any recommendations received under clause 13.59.2, must either:

13.60.1. make any amendments that it considers appropriate and then approve the draft Raukūmara CMS; or

13.60.2. return it to the Minister of Conservation and Te Whakahaere Takirua mō Te Raukūmara for further consideration in accordance with clause 13.59 with any new information that the Authority wishes them to consider, before the draft Raukūmara CMS is amended, if appropriate, and then approved.

Mediation process

13.61. At any time during the process set out in clauses 13.35 to 13.60, any of Te Whakahaere Takirua mō Te Raukūmara, the relevant conservation boards or the Director-General may refer any matter of disagreement arising out of that process to a mediator, and the following conditions will apply to such a mediation process:

13.61.1. within 15 working days of the date of the notice given of a dispute under clause 13.61.4, the parties must meet in good faith to seek to resolve the dispute, and if the matter is not resolved the following clauses will apply;

13.61.2. no later than 12 months after the settlement date, Te Whakahaere Takirua mō Te Raukūmara, the relevant conservation boards and the Director-General will agree on a mediator to be used in the event of referral to mediation under this clause 13.61, and the parties may agree to change the mediator from time to time;

13.61.3. where a matter of disagreement arises, the relevant parties in dispute will seek to resolve that matter in a co-operative, open-minded and timely manner before resorting to the mediation process under this clause 13.61;

13.61.4. where one of Te Whakahaere Takirua mō Te Raukūmara, the relevant conservation boards or the Director-General considers that it is necessary to resort to the mediation process under this clause 13.61, that party will give notice in writing of that referral to the other parties;

13.61.5. all parties will participate in a mediation process in a co-operative, open-minded and timely manner;

13.61.6. when participating in a mediation, the parties will have particular regard to the purpose of the Raukūmara CMS redress provided under this deed and the conservation purpose for which Raukūmara Lands is held;

13.61.7. where a matter of disagreement is referred to mediation under this clause 13.61, the mediation process must be completed no later than three months after the date upon which notice of referral is given under clause 13.61.4;

13.61.8. pending the resolution of any matter of disagreement, the parties will use their best endeavours to continue with the process for the preparation and approval of the Raukūmara CMS;

13.61.9. the parties to the mediation process will bear their own costs in relation to the resolution of any matter of disagreement and the costs of the mediator (and associated costs) will be shared equally between the parties;

13.61.10. the period of time taken for a mediation process under this clause 13.61 will not be counted for the purposes of the timeframes specified in clauses 13.35 to

13.60 for the preparation and approval of the Raukūmara CMS; and

13.61.11. to avoid doubt, the period of time referred to in clause 13.61.10 will not exceed three months.

Other matters

13.62. On and from the day that the draft Raukūmara CMS is approved under clause 13.60.1 and becomes operative:

13.62.1. the Raukūmara CMS will apply to the CMS area; and

13.62.2. those parts of the Bay of Plenty conservation management strategy and East Coast conservation management strategy that apply to the Raukūmara CMS area will no longer apply to that area.

Review procedure

13.63. At any time, Te Whakahaere Takirua mō Te Raukūmara and the Director-General may, after consulting with the relevant conservation boards, initiate a review of the Raukūmara CMS as a whole or in part.

13.64. A review must be carried out in accordance with the process set out in clauses 13.34 to 13.60 as if those provisions related to the review procedure, with any necessary modifications.

13.65. Te Whakahaere Takirua mō Te Raukūmara and the Director-General must commence a review of the whole of the Raukūmara CMS not later than 10 years after the date of its last approval, unless the Minister of Conservation, after consulting with the New Zealand Conservation Authority and Te Whakahaere Takirua mō Te Raukūmara, extends the period within which the review must be commenced.

Amendment procedure

13.66. At any time, Te Whakahaere Takirua mō Te Raukūmara and the Director-General may, after consulting with the relevant conservation boards, initiate amendments to the whole or a part of the Raukūmara CMS.

13.67. Unless clauses 13.68 or 13.69 apply, amendments must be made in accordance with the process set out in clauses 13.34 to 13.60 as if those provisions related to the amendment procedure with any necessary modifications.

13.68. If Te Whakahaere Takirua mō Te Raukūmara and the Director-General consider that the proposed amendments would not materially affect the objectives, policies or outcomes of the Raukūmara CMS or the public interest in the relevant conservation matters:

13.68.1. Te Whakahaere Takirua mō Te Raukūmara and the Director-General must send the proposed amendments to the relevant conservation boards; and

13.68.2. the proposed amendments must be dealt with in accordance with clauses 13.57 to 13.60, as if those provisions related to the amendment procedure.

13.69. If the purpose of the proposed amendments is to ensure the accuracy of the information in the Raukūmara CMS required by section 17D(7) of the Conservation Act 1987 (which requires the identification and description of all protected areas within the boundaries of

the Raukūmara CMS managed by the Department of Conservation), the parties may amend the Raukūmara CMS without following the processes prescribed under clauses 13.67 or 13.68.

13.70. The Director-General must notify any amendments made under clause 13.69 to the relevant conservation boards without delay.

Provision of advice

13.71. Te Whakahaere Takirua mō Te Raukūmara may provide written advice to one or more of the following entities or persons on any conservation matter that affects the Raukūmara Lands:

13.71.1. the Minister of Conservation;

13.71.2. the Director-General;

13.71.3. the New Zealand Conservation Authority; and

13.71.4. the relevant conservation boards.

13.72. The entities or persons referred to in clause 13.71 must have regard to any advice of Te Whakahaere Takirua mō Te Raukūmara on any conservation matter that affects the Raukūmara Lands.

13.73. Where the Minister of Conservation or Director-General consults with and seeks the advice of Te Whakahaere Takirua mō Te Raukūmara:

13.73.1. the Minister of Conservation or Director-General must state a reasonable time period within which Te Whakahaere Takirua mō Te Raukūmara may provide advice; and

13.73.2. the Minister of Conservation or Director-General must have regard to any written advice of Te Whakahaere Takirua mō Te Raukūmara which is provided within that time period.

13.74. To avoid doubt:

13.74.1. the Minister of Conservation and Director-General may have regard to any written advice received from Te Whakahaere Takirua mō Te Raukūmara on a matter for which advice has not been requested; and

13.74.2. the Crown is not prevented from consulting, and receiving advice from, any other person or organisation in relation to the Raukūmara Lands.

Raukūmara conservation management plan

13.75. Te Whakahaere Takirua mō Te Raukūmara will perform functions related to the preparation of a Raukūmara CMP for the Raukūmara Lands, and jointly approve that CMP alongside the relevant conservation boards.

13.76. The Raukūmara CMP is a conservation management plan for the purposes of section 17E of the Conservation Act 1987 and has the same effect as if it were a conservation management plan prepared and approved under that Act.

13.77. Except as otherwise provided for in the settlement legislation and this deed, the Conservation Act 1987 applies to the preparation and approval of the conservation management plan, including section 4 of the Conservation Act 1987.

Preparation

13.78. The Director-General must commence preparation of the draft Raukūmara CMP no later than 6 months after the Raukūmara CMS is approved.

13.79. Each draft Raukūmara CMP must be prepared by the Director-General in consultation with Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards.

13.80. Despite clauses 13.78 and 13.79, the draft Raukūmara CMP may be prepared by other persons or entities where that is agreed between Te Whakahaere Takirua mō Te Raukūmara and the Director-General.

13.81. The parties must use best endeavours to reach an agreement under clause 13.80, including by using the mediation process at clause 13.61.

Notification

13.82. As soon as practicable, but not later than six months after the date when preparation of the draft Raukūmara CMP commences, the Director-General must notify that draft in accordance with section 49(1) of the Conservation Act 1987 (and that provision will apply as if notice were given by the Minister of Conservation), and to the appropriate regional councils, territorial authorities and iwi authorities.

13.83. A notice under clause 13.82 must:

13.83.1. state that the draft Raukūmara CMP is available for inspection at the places and times specified in the notice; and

13.83.2. invite submissions from the public to be lodged with the Director-General before the date specified in the notice, being a date not less than 40 working days after the date of the notice.

