



CABINET

CAB (96) M 49/11

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Minister in Charge of Treaty of
Waitangi Negotiations

Copies to:

Prime Minister
Treasurer
Minister of Finance
Minister of Maori Affairs
Attorney-General
Minister for the Environment
Minister of Lands
Minister of Fisheries
Chief Parliamentary Counsel
Legislation Programme Coordinator

NGAI TAHU HEADS OF AGREEMENT: RATIFICATION

Reference: CAB (96) 963

At the meeting on 18 December 1996 Cabinet:

a noted that on 7 October 1996 Cabinet:

- i endorsed the Heads of Agreement signed by Ngai Tahu and by the Minister in Charge of Treaty of Waitangi Negotiations;
- ii noted that the Heads of Agreement is subject to confirmation by the incoming Government;

[CAB (96) M 38/16 refers]

- b noted the copy of the Heads of Agreement attached to the submission under CAB (96) 963;
- c noted that the Heads of Agreement has not yet been publicly released;
- d endorsed the Heads of Agreement signed by the Crown and Te Runanga o Ngai Tahu on 5 October 1996.

A handwritten signature in cursive script, appearing to read 'Marie Shroff'.

Secretary of the Cabinet



CABINET

377/5 COMMERCIAL: IN CONFIDENCE

CAB (96) 963

Document 18

17 December 1996

Copy No: 24

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NGAI TAHU HEADS OF AGREEMENT: RATIFICATION

The Minister in Charge of Treaty of Waitangi Negotiations recommends that Cabinet:

- a note that on 7 October 1996 Cabinet:
 - i endorsed the Heads of Agreement signed by Ngai Tahu and by the Minister in Charge of Treaty of Waitangi Negotiations;
 - ii noted that the Heads of Agreement is subject to confirmation by the incoming Government [CAB (96) M 38/16 refers];
- b note the copy of the Heads of Agreement attached to the submission under CAB (96) 963;
- c note that the Heads of Agreement has not yet been publicly released;
- d agree to confirm the Heads of Agreement signed by the Crown and Te Runanga o Ngai Tahu on 5 October 1996.

(Signed) Sue Sharp
for Secretary of the Cabinet

NOTE FOR MINISTERS

Purpose	The paper seeks Cabinet's confirmation of the Ngai Tahu Heads of Agreement.
Previous Cabinet/ Committee Consideration	On 5 October 1996 the Crown and Ngai Tahu signed a Heads of Agreement which was endorsed by Cabinet on 7 October 1996. Cabinet noted that the Heads of Agreement would be subject to confirmation by the incoming Government [CAB (96) M 38/16 refers].

Summary

The paper notes that Te Runanga o Ngai Tahu has consulted with its people on the Heads of Agreement. As a consequence both Te Runanga o Ngai Tahu and the Hui a Tau (general hui) have ratified the Heads. Ngai Tahu is seeking information as to when the Crown will confirm the Heads.

The Heads of Agreement includes a reference to the need to seek the confirmation of "the Government in power after the forthcoming general election".

**Baseline
Implications**

None.

**Legislative
Implications**

The Crown and Ngai Tahu are currently working on negotiating a Deed of Settlement which is expected to be finalised in the second quarter of 1997. Legislation to implement the Deed of Settlement would then be introduced in the third quarter of 1997.

Timing Issues

None indicated.

Announcement

None indicated.

Consultation

OTS, Treasury, Crown Law Office.

The Minister has indicated that caucus consultation and consultation with other parliamentary parties will not be required.

Chair,

Cabinet

Ratification of the Ngai Tahu Heads of Agreement

Purpose

1. The purpose of this paper is to seek Cabinet's confirmation of the Ngai Tahu Heads of Agreement.

Background

2. On 5 October 1996 the Crown and Ngai Tahu signed a Heads of Agreement recording the matters which the parties have agreed in principle are to be contained in a Deed of Settlement to effect a settlement of all of Ngai Tahu's historical claims and their agreement to negotiate in good faith to settle the terms of the Deed of Settlement.
3. In paragraph 4 of the Heads of Agreement, the parties acknowledged that Te Runanga o Ngai Tahu must obtain a mandate from the Ngai Tahu Whanui authorising Te Runanga to enter into the Deed of Settlement, and to settle Ngai Tahu's claims on the terms set out in that Deed. Te Runanga agreed to seek that mandate. In paragraph 5 of the Heads of Agreement, the parties further acknowledged that the Crown's agreements recorded in the Heads were subject to confirmation by the Government in power after the forthcoming general election [CAB (96) M 38/16 refers].
4. The Ngai Tahu Heads of Agreement is comprehensive and covers all of Ngai Tahu's historical claims.

Comment

5. Te Runanga o Ngai Tahu has consulted with its people on the Heads of Agreement. As a consequence, both Te Runanga o Ngai Tahu and the Hui a Tau have ratified the Heads. Ngai Tahu have informed the Crown that it will continue to brief their constituents over January 1997 and are seeking information as to when the Crown will confirm the Heads of Agreement.
6. The Crown and Ngai Tahu are currently working on negotiating a Deed of Settlement which is expected to be finalised in the second quarter of 1997. Officials and Ngai Tahu are working on the details required to achieve this. Legislation to implement the Deed of Settlement would be introduced in the third quarter of 1997.

Financial Implications

7. There are no financial implications arising from this paper.

Legislative Implications

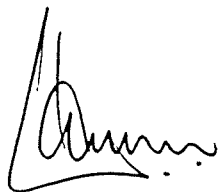
8. It is intended that legislation to implement the Ngai Tahu Settlement will be introduced in the third quarter 1997.