Submissions

13.84. Any person or organisation may make written submissions to the Director-General on the draft Raukūmara CMP in the manner, and before the date specified, in the notice.

13.85. The Director-General may, after consultation with Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards, obtain public opinion of the draft Raukūmara CMP by any other means from any person or organisation.

13.86. On and from the date a notice was given under clause 13.84 until the date specified in the notice under clause 13.83.2, the draft Raukūmara CMP will be made available by the Director-General for public inspection during normal office hours, in such places and quantities as are likely to encourage public participation in the development of the plan.

Hearing

13.87. The Director-General will give every person or organisation who or which, in making any submissions on the draft Raukūmara CMP, asked to be heard in support of a submission,

a reasonable opportunity of appearing before representatives of the Director-General, Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards.

13.88. Representatives of the Director-General, Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards may hear submissions from any other person or organisations consulted on the draft Raukūmara CMP under clause 13.85.

13.89. The hearing of submissions will be concluded no later than 40 working days after the closing date for submissions identified in clause 13.83.2.

13.90. The Director-General will prepare a summary of the submissions received on the draft Raukūmara CMP and public opinion expressed on that plan.

Revision of draft Raukūmara CMP

13.91. After considering submissions and public opinion, the Director-General will:

13.91.1. in consultation with the representatives of Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards who heard the submissions, revise the draft Raukūmara CMP; and

13.91.2. no later than four months after the completion of the hearing of submissions, send the revised draft Raukūmara CMP and the summary of submissions to Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards.

13.92. On receipt of the draft Raukūmara CMP and the summary of submissions:

13.92.1. Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards will consider the revised draft Raukūmara CMP and the summary of submissions, and may, no later than four months after receiving those documents, request the Director-General to further revise the draft Raukūmara CMP; and

13.92.2. if a request is made under clause 13.92.1 the Director-General will further revise the draft Raukūmara CMP in accordance with that request, and no later than two months after receiving a request, send to Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards the further revised draft Raukūmara CMP.

Referral to New Zealand Conservation Authority and Minister of Conservation

13.93. On receipt of the revised draft under clause 13.91 or a further revised draft under clause 13.92.2, Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards will refer the draft Raukūmara CMP and the summary of submissions to:

13.93.1. the New Zealand Conservation Authority for comments on matters relating to the national public conservation interest in the Raukūmara Lands; and

13.93.2. the Minister of Conservation for his or her comments.

13.94. The New Zealand Conservation Authority and the Minister of Conservation may provide any comments on the draft Raukūmara CMP to Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards no later than four months after receiving that draft plan for comment.

Approval

13.95. After considering any comments received from the New Zealand Conservation Authority and the Minister of Conservation, Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards will make any changes considered necessary and:

13.95.1. no later than two months after receiving any comments from the New Zealand Conservation Authority and the Minister of Conservation, approve the draft Raukūmara CMP; or

13.95.2. no later than two months after receiving any comments from the New Zealand Conservation Authority and the Minister of Conservation, refer any outstanding matter relating to the draft Raukūmara CMP to the New Zealand Conservation Authority for a recommendation on how to resolve that matter.

Referral to New Zealand Conservation Authority for recommendation

13.96. Where Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards refer any matter of disagreement to the New Zealand Conservation Authority, Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards will also provide a written statement of the outstanding matters and the reasons for such disagreement.

13.97. No later than three months after referral of the matter to it, the New Zealand Conservation Authority will make a recommendation on the outstanding matters, and notify that recommendation to Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards.

13.98. When making a recommendation under clause 13.97, the New Zealand Conservation Authority will:

13.98.1. give appropriate consideration to the purposes of Te Whakahaere Takirua mō Te Raukūmara and the Raukūmara CMP; and

13.98.2. give effect to the principles of the Treaty of Waitangi as required by section 4 of the Conservation Act 1987.

13.99. After receiving and considering the recommendation of the New Zealand Conservation Authority, Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards will seek to resolve any outstanding matters, and will make any changes considered necessary to the draft Raukūmara CMP.

13.100. If Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards have not resolved any outstanding matters within two months of receiving the recommendation from the New Zealand Conservation Authority, the recommendation of the New Zealand Conservation Authority will become binding on Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards, and those parties will make any changes to the draft Raukūmara CMP that are considered necessary to implement that recommendation.

13.101. Where Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards have referred any outstanding matters to the New Zealand Conservation Authority under clause 13.95.1, Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards will approve the draft Raukūmara CMP no later than four months

after receiving the recommendation of the New Zealand Conservation Authority under clause 13.97.

Reviews of Raukūmara CMP

13.102. The Director-General, after consultation with Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards, may at any time initiate a review of the Raukūmara CMP or any part of that plan.

13.103. Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards may at any time request that the Director-General initiate a review of the Raukūmara CMP or any part of that plan and the Director-General will consider that request.

13.104. Every review of the Raukūmara CMP will be carried out and approved in accordance with the provisions of clauses 13.75 to 13.101 and 13.61, which will apply with any necessary modifications.

13.105. The following provisions will also apply in relation to reviews of the Raukūmara CMP:

13.105.1. the Raukūmara CMP will be reviewed as a whole by the Director-General not later than 10 years after the date upon which the plan was last approved; and

13.105.2. the Minister of Conservation may, after consultation with Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards, extend that period of review.

Amendments to Raukūmara CMP

13.106. The Director-General, after consultation with Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards, may at any time initiate an amendment of the Raukūmara CMP, or any part of that plan.

13.107. Except as provided in clause 13.108, every amendment to the Raukūmara CMP will be carried out in accordance with the provisions of clauses 13.75 to 13.101 and 13.61, which will apply with any necessary modifications.

13.108. Where the proposed amendment is of such a nature that the Director-General, Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards consider that it will not materially affect the objectives, policies or outcomes expressed in the Raukūmara CMP or the public interest in the area concerned:

13.108.1. the Director-General of Conservation will send the proposal to Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards;

13.108.2. Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards may decide to amend the Raukūmara CMP as set out in the proposal; and

13.108.3. if Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards decide to amend the Raukūmara CMP, they will approve the amended Raukūmara CMP no later than two months after receiving the proposal.

Dispute resolution

13.109. At any time during the process set out in clauses 13.78 to 13.108, any of Te Whakahaere Takirua mō Te Raukūmara, the relevant conservation boards or the Director-General may refer any matter of disagreement arising out of that process to a mediator.

13.110. If a referral is made under clause 13.109, the process set out in clause 13.61 will apply, with any necessary modifications.

Annual Raukūmara statement of priorities and annual operational plan

13.111. The operational management of the Raukūmara Lands will be undertaken by the Director-General in accordance with:

13.111.1. the relevant legislation;

13.111.2. the Raukūmara CMS (once a conservation management strategy has been approved);

13.111.3. the Raukūmara CMP (once a conservation management plan has been approved);

13.111.4. the statement of priorities (if one is provided); and

13.111.5. the annual operational plan.

Statement of priorities

13.112. No later than three months before 1 July each year (**operational year**), Te Whakahaere Takirua mō Te Raukūmara may provide the Director-General with an annual statement of Raukūmara priorities (**statement of priorities**).

Annual Raukūmara operational plan

13.113. An annual Raukūmara operational plan must be prepared and approved for the commencement of each operational year (**annual Raukūmara operational plan**).

13.114. The annual Raukūmara operational plan must include the following information for the relevant operational year:

13.114.1. the sources and extent of funding for operational management;

13.114.2. restoration work;

13.114.3. capital projects;

13.114.4. strategic, policy, and planning projects;

13.114.5. maintenance and operational projects;

13.114.6. pest control;

13.114.7. species management;

13.114.8. contracts for management or maintenance activities; and

13.114.9. opportunities for iwi to participate in or undertake any of the above matters.

13.115. The first annual Raukūmara operational plan must be approved by 1 July in the year after the year of the settlement date unless otherwise agreed by the Director-General and Te Whakahaere Takirua mō Te Raukūmara.

13.116. No later than two months before the commencement of each operational year, or such later date as agreed by the Director General and Te Whakahaere Takirua mō Te Raukūmara, the Director-General must prepare a draft annual Raukūmara operational plan (**draft annual Raukūmara operational plan**) and provide that plan to Te Whakahaere Takirua mō Te Raukūmara.

13.117. The statement of priorities, if one has been provided, will guide the Director-General in preparing the draft annual Raukūmara operational plan.

13.118. Once the statement of priorities (if one is provided) and the draft annual Raukūmara operational plan have been provided, Te Whakahaere Takirua mō Te Raukūmara:

13.118.1. must consider the draft annual Raukūmara operational plan;

13.118.2. must determine whether the draft annual Raukūmara operational plan is consistent with:

(a) the Raukūmara CMS (once a conservation management strategy has been approved);

(b) the Raukūmara CMP (once a conservation management plan has been approved); and

(c) the annual statement of priorities; and

(d) any other matters it considers relevant; and

13.118.3. must:

(a) accept the draft annual Raukūmara operational plan in its entirety;

(b) accept part of the draft annual Raukūmara operational plan; or

(c) reject the draft annual Raukūmara operational plan in its entirety.

13.119. Te Whakahaere Takirua mō Te Raukūmara must notify the Director-General of its decision as soon as practicable after receiving the draft Raukūmara annual operational plan, but no later than one month before the commencement of the operational year.

13.120. If Te Whakahaere Takirua mō Te Raukūmara accepts only part of, or rejects, the draft annual Raukūmara operational plan, Te Whakahaere Takirua mō Te Raukūmara must:

13.120.1. notify the Director-General of those parts of the plan that are accepted; or

13.120.2. refer those parts of the plan that are not accepted to the Director-General for revision; and

13.120.3. meet with the Director-General (or his or her delegate) to discuss the matters requiring revision.

13.121. Te Whakahaere Takirua mō Te Raukūmara and the Director-General will work together in an open and constructive manner to seek to resolve any disagreement over the draft annual Raukūmara operational plan, with the intention that the whole plan will be in a form acceptable to Te Whakahaere Takirua mō Te Raukūmara as soon as possible.

13.122. To avoid doubt, if an annual Raukūmara operational plan is not in place for the relevant operational year, the Director-General may continue to undertake operational management activities where that is required:

13.122.1. to preserve the ecological integrity of the Raukūmara Lands or the viability of indigenous species, having first consulted with and had regard to the views of Te Whakahaere Takirua mō Te Raukūmara; and

13.122.2. in emergency circumstances or for the safety of the Raukūmara Lands or any person or group in the Raukūmara Lands.

13.123. If the parties are unable to reach agreement on two consecutive annual operational plans, either party may refer the matter to mediation, and the process set out in clause 13.61 will apply, with any necessary modification.

Other matters

13.124. Te Whakahaere Takirua mō Te Raukūmara and the Director-General and any other party retain full discretion and decision-making as to the operational funding (if any) to be contributed to the Raukūmara Lands, including any activities that may be included in an annual Raukūmara operational plan.

13.125. Where arrangements are agreed for iwi participation under clause 13.114.9, the Director-General will use section 53(2)(i) of the Conservation Act 1987 or other mechanisms that are available or may become available under legislation to give effect to any agreed arrangements.

13.126. An approved annual operational plan may be amended by agreement during its term to reflect any operational, structural, legislative, policy or administrative changes or other matters.

Delegated decision-making

13.127. The Minister of Conservation may delegate to Te Whakahaere Takirua mō Te Raukūmara any powers or functions of the Minister as if Te Whakahaere Takirua mō Te Raukūmara was identified in section 57(1) of the Conservation Act 1987.

13.128. The Director-General may delegate to Te Whakahaere Takirua mō Te Raukūmara any powers or functions of the Director-General as if Te Whakahaere Takirua mō Te Raukūmara was identified in section 58(1) of the Conservation Act 1987.

13.129. The Minister of Conservation and Director-General will execute the initial delegation instrument no later than 30 working days after settlement date, including the delegations referred to in clauses 13.130 and 13.131.

13.130. The Minister of Conservation will delegate to Te Whakahaere Takirua mō Te Raukūmara all powers and functions relating to concession applications under Part 3B of the Conservation Act 1987 received after the settlement date.

13.131. The Director-General, will delegate to Te Whakahaere Takirua mō Te Raukūmara the decisions under section 38 of the Conservation Act 1987 in relation to hunting and associated activities, subject to this delegation:

13.131.1. being limited to non-protected exotic fauna; and

13.131.2. not including decisions in relation to hunting permits for recreational purposes.

13.132. The delegations provided for in clauses 13.127 and 13.131:

13.132.1. apply to the Raukūmara Lands;

13.132.2. do not prevent the Minister of Conservation or Director-General from revoking or modifying the delegations, subject to the Minister or Director-General first engaging with Te Whakahaere Takirua mō Te Raukūmara in relation to the proposed revocation or modification;

13.132.3. do not remove or affect the need for permits to be obtained under the Wildlife Act 1953 or compliance with any other applicable legislation;

13.132.4. do not prevent the Minister of Conservation or Director-General from exercising or performing those powers and functions; or

13.132.5. do not prevent the Director-General from undertaking management or operational activities as provided for in the Conservation Act 1987.

13.133. Any exercise or performance of powers and functions under clause 13.132.4, and undertaking management or operational activities under clause 13.132.5, must be consistent with an agreed operational plan.

Amendments to timeframes

13.134. Any time frame set out in clauses 13.6 to 13.110 may be extended with the agreement of the Director-General, Te Whakahaere Takirua mō Te Raukūmara and the relevant conservation boards, and the Director-General will notify any person or organisation affected by an agreed extension.

13.135. The settlement legislation will, on the terms provided by sections [x] to [x] of the draft settlement bill, provide for the matters set out in clauses 13.6 to 13.134 above.

APPOINTMENT TO CONTROL AND MANAGE HAWAI SCENIC RESERVE

13.136. The settlement legislation will, on the terms provided by section [x] to [x] of the draft settlement bill, provide that:

13.136.1. Te Taumata will, on the settlement date, be the administering body of the Hawai Scenic Reserve (as shown on deed plan OMCR-114-13), as if it were a local authority appointed to control and manage the reserve under section 28 of the Reserves Act 1977;

13.136.2. Te Taumata may, as administering body, apply in writing to the Minister of Conservation to transfer the administering body role for all or part of the Hawai Scenic Reserve that remains a reserve under the Reserves Act 1977 (**reserve land**) to Te Whānau a Harawaaka (**hapū entity**);

13.136.3. if an application is made under clause 13.136.2, and provided the requirements under clause 13.136.5 are satisfied, the Minister of Conservation must, by way of notice in the *Gazette*, appoint the hapū entity to control and manage the reserve land under section 28 of the Reserves Act 1977 as if it were a local authority;

13.136.4. the appointment of the hapū entity under clause 13.136.3 will take effect on the date specified in the notice in the *Gazette*;

13.136.5. before appointing the hapū entity to control and manage the reserve land, Te Taumata must satisfy the Minister that the hapū entity is able to:

(a) comply with the requirements of the Reserves Act 1977; and

(b) perform the duties of the administering body under that Act; and

13.136.6. section 88 of the Reserves Act 1977 does not apply to the reserve land while there is an administering body appointed to control and manage that land under this clause 13.136.

DEEDS OF RECOGNITION

13.137. The Crown must, by or on the settlement date, provide Te Taumata with a copy of each of the following:

13.137.1. a deed of recognition, signed by the Minister of Conservation and the Director-General of Conservation, in relation to the Hawai River and its tributaries (as shown on deed plan OMCR-114-15); and

13.137.2. a deed of recognition, signed by the Commissioner of Crown Lands, in relation to the Hawai River and its tributaries (as shown on deed plan OMCR-114-15).

13.138. The area that a deed of recognition relates to includes only those parts of the area owned and managed by the Crown.