Consultation

9. The Crown Law Office and the Treasury have been consulted in the preparation of this paper, and their views have been incorporated.

Recommendation

10. It is recommended that Cabinet:
 - a) agree to confirm the Heads of Agreement signed by the Crown and Te Runanga o Ngai Tahu on 5 October 1996.



Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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CONSULTATION ON CABINET AND CABINET COMMITTEE SUBMISSIONS

Certification by Department:

The Cabinet Office will reject submissions if the necessary consultation does not appear to have taken place. The form which accompanies a submission sent to the Cabinet Office must have the original signatures of the Minister and official.		
I certify that the attached submission has implications for the following departments, whose views have been sought and are accurately reflected in the submission: Treasury Crown Law Office		
Signature	Name and Title	Date
M.A. Thompson	Mary Anne Thompson Group Manager Office of Treaty Settlements	17/12/96

Certification by Minister:

Consultation with other parties represented in Parliament on proposed legislation is coordinated by the Leader of the House. Consultation with other parties on matters other than legislation is coordinated by the Prime Minister. The relevant office should be contacted before any such consultation is undertaken.			
I certify that consultation on the issues raised in this paper with:			
	Has taken place	Will be needed	Is not required
the National party caucus			/
the New Zealand First party caucus			/
other parliamentary parties ¹			/
other interested groups ²			/
(¹) List parties which have been/are to be consulted:			
(²) List main interested groups:			
Signature	Name and Portfolio	Date	
[Signature]	J. O. W.	17, 12, 96	

Parties

HER MAJESTY THE QUEEN

in right of New Zealand

and

TE RUNANGA O NGAI TAHU

HEADS OF AGREEMENT

5 October 1996

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HEADS OF AGREEMENT

THIS HEADS OF AGREEMENT is made on the 5th day of October 1996

BETWEEN

- (1) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister in Charge of Treaty of Waitangi Negotiations (*the Crown*)
- (2) **TE RUNANGA O NGAI TAHU** (*Te Runanga*)

BACKGROUND

A The Treaty of Waitangi provides:

"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 Atanoho 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 wahikatoa 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 kua 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 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 ki hai 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 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.

For
RB

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaetanga 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
Consul and Lieutenant-Governor

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 wakaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

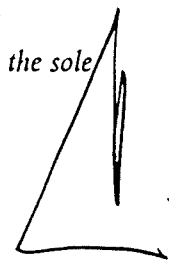
Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te wakaminenga."

"HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those Islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article The First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.



Job
Rt

Article The Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article The Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W. HOBSON Lieutenant Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

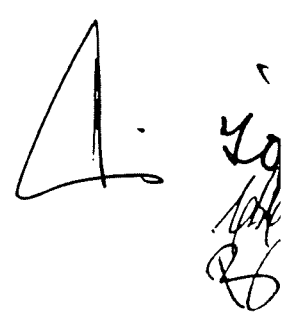
Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty."

Transfer of Ngai Tahu lands

- B In the years following the signing of the Treaty, the Crown, through its representatives and agents, sought the transfer of land from the Ngai Tahu people to the Crown. This was achieved through ten major purchases: Otakou 1844, Canterbury (Kemp's) 1848, Port Cooper 1849, Port Levy 1849, Akaroa 1856, Murihiku 1853, North Canterbury 1857, Kaikoura 1859, Arahura 1860, and Rakiura 1864.

Ngai Tahu have long sought to have their grievances redressed

- C From an early date, Ngai Tahu has pursued claims against the Crown of unfair purchase practices and of breaches of the deeds of purchase. Matiaha Tira

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Morehu, Hori Kerei Taiaroa, Tiemi Hipi, Tipene O'Regan, and Henare Rakiihia Tau and their wives and families were most prominent in these claims.

- D As a result of Ngai Tahu petitions and protests, some dating back to the 1840s, Ngai Tahu's grievances have been considered by a number of inquiries. Some dismissed them after cursory investigation, but those which investigated in detail generally found validity in Ngai Tahu's complaints. However, the Crown accepts that Ngai Tahu's grievances were not remedied. In particular, the Ngaitahu Claim Settlement Act 1944 was enacted without prior consultation with the tribe and did not debar the tribe from further pursuing its claim.

Claim under the Treaty of Waitangi Act 1975

- E Through enactment of the Treaty of Waitangi Amendment Act 1985, the Crown made it possible for Maori to bring claims before the Waitangi Tribunal in respect of historic grievances arising after 6 February 1840.
- F On 26 August 1986, a claim was submitted to the Waitangi Tribunal by Henare Rakiihia Tau and the Ngai Tahu Maori Trust Board, which represented the Ngai Tahu iwi and was chaired by Tipene O'Regan. That claim was subsequently elaborated upon by way of several amendments.
- G The Ngai Tahu claim, registered with the Waitangi Tribunal as Wai 27, was investigated in hearings before the Tribunal over the years 1987 to 1989.
- H On 1 February 1991, the Waitangi Tribunal reported on the main elements of the Ngai Tahu claim, described collectively as the 'Nine Tall Trees' of Ngai Tahu's grievances, and on 6 September 1991 issued a supplementary report recommending the creation by statute of a representative tribal body for Ngai Tahu.
- I The Waitangi Tribunal made a further report on 27 April 1995 in respect of Ngai Tahu's Ancillary Claims.