13.139. A deed of recognition will provide that the Minister of Conservation and the Director-General of Conservation, or the Commissioner of Crown Lands, as the case may be, must, if undertaking certain activities within the area that the deed relates to:

13.139.1. consult Te Taumata; and

13.139.2. have regard to its views concerning the association of Te Whānau a Haraawaka with the area as described in a statement of association.

13.140. Each deed of recognition will be:

13.140.1. in the form in part 2 of the documents schedule; and

13.140.2. issued under, and subject to, the terms provided by sections [x] to [x] of the draft settlement bill.

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

CULTURAL MATERIALS PLAN

13.142. For the purposes of clause 13.143:

13.142.1. **flora** means any member of the plant family, and includes any alga, bacterium or fungus, and any plant, seed or spore from any plant;

13.142.2. **flora material** means flora or part of flora; and

13.142.3. **public conservation land** means land held under the Conservation Act 1987 and the enactments listed in Schedule 1 of that Act.

13.143. The settlement legislation will, on the terms provided by sections [x] to [x] of the draft settlement bill, provide for the Minister of Conservation (or his or her delegate) and Te Taumata to develop a cultural materials plan, within five years of the settlement date, setting out how Te Taumata will provide a member of ngā hapū o Te Whānau a Apanui with written authorisations to collect the following cultural materials:

13.143.1. flora material from public conservation land within the area of interest; and

13.143.2. protected wildlife found dead within the area of interest.

CROWN MINERALS PROTOCOL

13.144. The Crown minerals protocol must, by or on the settlement date, be signed and issued to Te Taumata by the responsible Minister.

13.145. The Crown minerals protocol sets out how the Crown will interact with Te Taumata with regard to the matters specified in it.

13.146. The Crown minerals protocol will be:

13.146.1. in the form in part 3.1 of the documents schedule; and

13.146.2. issued under, and subject to, the terms provided by sections [x] to [x] of the draft settlement bill.

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

F. TOITŪ TE WHENUA

14 TE ROHE O TE WHĀNAU A APANUI | TERRITORY OF TE WHĀNAU A APANUI

ACKNOWLEDGEMENT

14.1. The Crown acknowledges the kōrero of ngā hapū o Te Whānau a Apanui that:

14.1.1. they have a unique, unbroken, inalienable and sacred relationship with their rohe (as shown on the Te Rohe o Te Whānau a Apanui map at part 1.2 of the attachments);

14.1.2. the seaward boundary of Te Whānau a Apanui goes out to Tauritoatoa, a sea-based boundary marker past Whakaari (White Island);

14.1.3. this relationship is based on the status of Te Whānau a Apanui as tangata whenua in that rohe;

14.1.4. the source of this relationship is whakapapa and it has important cultural, social, physical and spiritual implications for Te Whānau a Apanui;

14.1.5. Te Whānau a Apanui view their rohe as a taonga tuku iho;

14.1.6. it is the aspiration of Te Whānau a Apanui to regain possession of all of their lands, territories, waters, coastal seas and resources within their rohe to uphold their responsibilities to future generations; and

14.1.7. Te Whānau a Apanui were in possession and occupation of the vast majority of their rohe at the time of the signing of the Te Tiriti o Waitangi on 14 June 1840.

14.2. The Crown and Te Whānau a Apanui acknowledge that clause 14.1 is only intended to provide context for this deed and clause 14.1 does not:

14.2.1. prevent the Crown from acknowledging the association of a person or persons other than Te Whānau a Apanui with the rohe referred to in clause 14.1;

14.2.2. confer any additional rights or obligations on any party to this deed;

14.2.3. affect or alter any legal obligation on a person exercising a power or performing a function or duty, under any enactment or other statutory instrument, including a bylaw; or

14.2.4. affect the lawful rights or interests of any person.

14.3. The area of interest map in part 1.1 of the attachments over which the redress in this deed applies is for Treaty settlement purposes. It does not represent the full rohe of ngā hapū o Te Whānau a Apanui according to their tikanga. For the avoidance of doubt, that map does not prejudice ngā hapū o Te Whānau a Apanui seeking rights and recognition in respect of the full rohe of nga hapū o Te Whānau a Apanui outside of this settlement.

POU WHENUA

14.4. For Te Whānau a Apanui, the erection of pou whenua in their rohe is a long-standing practice that contributes towards the recognition of the mana of the hapū of Te Whānau a Apanui. Te Whānau a Apanui exercises this practice in accordance with their tikanga across their rohe.

14.5. To erect pou whenua on public conservation land requires a concession under Part 3B of the Conservation Act 1987.

14.6. Ngā hapū o Te Whānau a Apanui will be able to make decisions about concessions to erect pou whenua within their rohe by the arrangements provided for in this deed through:

14.6.1. Te Whakahaere Takirua mō Te Raukūmara within the Raukūmara lands as provided for in clause 13.130;

14.6.2. the administering bodies of the reserves provided for under clause 15.1; and

14.6.3. the administering body of the Hāwai Scenic Reserve provided for under clause 13.136.

14.7. Subject to the tikanga of nga hapū o Te Whānau a Apanui and any relevant laws, Te Whānau a Apanui may also erect pou on non-public conservation lands.

15 TE HOKITANGA MAI O TE WHENUA TŪPUNA | CULTURAL REDRESS PROPERTIES

Vesting of properties

15.1. The settlement legislation will vest in Te Taumata on the settlement date:

In fee simple

15.1.1. the fee simple estate in each of the following sites:

(a) Otamatohirua:

(b) Whanarua Bay site A; and

As a scenic reserve

15.1.2. the fee simple estate in each of the following sites as a scenic reserve, with Te Taumata as the administering body:

(a) Hawai site A:

(b) Tokata property; and

As a recreation reserve

15.1.3. the fee simple estate in each of the following sites as a recreation reserve, with Te Taumata as the administering body:

(a) Oruaiti Beach property; and

(b) Taheke property;

15.1.4. the fee simple estate in the Maraetai property as a recreation reserve, with the joint management body referred to in clause 15.7.1(a) as the administering body;

15.1.5. the fee simple estate in the Ōmaio Bay property as a recreation reserve, with the joint management body referred to in clause 15.7.1(b) as the administering body;

As a local purpose (esplanade) reserve

15.1.6. the fee simple estate in each of the following sites as a local purpose (esplanade) reserve, with Te Taumata as the administering body:

(a) Hawai site B; and

(b) Whangaparāoa beach property; and

As a historic reserve

15.1.7. the fee simple estate in Whanarua Bay site B as a historic reserve, with the joint management body referred to in clause 15.7.1(c) as the administering body.

Vesting of Tamatari subject to continued public access

15.2. The Crown acknowledges the enduring mana of the Te Whānau a Apanui hapū Te Whānau a Pararaki over Tamatari based on their longstanding cultural connection with the land.

15.3. The settlement legislation will:

15.3.1. vest in Te Taumata on the settlement date the fee simple estate in Tamatari; and

15.3.2. record that Te Whānau a Pararaki have agreed, as an expression of mana and manaakitanga, that the public may continue to have access over Tamatari in accordance with their tikanga.

15.4. The settlement legislation will, on the terms provided in section [x] to [x] of the draft settlement bill, provide that:

15.4.1. public access will continue over Tamatari on and from settlement date;

15.4.2. Te Whānau a Pararaki, in consultation with Ōpōtiki District Council, will prepare and approve a hapū document in relation to Tamatari (**hapū document**);

15.4.3. the hapū document will:

(a) set out the history and significance of Tamatari to Te Whānau a Pararaki;

(b) address public access matters as provided for in clause 15.4.6; and

(c) contain such other matters as Te Whānau a Pararaki consider appropriate;

15.4.4. Te Whānau a Pararaki may, in accordance with the hapū document, restrict public access over Tamatari for a reasonable period of time for:

(a) cultural or hapū activities;

(b) maintenance; or

(c) any other reason as determined by Te Whānau a Pararaki;

15.4.5. Ōpōtiki District Council may, in accordance with the hapū document, restrict public access over Tamatari for a total period of no more than 20 days each year:

(a) for maintenance purposes; and

(b) with prior agreement from Te Whānau a Pararaki;

15.4.6. the hapū document must identify relevant terms and conditions on which public access will be provided and may be restricted, including:

(a) that Te Whānau a Pararaki may impose reasonable charges for access (including differential charges);

(b) the circumstances in which public access may be restricted and the nature and extent of those restrictions (insofar as they are known at the time of preparation and approval of the hapū document);

(c) how the public will be notified of any restrictions on public access; and

(d) any other matters considered appropriate by Te Whānau a Pararaki;

15.4.7. the hapū document may be:

(a) reviewed from time to time as considered appropriate by Te Whānau a Pararaki; and

(b) amended by Te Whānau a Pararaki following consultation with the Ōpōtiki District Council; and

15.4.8. any public access restrictions will be publicly notified in the manner set out in the hapū document.

15.5. The parties record the intention that the hapū document will be approved prior to the settlement date.

Provisions that apply to specific properties

15.6. The settlement legislation will, on the terms provided in section [x] of the draft settlement bill, provide that any improvements in or on the following properties do not vest on the settlement date:

15.6.1. Maraetai property;

15.6.2. Ōmaio Bay property;

15.6.3. Taheke property;

15.6.4. Tamatari; and

15.6.5. Whanarua Bay site B.

Joint management bodies for Maraetai property, Ōmaio Bay property and Whanarua Bay site B

15.7. The settlement legislation will, on the terms provided by sections [x] to [x] of the draft settlement bill, provide that:

15.7.1. separate joint management bodies will be established as the administering bodies for each of the following properties:

(a) Maraetai property;

(b) Ōmaio Bay property; and

(c) Whanarua Bay site B;

15.7.2. each joint management body will consist of 4 members, with 2 members appointed by the registered owner of the property and 2 members appointed by Ōpōtiki District Council;

15.7.3. separate management plans will be prepared for the Maraetai property, Ōmaio Bay property and Whanarua Bay site B in accordance with section 41 of Reserves Act 1977 by the relevant joint management body;

15.7.4. management plans prepared under clause 15.7.3 may be approved by the joint management body, if the Minister of Conservation's power of approval has been delegated to Ōpōtiki District Council;

15.7.5. at any time after the first management plan for a property has been approved under section 41 of the Reserves Act 1977, the registered owner of the property may give notice to Ōpōtiki District Council and the Minister of Conservation that they wish to become the sole administering body for that property;

15.7.6. after that notice is received, the Minister of Conservation will appoint the registered owner of the property as the administering body of that property; and

15.7.7. to avoid doubt, a joint management body is not a committee or joint committee for the purposes of the Local Government Act 2002.

15.8. The settlement legislation will, on the terms provided by sections [x] to [x] of the draft settlement bill, provide that, for Whanarua Bay site B:

15.8.1. the joint management body must, when preparing the first management plan under clause 15.7.3, consider possible access arrangements in respect of the site, including the continued use of the existing tar-sealed vehicular route (**vehicular route**) (as shown by the broken red line on deed plan OMCR-114-12 in part 2 of the attachments);

15.8.2. the management plan prepared under clause 15.7.3 must state:

(a) the joint management body's preferred approach to implement the outcome considered appropriate under clause 15.8.1; and

(b) a timeframe for implementing that outcome; and

15.8.3. while the joint management body is the administering body of the reserve, Ōpōtiki District Council is responsible for any costs or liabilities relating to the vehicular route for which the joint management body would otherwise be responsible.

Provisions that apply to properties generally

15.9. Each cultural redress property is to be:

15.9.1. as described in schedule 3 of the draft settlement bill;

15.9.2. vested on the terms provided by:

(a) sections [x] to [x] of the draft settlement bill; and

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

15.9.3. subject to any encumbrances in relation to that property:

(a) required by the settlement legislation; and

(b) in particular, referred to by schedule 3 of the draft settlement bill.

16 WHITUARE BAY - MARAENUI HILL

Māori reservation to be established

16.1. Certain portions of Māori freehold land described in schedule [x] of the draft settlement bill shown on SO 6749 and adjacent to State Highway 35 (the **Whituare Bay - Maraenui Hill land**) were taken by *Gazette* notice 138316.1 (*Gazette* 1980, p 3759) dated 20 November 1980 for the use, convenience, or enjoyment of a road.

16.2. The Whituare Bay - Maraenui Hill land is of cultural and historical importance to members of ngā iwi o Te Whānau a Apanui, especially Te Whānau a Haraawaka and Te Whānau a Hikarukutai.

16.3. The settlement legislation will, on the terms provided in section [x] of the draft settlement bill:

16.3.1. declare the Whituare Bay - Maraenui Hill land to be held, on and from the settlement date, as a Māori reservation (as if it had been set apart pursuant to Part 17 of Te Ture Whenua Māori Act 1993) for the purpose and on the terms set out in this deed; and

16.3.2. specify in that declaration that the Whituare Bay - Maraenui Hill land being held as a Māori reservation:

(a) will not prevent the Whituare Bay - Maraenui Hill land from being used for the use, convenience, or enjoyment of a road;

(b) will not result in the Whituare Bay - Maraenui Hill land ceasing to be required for that purpose; and

(c) is not a disposal of the Whituare Bay - Maraenui Hill land.

Purpose of the Māori reservation

16.4. The purpose of the Māori reservation under clause 16.3.1 is to enable the Whituare Bay - Maraenui Hill land to be held:

16.4.1. in a manner that reflects the ancestral significance and cultural values attributed to it by the hapū of Te Whānau a Apanui;

16.4.2. subject to clause 16.4.3, in part or whole for the development of Te Whānau a Haraawaka and Te Whānau a Hikarukutai capacity and capability;

16.4.3. in part or whole, as necessary for the use, convenience, or enjoyment of State Highway 35; and

16.4.4. as a place of local significance, with associated amenity and strategic values central to the maintenance of passage within the rohe, for the benefit of all Te Whānau a Apanui hau kāinga and the wider community.

Governance and management of the Māori reservation

16.5. The tikanga of ngā hapū of Te Whānau a Apanui is to be central to the governance of the Whituare Bay - Maraenui Hill land.

16.6. In order to respect and maintain the cultural and traditional values associated with the Whituare Bay - Maraenui Hill land, persons exercising powers and functions in respect of the Whituare Bay - Maraenui Hill land must:

16.6.1. be familiar with the cultural and traditional values associated with the that land; and

16.6.2. as far as practicable, carry out their functions and powers in a manner that does not conflict with those cultural and traditional values.

16.7. In order to protect and maintain the amenity and strategic values associated with the Whituare Bay - Maraenui Hill land:

16.7.1. management of the Whituare Bay - Maraenui Hill land as a Māori reservation must be carried out in a manner that enables the control of erosion and provides flexibility in order to re-align the carriageway of State Highway 35 for the maintenance of passage or responses to emergencies; and

16.7.2. the Minister of Transport and Waka Kotahi / NZ Transport Agency continue to have authority to exercise powers conferred under any Acts of Parliament for road purposes, including controlling erosion and re-aligning the State Highway.