Findings of the Tribunal: the 'Nine Tall Trees'

- J After considering the elements of the Ngai Tahu claim, the Waitangi Tribunal found substantially in Ngai Tahu's favour, both in relation to the elements referred to as the 'Nine Tall Trees', and to the Ancillary Claims. In particular, the Tribunal could not reconcile the Crown's enduring failure to meet its obligations to Ngai Tahu with its duty to act towards its Treaty partner reasonably and with the utmost good faith. The Tribunal also emphasised that, in acquiring some 34.5 million acres of land from Ngai Tahu for £14,750, the Crown acted unconscionably and

in repeated breach of the Treaty of Waitangi. The Tribunal considered that the Crown's actions left Ngai Tahu with insufficient land to maintain its way of life, and to enable the tribe's full participation in subsequent economic development.

- K The Tribunal indicated in general terms the nature and scope of the redress which Ngai Tahu ought properly to receive. The Tribunal considered that the Crown ought to have restored to Ngai Tahu sufficient land to provide for the future economic, social and cultural development of the tribe.

L *Otakou*

The Tribunal found that the Crown was under a residual obligation to make further provision for Ngai Tahu, in addition to the reserves agreed upon during the purchase of the Otakou Block, and that the Crown failed to satisfy this obligation. The Tribunal considered that the Crown's obligation might have been satisfied by the creation of 'Tenths', or by other adequate provision.

Canterbury

The Tribunal found that the Crown, in acquiring the Canterbury Block, failed to negotiate fairly, failed to meet its undertaking to reserve sufficient food resources for Ngai Tahu, and failed to meet its obligation to provide ample reserves for the existing and future needs of Ngai Tahu. The Crown did not set aside the area from coast to coast defined by the Waimakariri and Kawari Rivers, as requested by Ngai Tahu. The Tribunal found that, in so acting, and in its subsequent failure to remedy these faults, the Crown breached its duty to act with the utmost good faith towards Ngai Tahu.

Banks' Peninsula

The Tribunal found that the Crown granted the Nanto-Bordelaise Company an interest in 30,000 acres of land on Banks' Peninsula, that Ngai Tahu had not agreed to relinquish most of this land and were not compensated for its loss, and that the Crown used high-handed and unfair methods in its dealings with Ngai Tahu over the Port Cooper and Port Levy Blocks. Significant to the Tribunal's findings on the Port Levy Purchase was the Crown's refusal to make reserves, as requested by Ngai Tahu, at Okains Bay, Kaituna Valley and Pigeon Bay. The Tribunal further found that the Crown had dealt with land on Banks' Peninsula before it had been lawfully acquired from Ngai Tahu and that the Crown failed to meet its obligation to provide ample reserves for the existing and future needs of Ngai Tahu.



Murihiku

The Tribunal found that the Crown, in purchasing the Murihiku Block, failed to set aside reserves that were requested by Ngai Tahu, failed to preserve for Ngai Tahu reasonable access to food resources, and failed to ensure that Ngai Tahu retained sufficient land for their existing and future needs. The Tribunal found that, in so acting, and in its subsequent failure to remedy these faults through the Middle Island Half-Caste Crown Grants Act 1877 and South Island Landless Natives Act 1906, the Crown breached its duty to act with the utmost good faith towards Ngai Tahu.

North Canterbury and Kaikoura

The Tribunal found that Ngai Tahu's interests and rangatiratanga in the North Canterbury and Kaikoura Blocks were gravely prejudiced by the Crown's transactions with other tribes, particularly in the Wairau Purchase 1847, and by the Crown's disposal of land without Ngai Tahu's consent. It found that the Crown failed both to act fairly and honourably in negotiating for the subsequent purchase of Ngai Tahu's interests, and to provide sufficient reserves in the North Canterbury and Kaikoura Blocks for the existing and future needs of Ngai Tahu.

Arahura

The Tribunal found that the Crown did not act fairly in its negotiations for the Arahura Block, and that the Crown failed both to set aside certain areas that Ngai Tahu wished to retain, and to preserve for Ngai Tahu reasonable access to food resources. It found that the Crown failed to protect the right of Ngai Tahu to retain possession and control of all pouamu. The Tribunal also found that the Crown failed to respect Ngai Tahu's interests and wishes when enacting a system of perpetual leases over Ngai Tahu reserves.

Rakiura

The Tribunal found that Ngai Tahu was disadvantaged by the delay in implementing the terms of the Rakiura purchase, the Crown having failed in its duty actively to protect Maori interests.

Mahinga Kai

The Tribunal found that, when purchasing Ngai Tahu lands, the Crown failed to ensure that Ngai Tahu retained reasonable access to places where the tribe produced or procured food, and especially unimpeded access to Lakes Waihora and Wairewa.

Schools and Hospitals

The Tribunal found that the expectation of being provided with schools and hospitals was an inducement to Ngai Tahu in selling the Kemp and Murihiku

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Blocks, that the Crown failed to act promptly to provide these benefits, and that Ngai Tahu was disadvantaged by the delay in meeting their expectations.