16.8. Without limiting clauses 16.5 to 16.7, for the purposes of managing the Whituare Bay - Maraenui Hill land as a Māori reservation and in order to facilitate participation by Māori in land transport decision-making processes:

16.8.1. Waka Kotahi / NZ Transport Agency will work together in good faith to, within 24 months after the settlement date or earlier at the request of either party, enter into a management agreement with the hapū entities for Te Whānau a Haraawaka and Te Whānau a Hikarukutai that must:

(a) include provisions setting out how Waka Kotahi / NZ Transport Agency and

the hapū entities will partner in the management of the Whituare Bay - Maraenui Hill land as a Māori reservation;

(b) include provisions which reflect, and give effect to, clauses 16.5 to 16.7;

(c) specify how Waka Kotahi / NZ Transport Agency and the hapū entities will:

(i) establish and maintain communication pathways and points of contact between them;

(ii) use and appropriately protect information that is exchanged between them;

(iii) actively manage a 'no surprises/early advice' policy;

(iv) ensure relationships are maintained when people, positions and structures change;

(v) identify areas of shared interest and prioritise activities; and

(vi) facilitate the early and constructive resolution of any issues;

(d) specify a process for reviewing and if appropriate altering the content of, or any provision in, the agreement;

(e) include provisions which confirm that for so long as Waka Kotahi / NZ Transport Agency is the road controlling authority in relation to State Highway 35, Waka Kotahi / NZ Transport Agency will remain liable for the costs associated with the design, building, maintenance and operation of State Highway 35; and

(f) include any other provisions agreed between Waka Kotahi / NZ Transport Agency and the hapū entities.

16.8.2. The deed does not provide for any funding towards the costs of preparing or implementing the management agreement. As a Crown agency, Waka Kotahi / NZ Transport Agency resourcing is subject to various approval processes and limitations, as described in more detail in clause 3 of the Land Transport / Waka Whenua Schedule between Te Taumata o Ngā Hapū o Te Whānau a Apanui and Waka Kotahi / NZ Transport Agency. Accordingly, Waka Kotahi / NZ Transport Agency and the hapū entities for Te Whānau a Haraawaka and Te Whānau a Hikarukutai agree that they will work together to identify and secure the necessary funding and resources required to prepare and successfully implement the management agreement.

Future contingencies

16.9. The settlement legislation will, on the terms provided in section [x] of the draft settlement bill, provide that the Minister of Transport:

16.9.1. may exclude any part of the Whituare Bay - Maraenui Hill land from the Māori reservation by notice in the *Gazette* in the following circumstances:

(a) if it is necessary to enable re-alignment of State Highway 35 over that part of the Māori reservation; and

(b) if the Minister and the hapū of Te Whānau a Haraawaka and Te Whānau a Hikarukutai agree to the exclusion; and

16.9.2. may include any adjoining portion of State Highway 35 in the Māori reservation by notice in the *Gazette* in the event of that portion being stopped.

Relationship with other legislation

16.10. The settlement legislation will, on the terms provided in section [x] of the draft settlement bill, provide that:

16.10.1. the jurisdiction of the Māori Land Court in respect of Māori reservations under Part 17 of Te Ture Whenua Māori Act 1993 does not apply to the Whituare Bay - Maraenui Hill land;

16.10.2. the Whituare Bay - Maraenui Hill land, or any part of it, cannot be alienated, or vested or acquired under an Act of Parliament so long as that land or part is a Māori reservation;

16.10.3. nothing in the Māori Reservations Regulations 1994 will apply to the Māori reservation established pursuant to clause 16.3.1 or amended by clause 16.9.2; and

16.10.4. if all or any part of the Whituare Bay – Maraenui Hill land ceases to be required for a government work (within the meaning of the Public Works Act 1981):

(a) the Minister responsible for the government work, must exclude the land or the relevant part of it from the Māori reservation by notice in the *Gazette*; and

(b) the land must be returned to private ownership by way of disposal (including vesting) pursuant to any applicable provision in legislation that applies to the disposal of land no longer required for a government work.

17 TE WHENUA AUPIKI | COMMERCIAL REDRESS PROPERTIES

17.1. The commercial redress properties are:

17.1.1. 6749 State Highway 35, Te Kaha; and

17.1.2. Cemetery Road, Raukokore.

17.2. Each commercial redress property in clause 17.1 is to be:

17.2.1. transferred by the Crown to Te Taumata on the settlement date:

(a) as part of the redress to settle the historical claims, and without any other consideration to be paid or provided by Te Taumata or any other person; and

(b) on the terms of transfer in part 6 of the property redress schedule; and

17.2.2. as described, and is to have the transfer value provided, in part 3 of the property redress schedule.

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

18 TE WHENUA TĀRIA | DEFERRED SELECTION PROPERTY

18.1. Te Taumata may during the deferred selection period for the deferred selection property, give the Crown a written notice of interest in accordance with paragraph 5.1 of the property redress schedule.

18.2. Part 5 of the property redress schedule provides for the effect of the notice and sets out a process where the property is valued and may be acquired by Te Taumata.

18.3. The deferred selection property is to be leased back to the Crown, immediately after its purchase by Te Taumata, on the terms and conditions provided by the lease for that property in part 5 of the documents schedule (being a registrable ground lease for the property, ownership of the improvements remaining unaffected by the purchase).

18.4. Clause 18.5 applies in respect of the DSP school house site if, before the settlement date, the board of trustees of the related school site relinquishes the beneficial interest it has in the DSP school house site.

18.5. If this clause applies to the DSP school house site:

18.5.1. the Crown must, within 10 working days of this clause applying, give notice to Te Taumata that the beneficial interest in the DSP school house site has been relinquished by the board of trustees;

18.5.2. the deferred selection property that is the related school site will include the DSP school house site; and

18.5.3. all references in this deed to the deferred selection property that is the related school site are to be read as if the deferred selection property were the related school site and the DSP school house site together.

18.6. In the event that the school site (or part of the school site) becomes surplus to the land holding agency's requirements, then the Crown may, at any time before Te Taumata has given a notice of interest in respect of the school site (or the relevant part of the school site), give written notice to Te Taumata advising it that the school site (or the relevant part of the school site) is no longer available for selection by Te Taumata in accordance with clause 18.1. The right under clause 18.1 ceases in respect of the school site (or the relevant part of the school site) on the date of receipt of the notice by Te Taumata under this clause. To avoid doubt, following service of a notice under this clause 18.6:

18.6.1. where the notice is served in respect of part only of the school site, the balance of the school site will continue to be available for selection by Te Taumata in accordance with clause 18.1; and

18.6.2. to avoid doubt, Te Taumata will continue to have a right of first refusal in relation to the school site (or the relevant part of the school site) in accordance with clause 19.1.

18.7. The parties to this deed acknowledge that if the Te Kura Mana Māori o Whangaparāroa deferred selection property transfers to Te Taumata, Te Taumata intends to on-transfer the property to the hapū entity for Te Whānau a Kauaetangohia.

SETTLEMENT LEGISLATION

18.8. The settlement legislation will, on the terms provided by sections [x] to [x] of the draft settlement bill, enable the transfer of the commercial redress properties and the deferred selection property.

19 TE MANA TUATAHI | RFR FROM THE CROWN

19.1. Te Taumata is to have a right of first refusal in relation to a disposal of RFR land, being land listed in part 3 of the attachments as RFR land that, on the settlement date:

19.1.1. is vested in the Crown; or

19.1.2. the fee simple for which is held by the Crown or Kāinga Ora – Homes and Communities.

19.2. The right of first refusal is:

19.2.1. to be on the terms provided by sections [x] to [x] of the draft settlement bill; and

19.2.2. in particular, to apply:

(a) for a term of 180 years on and from the settlement date; but

(b) only if the RFR land is not being disposed of in the circumstances provided by sections [x] to [x] of the draft settlement bill.

20 WHAKAARI / WHITE ISLAND

20.1. The Crown agrees that if the Department of Internal Affairs conducts a review of the local government administration of Whakaari / White Island, it

20.1.1. will, as a part of that review, consult with, and have regard to the views of, ngā hapū o Te Whānau a Apanui about their concerns and interests in relation to the local government administration of Whakaari / White Island, and;

20.1.2. may, as a part of that review, consult:

(a) other iwi with an interest in Whakaari / White Island;

(b) other land owners with an interest in Whakaari / White Island;

(c) local authorities having jurisdiction over areas which are adjacent to Whakaari / White Island;

(d) the Local Government Commission; and

(e) other parties with interests in Whakaari / White Island.

21 OFFICIAL OR RECORDED GEOGRAPHIC NAMES

21.1. The place names referred to in this deed that are not official or recorded geographic names, within the meaning of the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008, are listed in paragraph 7.5 of the general matters schedule.