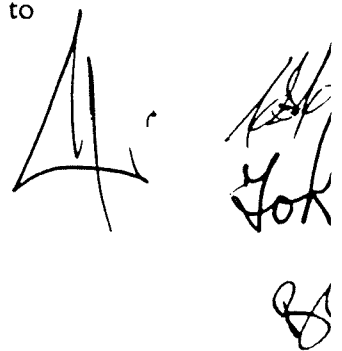
Negotiations between Ngai Tahu and the Crown

- M In 1990, the Crown entered into an interim agreement with Ngai Tahu to safeguard surplus Crown lands for the future settlement of Ngai Tahu's claims.
- N The Crown accepted the thrust of the 1991 Waitangi Tribunal report, and, in consequence of that acceptance, in September 1991 the Crown and Ngai Tahu entered into negotiations to seek resolution of the Ngai Tahu grievances.
- O During the period 1991-1994, the Crown and Ngai Tahu endeavoured to negotiate a settlement.
- P Following the passing of the Te Runanga o Ngai Tahu Act 1996, Te Runanga o Ngai Tahu, as defined in that Act, is recognised for all purposes as the representative of Ngai Tahu Whanui pursuant to section 15 of that Act.
- Q In 1996, the Crown and Ngai Tahu negotiated in good faith in a further attempt to achieve a full and final settlement of Ngai Tahu's historic Treaty claims and to remove the continuing sense of grievance felt by Ngai Tahu.
- R On 14 June 1996, the Crown and Te Runanga o Ngai Tahu entered into a Deed of 'On Account' Settlement, pursuant to which the Crown agreed to provide certain redress to Te Runanga o Ngai Tahu on an 'on account' basis as a sign of good faith and a demonstration of the Crown's goodwill.

Settlement of Claims

- S The Crown, having acknowledged that Ngai Tahu has suffered grave injustices which significantly impaired Ngai Tahu's economic, social and cultural development, now wishes to enter into a heads of agreement in the spirit of co-operation and compromise necessary to achieve a settlement of all of Ngai Tahu's historical claims, and Te Runanga o Ngai Tahu also wishes to enter into such a heads of agreement.

ACCORDINGLY the parties record on a without prejudice basis the matters which the parties have agreed in principle are to be contained in a Deed of Settlement to effect a settlement of Ngai Tahu's claims and their agreement to negotiate in good faith to settle the terms of the Deed of Settlement.



1 AGREEMENT IN PRINCIPLE

The parties record their agreement in principle to the matters set out in the Appendix to this Heads of Agreement (which comprises the text of the letter dated 25 September 1996 from the Minister in Charge of Treaty of Waitangi Negotiations to the Ngai Tahu Principal Negotiator, and its attachments, amended to incorporate changes and refinements referred to in subsequent correspondence and discussions between the Crown and Te Runanga).

2 NEGOTIATION OF DEED OF SETTLEMENT

The parties agree to negotiate with each other in good faith to settle the terms of the Deed of Settlement and to use reasonable endeavours to remove any obstacles to such good faith negotiations proceeding.

3 NATURE OF THIS HEADS OF AGREEMENT

The parties acknowledge to each other that this Heads of Agreement is not intended to create legal obligations by either party to the other party or by either party in favour of any third party, and that the implementation of the settlement will require the resolution of a number of practical issues, agreement on the terms of the Deed of Settlement and the passing of legislation.

4 NGAI TAHU MANDATE

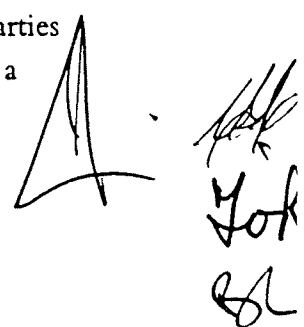
The parties acknowledge that Te Runanga must obtain a mandate from the Ngai Tahu Whanui authorising Te Runanga to enter into the Deed of Settlement on behalf of the Ngai Tahu Whanui, and to settle Ngai Tahu's claims on the terms set out in that Deed. Te Runanga agrees to seek that mandate.

5 CROWN MANDATE

The parties acknowledge that the Crown's agreements recorded in this Heads of Agreement are subject to confirmation by the Government in power after the forthcoming general election and that an invitation will be made to the incoming Government to give that confirmation.

6 AGREEMENT TO REVIEW

The parties agree that if the parties have not, by the date which is 6 months after the date of this Heads of Agreement, entered into a Deed of Settlement, the parties will jointly review the continued operation of this Heads of Agreement. If, as a result of that review, the parties conclude that they will be unable to reach

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agreement on any matter or matters relating to the Deed of Settlement, they may terminate this Heads of Agreement.

7 DEED OF SETTLEMENT

The parties agree that the Deed of Settlement will supersede this Heads of Agreement from the date on which the Deed of Settlement is signed. The Deed of Settlement will be conditional on the passing of the legislation required to give effect to the settlement.

EXECUTED on 5 October 1996

SIGNED for and on behalf of
HER MAJESTY THE QUEEN in right
of New Zealand by DOUGLAS
ARTHUR MONTROSE GRAHAM,
Minister in Charge of Treaty of Waitangi
Negotiations, in the presence of:

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)
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)
)
)



Witness:

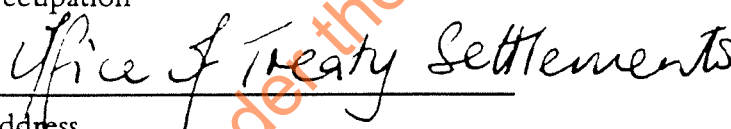
B. R. Clark



Signature



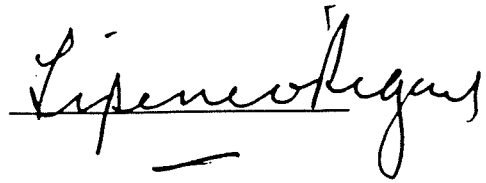
Occupation



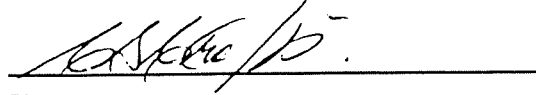
Address



SIGNED by TIPENE GERARD)
O'REGAN (KNIGHT BACHELOR) as)
duly authorised representative of)
TE RUNANGA O NGAI TAHU in the)
presence of:)



Witness:



Signature



Occupation

Address

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APPENDIX

Text of letter dated 25 September 1996 from the Minister in Charge of Treaty of Waitangi Negotiations to Sir Tipene O'Regan, Ngai Tahu Principal Negotiator, amended to incorporate changes and refinements referred to in subsequent correspondence and discussions between the Crown and Te Runanga.