G. TOITŪ TE ORANGA WHĀNUI

22 NGĀ PIRINGA MAHITAHI | RELATIONSHIP AGREEMENTS

22.1. The aspirations of Te Whānau a Apanui and the Crown are to:

22.1.1. change the tide for Te Whānau a Apanui by achieving absolute well-being for the hapū of Te Whānau a Apanui (this well-being is holistic and includes cultural, spiritual, physical, environmental, social and economic well-being);

22.1.2. reset the relationship between Te Whānau a Apanui and the Crown in light of significant Crown breaches of Te Tiriti o Waitangi / the Treaty of Waitangi since 1840 and systems that have failed Te Whānau a Apanui; and

22.1.3. like the kāroro, develop an agile and adaptive whole of systems scaffolding to be able to foster a mutually beneficial and Te Tiriti o Waitangi / the Treaty of Waitangi consistent relationship between Te Whānau a Apanui and the Crown moving into the future.

22.2. To achieve this, Te Taumata will enter into a relationship agreement with the following agencies (**Government Organisations**):

22.2.1. Department of Corrections / Ara Poutama Aotearoa;

22.2.2. Department of Internal Affairs / Te Tari Taiwhenua, the agency responsible for:

(a) The National Library of New Zealand / Te Puna Mātauranga o Aotearoa; and

(b) Archives New Zealand / Te Rua Mahara o Te Kāwanatanga;

22.2.3. Heritage New Zealand Pouhere Taonga;

22.2.4. Ministry for Children / Oranga Tamariki;

22.2.5. Ministry for Culture and Heritage / Manatū Taonga;

22.2.6. Ministry of Business, Innovation and Employment / Hīkina Whakatutuki;

22.2.7. Ministry of Education / Te Tāhuhu o te Mātauranga;

22.2.8. Ministry of Health / Manatū Hauora;

22.2.9. Health New Zealand / Te Whatu Ora;

22.2.10. Māori Health Authority / Te Aka Whai Ora;

22.2.11. Ministry of Housing and Urban Development / Te Tūāpapa Kura Kāinga;

22.2.12. Ministry of Justice / Te Tāhū o Te Ture;

22.2.13. Ministry for Primary Industries / Manatū Ahu Matua;

22.2.14. Ministry of Social Development / Te Manatū Whakahiato Ora;

22.2.15. Ministry of Transport / Te Manatū Waka;

22.2.16. Museum of New Zealand / Te Papa Tongarewa;

22.2.17. New Zealand Police / Ngā Pirihimana o Aotearoa;

22.2.18. New Zealand Transport Agency / Waka Kotahi;

22.2.19. Statistics New Zealand / Tatauranga Aotearoa; and

22.2.20. Tertiary Education Commission / Te Amorangi Mātauranga Matua.

22.3. This relationship agreement will provide a general statement of values and principles that will be the foundation of the relationship between Te Whānau o Apanui and the Government Organisations. The Schedules of the relationship agreement will provide the terms of each specific relationship between Te Whānau a Apanui and relevant Government Organisations with reference to particular kaupapa.

22.4. Te Taumata will enter into a separate relationship agreement with the Department of Conservation / Te Papa Atawhai.

MANA KI TE MANA

22.5. As Te Tiriti o Waitangi/Treaty of Waitangi partners, a “mana ki te mana” relationship exists between Te Whānau a Apanui and the Crown.

22.6. This mana ki te mana relationship is:

22.6.1. personified by the hapū of Te Whānau a Apanui and the Crown, through its Ministers;

22.6.2. guided by the mutual commitment to honour Te Tiriti o Waitangi / the Treaty of Waitangi; and

22.6.3. informed by the principle that the hapū of Te Whānau a Apanui and the Crown see themselves as equal partners in their relationship.

22.7. As part of the mana ki te mana relationship, the hapū of Te Whānau a Apanui and Ministers will wish to engage from time to time on matters of mutual importance.

22.8. At any time, where either party requests a meeting, the other party will respond in a way that respects the mana ki te mana relationship.

22.9. Each relationship agreement will be in the form set out in part 6 of the documents schedule.

22.10. A failure by the Crown to comply with a relationship agreement is not a breach of this deed.

LETTER OF INTRODUCTION

22.11. By the settlement date, the chief executive of the Office for Māori Crown Relations – Te Arawhiti will write a letter, in the form set out in part 7 of the documents schedule to the chief executive of Ngā Taonga Sound and Vision, to introduce ngā hapū o Te Whānau a Apanui and Te Taumata.

23 NGĀ PŪKORO HĀPAI | RE-BUILDING THE ECONOMIC BASE

FINANCIAL REDRESS

23.1. The Crown must pay Te Taumata on the settlement date $11,400,000, being the financial and commercial redress amount of $30,000,000 less:

23.1.1. $6,000,000 being the on account payment referred to in clause 23.2;

23.1.2. $12,000,000 being on the on account payment referred to in clause 23.3; and

23.1.3. $600,000 being the total transfer values of the commercial redress properties.

ON ACCOUNT PAYMENTS

23.2. On 11 September 2020, the Crown paid $6,000,000 to Te Rūnanga o Te Whānau Charitable Trust on account of the financial and commercial redress amount in accordance with the deed recording on account arrangements signed on 28 August 2020.

23.3. Within 10 working days after the date of this deed, the Crown will pay $12,000,000 to Te Taumata on account of the financial and commercial redress amount.

MARINE SPACE FOR AQUACULTURE

23.4. Ngā hapū o Te Whānau a Apanui consider that developing aquaculture opportunities aligns with their longstanding association to the moana, their right to develop traditional resources, and could assist with providing a positive path forward to addressing some of the economic, poverty and employment challenges that they face.

23.5. The Crown has agreed that the deed will provide Te Taumata with an exclusive right to apply for a coastal permit in relation to aquaculture activities within an area of reserved space on the terms set out in clauses 23.6 and 23.7 below.

Reservation of aquaculture space

23.6. The settlement legislation will, on the terms provided by sections [x] to [x] of the draft settlement bill, provide:

23.6.1. the Minister for Oceans and Fisheries, may, within two years of the settlement date, by notice in the *Gazette*, declare an area of the coastal marine area as reserved space for the ngā hapū o Te Whānau a Apanui (**reserved space**), provided that:

(a) Te Taumata has provided written notice to the Minister identifying the space they intend to reserve;

(b) the space identified is within the area identified on the map at part 1 of the attachments;

(c) the space identified does not exceed 5000 hectares; and

(d) the Minister has complied with the process set out in clause 23.6.2;

23.6.2. prior to issuing a notice under clause 23.6.1, the Minister for Oceans and Fisheries must:

(a) be satisfied that Te Taumata has consulted with any other affected iwi about the space intended to be a reserved space;

(b) consult with Te Taumata if the Minister for Oceans and Fisheries considers that adequate consultation has not been undertaken or in relation to any material issues raised by the affected iwi;

(c) consult with the Minister for Treaty of Waitangi Negotiations and the Minister of Conservation about the space intended to be a reserved space; and

(d) consult with Te Taumata in relation to any material issues raised by the Minister for Treaty of Waitangi Negotiations or the Minister of Conservation;

23.6.3. once a notice is issued under clause 23.6.1, the following provisions will apply:

(a) the reserved space will continue for a period of 35 years following the date of *Gazette* notice (**reservation term**);

(b) at the end of the reservation term, the reservation of space will be deemed to have lapsed;

(c) that the Bay of Plenty Regional Council will, as soon as is reasonably practicable after the date of *Gazette* notice, identify the reserved space in its regional coastal plan, without using the process under Schedule 1 of the Resource Management Act 1991;

(d) the Minister of Conservation will not be required to approve the amended regional coastal plan under Schedule 1 of the Resource Management Act 1991;

(e) only Te Taumata or a nominee of Te Taumata may apply for a coastal permit in relation to aquaculture activities within the reserved space during the reservation term (**exclusive right**);

(f) to avoid doubt, the exclusive right will continue to the end of the reservation term, regardless of whether Te Taumata has applied for or obtained a coastal permit in relation to aquaculture activities within the reserved space either before or during the reservation term; and

(g) during the reservation term, the Bay of Plenty Regional Council may grant a coastal permit authorising any other activity, apart from aquaculture activities, in the reserved space, but only:

(i) to the extent that that activity is compatible with aquaculture activities;

(ii) after consultation with Te Taumata; and

(iii) in a manner that reflects sections 6(e), 7(a) and 8 of the Resource Management Act 1991.

23.7. The parties acknowledge that:

23.7.1. the exclusive right does not mean that a coastal permit will necessarily be granted;

23.7.2. the Crown has no further obligations beyond those set out in clause 23.6; and

23.7.3. there is no recourse to the Crown in any circumstances, including if a coastal permit is not:

(a) applied for within the reservation term; or

(b) granted.

FISHERIES RIGHT OF FIRST REFUSAL OVER QUOTA

23.8. The Crown agrees to grant to Te Taumata a right of first refusal to purchase certain quota as set out in the Fisheries RFR deed over quota.

Delivery by the Crown of a Fisheries RFR deed over quota

23.9. The Crown must, by or on the settlement date, provide Te Taumata with two copies of a deed (the **Fisheries RFR deed over quota**) on the terms and conditions set out in part 4 of the documents schedule and signed by the Crown.

Signing and return of Fisheries RFR deed over quota by Te Taumata

23.10. Te Taumata must sign both copies of the Fisheries RFR deed over quota and return one signed copy to the Crown by no later than 10 working days after the settlement date.

Terms of Fisheries RFR deed over quota

23.11. The Fisheries RFR deed over quota will:

23.11.1. relate to the Fisheries RFR area;

23.11.2. be in force for a period of 50 years from the settlement date; and

23.11.3. have effect from the settlement date as if it had been validly signed by the Crown and Te Taumata on that date.

Crown has no obligation to introduce or sell quota

23.12. The Crown and Te Taumata agree and acknowledge that:

23.12.1. nothing in this deed, or the Fisheries RFR deed over quota, requires the Crown to:

(a) purchase any provisional catch history, or other catch rights, under section 37 of the Fisheries Act 1996; or

(b) introduce any applicable species (being the species referred to in Schedule 1 of the Fisheries RFR deed over quota) into the quota management system (as defined in the Fisheries RFR deed over quota); or

(c) offer for sale any applicable quota (as defined in the Fisheries RFR deed over quota) held by the Crown except in accordance with the terms of the Fisheries RFR deed over quota; and

23.12.2. the inclusion of any applicable species (being the species referred to in Schedule 1 of the Fisheries RFR deed over quota) in the quota management system may not result in any, or any significant, holdings by the Crown of applicable quota.

H. TOITŪ TE MANA O NGĀ HAPŪ

24 TE MANA O NGĀ HAPU | THE MANA OF THE HAPŪ

24.1. The parties to this deed recognise that:

24.1.1. ngā hapū o Te Whānau a Apanui are the Crown's Treaty partner;

24.1.2. ngā hapū o Te Whānau a Apanui possess their own on-going, inalienable and enduring mana and express their own worldview, tikanga and kawa within their respective hapū territory;

24.1.3. there is a complex set of whakapapa-based relationships between each of the hapū and they have collective obligations to each other to preserve the unity and the mana of the tribal collective and ensure the wise management of the entire tribal territory;

24.1.4. accordingly, to the extent that Te Taumata assumes rights, obligations and functions under this deed, it does so as a mahi entity that acts for the benefit of ngā hapū o Te Whānau a Apanui and to uphold their mana; and

24.1.5. it is the intention of ngā hapū o Te Whānau a Apanui that the Te Taumata will on transfer appropriate redress to the hapū as represented by their hapū entity.

24.2. Acknowledging the desire of Te Whānau a Apanui to maintain and restore hapū mana over their lands, narratives and cultural landscape, on the settlement date, the Crown will pay Te Taumata $1,100,000 in cultural redress funding. The parties acknowledge ngā hapū o Te Whānau a Apanui intend to use:

24.2.1. $550,000 for the purpose of land acquisition / hoki whenua mai;

24.2.2. $300,000 for the purpose of the creation, writing, publication and dissemination of the history of ngā hapū o Te Whānau a Apanui; and

24.2.3. $250,000 as a general cultural redress fund.

SIGNED as a deed on [*date*]

SIGNED for and on behalf of)
NGĀ HAPŪ O TE WHĀNAU A APANUI by)
the mandated signatories, in the presence)
of:)

Signature of Witness

Witness Name

Occupation

Address

Francis Kerry Cameron on behalf of Te Whānau a Haraawaka

Ora Barlow on behalf of Te Whānau a Hikarukutai

Donna Michelle Takitimu on behalf of Te Whānau a Tutawake

Makarauria Max Kemara on behalf of Te Whānau a Nuku

Catherine Edmonds on behalf of Te Whānau a Rutaia

Lynette Parekura on behalf of Te Whānau a Hinetekahu

Tiaki Rangikawanoa Parata on behalf of Te Whānau a Te Ehutu

Raukura Ngatoro on behalf of Te Whānau a Kaiaio

Inys Calcott on behalf of Te Whānau a Kahurautao

Moana Waititi on behalf of Te Whānau a Pararaki

William Stirling Te Aho on behalf of
Te Whānau a Maruhaeremuri

Rika Mato on behalf of Te Whānau a
Kauaetangohia

[name] on behalf of Te Whānau a
Tapaeururangi

SIGNED by the trustees of)
TE TAUMATA O NGĀ HAPŪ O TE)
WHĀNAU A APANUI, in the presence of:)

Signature of

Witness Name

Occupation

Address

Francis Kerry Cameron on behalf of Te Whānau a Haraawaka

Ora Barlow on behalf of Te Whānau a Hikarukutai

Donna Michelle Takitimu on behalf of Te Whānau a Tutawake

Makarauria Max Kemara on behalf of Te Whānau a Nuku

Catherine Edmonds on behalf of Te Whānau a Rutaia

Lynette Parekura on behalf of Te Whānau a Hinetekahu

Tiaki Rangikawanoa Parata on behalf of Te Whānau a Te Ehutu

Raukura Ngatoro on behalf of Te Whānau a Kaiaio

Inys Calcott on behalf of Te Whānau a Kahurautao

Moana Waititi on behalf of Te Whānau a Pararaki

William Stirling Te Aho on behalf of
Te Whānau a Maruhaeremuri

Rika Mato on behalf of Te Whānau a
Kauaetangohia

[name] on behalf of Te Whānau a
Tapaeururangi

SIGNED for and on behalf of the **CROWN**)
by the Minister for Treaty of Waitangi)
Negotiations, in the presence of:)

Hon Paul Jonathan Goldsmith

Signature of Witness

Witness Name

Occupation

Address

by the Minister of Finance (only in relation to)
the tax indemnities), in the presence of:)

Hon Nicola Valentine Willis

Signature of Witness

Witness Name

Occupation

Address

INITIALLING PAGE FOR TE WHĀNAU A HARAAWAKA

INITIALLING PAGE FOR TE WHĀNAU A HIKARUKUTAI

INITIALLING PAGE FOR TE WHĀNAU A TUTAWAKE

INITIALLING PAGE FOR TE WHĀNAU A NUKU

INITIALLING PAGE FOR TE WHĀNAU A RUTAIA AND TE WHĀNAU A RONGOMAI

INITIALLING PAGE FOR TE WHĀNAU A HINETEKAHU

INITIALLING PAGE FOR TE WHĀNAU A TE EHUTU

INITIALLING PAGE FOR TE WHĀNAU A KAIAIO

INITIALLING PAGE FOR TE WHĀNAU A KAHURAUTAO

INITIALLING PAGE FOR TE WHĀNAU A PARARAKI

INITIALLING PAGE FOR TE WHĀNAU A MARUHAEREMURI

INITIALLING PAGE FOR TE WHĀNAU A KAUAETANGOHIA