**CROWN PROPOSAL FOR FULL AND FINAL SETTLEMENT OF
ALL OF NGAI TAHU'S HISTORICAL CLAIMS**

It was good to meet with you and other Ngai Tahu Principals on Monday 23 September 1996 to discuss Wigram and significant outstanding issues relating to the full and final settlement of all of Ngai Tahu's historical claims.

At that meeting the Crown agreed to grant Ngai Tahu an option to purchase Wigram Airbase on the agreed fundamental terms. The option will be exercisable on the terms of a sale and purchase agreement which is currently being developed. The purchase of Wigram by Ngai Tahu will be outside of the settlement.

At that same meeting I set out the Crown's proposal for a comprehensive settlement with Ngai Tahu. As I indicated then, the proposal is without prejudice and is yet to be approved by Cabinet. As requested by Mr Ashton, I am now setting out that proposal in writing.

I believe that the proposal, set out below, is a result of considerable progress made by the Crown and Ngai Tahu at the officials level. If Ngai Tahu is prepared to proceed on the basis outlined in this proposal, the parties would sign a Heads of Agreement. The Heads would not be legally binding, but would record the terms of the proposal and contain commitments to negotiate and agree on a Deed of Settlement, and obtain the necessary mandates to execute it. This Government would invite the incoming Government to work with Ngai Tahu towards a signed and ratified Deed of Settlement as proposed in the Heads of Agreement and to introduce legislation to give effect to the Deed of Settlement.

I expect the incoming Government would need to be satisfied that a majority of the House supports the settlement legislation. From past experience that support should be forthcoming.

The Crown's proposal is as follows.

Redress Amount

The total redress quantum would be \$170 million, of which \$10 million was paid by way of an on account settlement agreed between the Crown and Ngai Tahu on 14 June 1996. The Deed will provide that the Crown would pay interest on the remaining \$160 million at a rate equal to the 5 year Government Stock rate at the close of business on 3 October 1996 (being 7.91%) for the period between the date on which the Heads of Agreement is signed by the parties and the payment date, which would be 20 business days after the Deed becomes unconditional.

Deferred Selection Process

In the Deferred Selection Process (DSP) Ngai Tahu would select Crown properties from an agreed schedule. The Crown would transfer the selected properties to Ngai Tahu at the price, on terms and on a date which would be established by a process set out in the Deed of Settlement.

The DSP would cover a list of specified properties, including those in the Ngai Tahu landbank, those referred to in the 4 April 1995 list and Crown forest assets (Aoraki forests, Crown forest licensed lands and agreed parts of Timberlands West Coast). The Crown and Ngai Tahu are working to agree the final list from those properties put forward by Ngai Tahu. The Crown intends that this will include certain lands owned by Canterbury Health, Department for Courts, Government Property Services, Healthcare Otago, Healthlink South, Ministry of Education, New Zealand Police, New Zealand Post, Landcorp, Radio New Zealand, Works Consultancy, DOC and Telecom. Some of the latter properties would require leasebacks to enable public services to be maintained as in the Waikato Settlement.

For the DSP the Deed would provide that:

- Ngai Tahu could select properties which have a total market value of no more than \$200 million, less the value of all other properties and assets to be transferred to Ngai Tahu under the Deed (other than by way of gift) (i.e. Ngai Tahu may use up to \$30 million of non-settlement funds to purchase properties under the DSP)
- it is intended that a significant proportion of the assets, both by number and value, would be valued and selected before the settlement legislation is enacted and then, if selected, transferred shortly afterwards

- Ngai Tahu would be required to make its final selection no later than 12 months after the settlement legislation comes into force and final transfers would take place no more than 3 months later
- the Crown would be required to disclose to Ngai Tahu material information relating to the properties
- all properties would be valued as at the date the Deed is signed
- the market value of each property would be established by a process involving the Crown, or the owner of the property, providing its assessment of market value and Ngai Tahu indicating its agreement to that value or requiring determination by an independent person
- where the property is to be transferred subject to a lease back to its current owner, the Deed would contain a process which ensures all the terms of the lease can be agreed or determined
- all assets covered by the DSP that are not taken by Te Runanga under the DSP and which come within the categories of properties to which the RFR applies shall be subject to the RFR.

Aoraki Forests

The Crown agrees to facilitate the transfer to Ngai Tahu for the purposes of the settlement of the land under the Aoraki forests (including the McLaren Gully forest) by separating, where requested, the land from the trees in a manner analogous to the creation of a crown forest licence (with the Crown or its nominee as the licensee). If Ngai Tahu selects such land for transfer pursuant to the DSP, the land would be transferred on a basis which is no less favourable to Ngai Tahu (apart from the requirement to pay the market value to the Crown) than would otherwise be the case if the land were returned to Ngai Tahu (subject to the licence) pursuant to a final recommendation under section 8HB(1)(a) of the Treaty of Waitangi Act 1975 and section 36(1)(b) of the Crown Forests Assets Act 1989 did not apply.

Transitional Arrangements

The Crown agrees that from the date of signing of this Heads of Agreement land sales will continue in the normal course of business. The Crown would also agree to increase the landbank cap to \$75 million as soon as possible, on condition that all properties placed in the landbank from the time the cap is increased must be

taken by Te Runanga under the DSP. The Crown also agrees that the landbank scope will be increased to include all items included under the DSP and the RFR.

Right of First Refusal

The Deed would include a right of first refusal (RFR) over land in the categories referred to below and owned by the relevant agencies at the time the Deed of Settlement is signed. The process would be the same as the Waikato RFR. The Deed will include a requirement that the Crown will, if requested by Te Runanga, convene a meeting of representatives of the Crown and Te Runanga during the one month period after the Crown has given notice to Te Runanga of the proposed price and sale terms for a property, to negotiate in good faith to agree the price, terms and conditions on which the property is to be transferred to Te Runanga. If no such agreement is reached, the Crown can then sell the property on no more favourable terms within a defined period. Nothing in this requirement will limit the Crown's ability to determine the method by which the Crown sets the price the Crown offers to Ngai Tahu or the Crown's freedom to negotiate with other parties. Department of Conservation land swap transactions would not trigger the RFR.

The RFR would be triggered, in addition to the event of sale, if any of the relevant properties were transferred to a new Crown body which was subsequently sold within one year of the transfer. The RFR would also be triggered if the Crown entered into a lease over a relevant property for more than 50 years (in which case the same leasehold interest would first be offered to Te Runanga under the RFR process).

The categories of land covered by the RFR would be land in the Ngai Tahu takiwa owned by:

- the Crown (Departmental land, Crown land including land managed by Timberlands West Coast and unallocated Crown land)
- Crown Research Institutes
- Crown Health Enterprises (except the RFR would not be triggered where land is being transferred to community trusts)
- Landcorp
- Transit New Zealand
- Tertiary Education Institutes

- New Zealand Fire Service

The RFR would also apply to two specified properties of The Power Company Limited and Crown forest assets subject to the DSP which are not taken under the DSP. Where Ngai Tahu takes only land or trees in respect of Aoraki forests or the selected TWC forests under the DSP the trees or land not taken under the DSP would become subject to the RFR.

In addition, the Crown agrees that the Deed would provide Ngai Tahu with a similar RFR over the assets listed below which are less frequently traded. This RFR would cover the following assets:

- Highbank hydro-station (subject to Ngai Tahu's right being exercised through a joint venture with Electricity Ashburton)
- Crown shares in the Dunedin and Invercargill airport companies
- Crown shares in the Christchurch airport company, subject to the requirements of the articles or constitution of the company, particularly the Crown's obligations under the existing pre-emption provisions
- Landcorp financial instruments (if they are sold as an ongoing business and without prejudice to the rights of the parties to each instrument)
- Milford Airport (other than land).

Relativity Clause

The Deed would include a relativity clause which would be drafted so as to provide that the criteria for, and timing of, any top-up payments to Ngai Tahu would be the same as those provided in the Waikato relativity clause. The relativity percentage used to quantify any top-up payment would be calculated by dividing the \$170 million redress, adjusted to reflect CPI movements since 31 December 1994, by \$1 billion. This would be likely to lead to a percentage of about 16.3-16.4%.

High Country Stations

The Crown proposes to transfer title of the farmable parts of the property to Ngai Tahu, subject to a number of covenants to safeguard public and conservation interests which are set out in the document "Mahinga Kai and High Country Stations Crown Proposal" dated 25 September 1996, a copy of which is attached as

Schedule 1. These include covenants to allow for public access over the areas referred to in that document free of charge.

The Crown accepts the Ngai Tahu proposition that the pink areas on the maps previously supplied by the Crown shall be vested in Te Runanga. Te Runanga would immediately gift these areas to the nation in recognition of their conservation values.

The Crown proposes to transfer title to Ngai Tahu of the non-farmable parts of the properties, subject to leaseback to the Minister of Conservation in perpetuity and for a peppercorn rental, for management and control as if conservation land (yellow area on the map previously supplied to you). Ngai Tahu would have the right to veto any commercial activity over the land leased to the Minister of Conservation.

The Crown proposes that the Deed would provide for the Mararoa Valley and Home Hill area of the Caples to be licensed for a term of 9 years by the Crown to Ngai Tahu for a peppercorn rental to allow Ngai Tahu to run stock in those areas. There would be tenure reviews for these areas to assess the ecological sustainability of the stocking levels every three years. The review process will be an open process (allowing Ngai Tahu, DOC and the Commissioner of Crown Lands to participate), with the final decision being made by the Minister of Conservation. Ngai Tahu would be required to ensure that stocking levels are no greater than those established by the most recent review as being sustainable, and the licence could be terminated in respect of any area before the end of the 9 year term at 6 months notice if, after a review, the Minister determines that stocking of that area is no longer ecologically sustainable. At the end of the 9 year term, the parties, without commitment, will review the position.

The Crown and Te Runanga agree that these stations will be transferred at their market value (reflecting the covenants etc) not the Crown's purchase price.

Rarotoka (Centre Island)

The Deed would provide for the freehold title to Rarotoka to be transferred by way of gift to Ngai Tahu, exempt from the requirement for marginal strips, subject to a lease to the Maritime Safety Authority for the lighthouse and a surrounding area on the island. A regime to give Ngai Tahu management rights in respect of fisheries would be established in the area covering the reefs adjacent to the island (a radius of approximately 450-500 metres offshore).

Whenua Hou (Codfish Island)

The Deed would provide for the establishment of a special sub-committee of the Southland Conservation Board comprising Rakiura Maori (the sub-committee could be a body which already exists such as Kaitiaki Roopu). Provision would be made for Ngai Tahu to have access to Whenua Hou and the sub-committee and the Regional Conservator would prepare mutually agreed conditions for this access. In addition the sub-committee would provide advice to the Regional Conservator on the issue of entry permits. Although title to Whenua Hou would remain within the Crown, the Crown proposes a Deed of Recognition in respect of it.

Crown Titi Islands

The Deed would provide for the freehold title to the Crown Titi Islands to be transferred by way of gift to Ngai Tahu, exempt from the requirement for marginal strips. The Islands would be managed by Ngai Tahu as if they were a nature reserve, subject to the traditional rights of Rakiura Maori to take titi as set out in the Titi Regulations. Ngai Tahu would be required to prepare a management plan in accordance with the Reserves Act. Ngai Tahu and the Crown would agree a joint work programme each year for the islands. The Minister of Conservation or his representative would be given the right of access to the islands on reasonable request and would be able to attend meetings of the administering body about management of the Islands.

Arahura Valley

The Deed would provide for the closure of legal but unformed roads along the middle third of the Arahura river and the transfer by way of gift of freehold title to this land to the Mawhera Incorporation, exempt from requirement for marginal strips and subject to easements to secure legal access for affected private sections. The Crown would preserve existing levels of public access. A legal but unformed road in the area of the bottom third of the river would also be closed. The Crown would establish a reserve covering the catchment of the top third of the river which recognises both the historic importance of the area to Ngai Tahu and its natural values. This reserve would be vested in Mawhera Incorporation under the Reserves Act. Management responsibilities would be shared with the Department of Conservation. For example, the Department of Conservation would retain ownership of and responsibility for six swing bridges in the reserve area.

Mahinga Kai

The Crown's proposals for mahinga kai redress are summarised below. A more detailed outline is contained in the document entitled "Mahinga Kai Crown Proposals" a copy of which is attached as Schedule 1. The essential features that the Deed would provide for are:

- the transfer by way of gift of **ownership rights** and title to Ngai Tahu in specified sites. This would include the transfer of freehold title to the beds of Te Waihora and Lake Mahinapua
- authorisations at the tender price encompassing 10% of the **coastal space** allocated under coastal tendering for Kaikoura, Banks Peninsula, Fiordland, Otakou and Foveaux Strait/Rakiura, should these areas be tendered
- the provision to Ngai Tahu with respect to **specific sites**, including wetlands, lake and river beds, of a range of other existing and new instruments, including deeds of recognition, statutory acknowledgements, a statutory adviser role, topuni special areas and transfer of title with management by Minister of Conservation
- guaranteed exclusive temporary **occupation** for Ngai Tahu to defined areas adjacent to 32 rivers and lakes for customary fishing purposes
- involvement by Ngai Tahu in the **management** of a number of reserves
- involvement by Ngai Tahu with the Ministry for the Environment on improving the implementation of the **Resource Management Act**, with particular reference to Treaty and Maori provisions
- changes to 78 **place names** with provision for joint Maori and English names (with the English names to come first except Aoraki/Mount Cook) and amendment of the New Zealand Geographic Board Act to encourage the use of Maori names, and provision of one dedicated position on the New Zealand Geographic Board
- increased Ngai Tahu participation in the management of **customary fisheries**, recognition of Ngai Tahu's special relationship with certain species of fish and providing Ngai Tahu with a right of first refusal to 30% of TACC with respect to five shellfish species, should they be entered into the QMS
- mana recognition and management input for Ngai Tahu in specified **plant and animal taonga species**

- dedicated **membership** (on the recommendation of Ngai Tahu) on the New Zealand Conservation Authority all Conservation Boards within the Ngai Tahu takiwa, the Guardians of Lake Wanaka and Manapouri, and Crown to seek the agreement of each Regional Fish & Game Council within the Ngai Tahu takiwa to co-opt one Ngai Tahu member
- the Crown including within its review of **heritage protection** participation for Ngai Tahu
- Department of conservation (DOC) to issue, after input from Ngai Tahu, a set of **protocols** which express, within the terms of current policy, how DOC will conduct its business in relation to matters of cultural significance to Ngai Tahu.

Ancillary Claims

The Crown's proposals for ancillary claims are summarised below. A more detailed outline is contained in the document entitled "Ancillary Claims Crown Proposals" dated 25 September 1996, a copy of which is attached as Schedule 2. The Deed would provide redress to settle 33 ancillary claims upheld by the Waitangi Tribunal, and either claims not upheld. The Crown is committed to continuing to work with Ngai Tahu to finalise for inclusion in the Deed redress in respect of claims 7, 66, 67, 72, 73 and 112 consistent with the way in which the other Ancillary Claims have been resolved.

The essential features that the Deed would provide are:

- identification of the beneficial owners of land allocated under the 1906 **South Island Landless Natives Act (SILNA)**, but never transferred. This relates to claim 14, Hawea/Wanaka; claim 33, Whakapoai, and claim 92, Port Adventure/Toi Toi. The Crown would negotiate with the owners to settle their claims. The value of any land vested in beneficial owners of land under the South Island Landless Natives Act would not be offset against the Ngai Tahu settlement.
- in respect of ancillary claims relating to **fishing reserves**, the Deed would establish an entitlement to temporarily occupy specific sites owned by the Crown, as set out in the mahinga kai proposal, and an associated right to occupy a portion of the riverbed as redress for ancillary claims 3, 4, 5, 6 and 10. Title would be transferred to particular sites in respect of claims 7, 8, 11 and 14. For claim 53, Tatawai, the Crown would attempt to purchase part of the Sinclair Wetlands area, subject to Ngai Tahu's undertaking to take the land as part of the settlement.

- in **Kaikoura**, title to a number of reserves would be transferred to Te Runanga o Ngai Tahu. An area at White Bluffs would be vested with Ngai Tahu so that a pou whenua could be erected to mark the boundary of the Ngai Tahu takiwa. On two reserves of national importance, Tapuae o Uenuku and Mt Uwerau Nature Reserve, Ngai Tahu would have management input through the instruments developed by the mahinga kai working group. In addition unencumbered freehold title to two properties would be given to individual claimants.
- in the **Canterbury** region, the Ellesmere Landing reserve would be vested in Ngai Tahu. This is in addition to the instruments and land that would be provided as redress for the Canterbury fishing claims and the Hawea fishing claims.
- in the area of the **Arahura** purchase, a number of properties would be transferred in fee simple to the individual claimants, and in some cases to the Mawhera Incorporation.
- in **Otakou**, there would be redress for four ancillary claims, including the resolution of the claim to Taiaroa Heads along the lines of the Waitangi Tribunal recommendation, and the offer-back to the former owners of the surplus property at Harington Point.
- in the area of the **Murihiku** purchase, title to land at Tautuku, Maranuku, Invercargill and Riverton would be transferred to claimants when agreement has been reached on the appropriate sites. Title to Matariki Island would be vested in Te Runanga o Ngai Tahu.
- the Crown would work with Ngai Tahu to develop a **trust structure** to receive properties being transferred to ancillary claimants, and a process to identify the beneficiaries as efficiently as possible.
- the Crown would transfer to Ngai Tahu by way of gift any interests being returned to beneficial interests (i.e., not to tribal interests) as redress for ancillary claims up to the value of \$1 million (excluding SILNA compensation).

Comprehensive Settlement

The settlement would be a comprehensive full and final settlement of all of Ngai Tahu's historical claims. The Deed would be drafted to include the following provisions:

"Ngai Tahu Claims:

- (a) *means all claims made at any time by any Ngai Tahu Claimant and:*
- (i) *founded on rights arising in or by the Treaty of Waitangi, the principles of the Treaty of Waitangi, statute, common law (including customary law and aboriginal title), fiduciary duty or otherwise; and*
 - (ii) *arising out of or relating to any loss of interests in land, water, rivers, harbours, coastal marine areas [as defined in the Resource Management Act] minerals, forests or any natural and physical resources [as defined in the Resource Management Act] in the Ngai Tahu Claim Area, caused by acts or omissions by or on behalf of the Crown or by or under legislation, being a loss that occurred prior to 21 September 1992;*
- whether or not the claims have been researched, registered, or notified; and*
- (b) *includes all of the claims made by Ngai Tahu against the Crown arising from those historical grievances of Ngai Tahu which are referred to in the following Ngai Tahu Wai 27 claims to the Waitangi Tribunal:*
- (i) *General Claim of 26 August 1986;*
 - (ii) *Amended Claim of 24 November 1986;*
 - (iii) *Amended Claim of 16 December 1986;*
 - (iv) *Amended Claim of 2 June 1987;*
 - (v) *Amended Claim of 5 September 1987*
 - (vi) *Amended Claim of 13 April 1988;*
 - (vii) *Amended Claim of 20 December 1994;*
 - (viii) *Amended Claim of 12 June 1995;*
 - (ix) *Amended Claim of 6 July 1995;*
 - (x) *Amended Statement of Claim of 7 May 1996; and*
- (c) *includes all Wai 27 Ancillary Claims made to the Waitangi Tribunal; and*

- (d) includes the claims to the Waitangi Tribunal designated Wai 189, Wai 324, Wai 348, Wai 380, Wai 482 and Wai 597, Wai 618 and Wai 622; but
- (e) excludes claims insofar as they relate to language and culture which are not claims which come within paragraphs (a)-(d) above.

In this definition, loss in relation to any of the interests referred to in paragraph (a)(ii) includes extinguishment of, diminution of, or adverse effect on, any such interest and interest includes any legal or equitable right, title, power, privilege or benefit.

Ngai Tahu Claim Area means the Takiwa of Ngai Tahu Whanui and that part of the New Zealand fisheries waters (as defined in section 2 of the Fisheries Act 1996) adjacent to the coastal boundary of the Takiwa of Ngai Tahu Whanui.

Ngai Tahu Claimant means any of Te Runanga, any claimant in respect any of the Ancillary Claims, Ngai Tahu, one or more individuals, whanau, marae, hapu or papatipu runanga of Ngai Tahu, or any person acting on behalf of any one of the above.

Te Runanga's acknowledgements and agreements in relation the Ngai Tahu Claims will include acknowledgements and agreements that:

- (1) the Deed of Settlement and the Settlement Legislation will, when the Deed becomes unconditional, settle all the Ngai Tahu Claims and the Crown is released and discharged in respect thereof, and the Settlement Legislation will contain a provision to that effect;
- (2) the Settlement Legislation will:
 - (a) declare that, without limiting the acknowledgements expressed in, or any of the provisions of, this Deed, the Settlement is final; and
 - (b) provide for the removal of the jurisdiction of the Courts, the Waitangi Tribunal and any other tribunal in respect of:
 - (i) the Ngai Tahu Claims; or
 - (ii) the validity of the Deed of Settlement; or
 - (iii) the adequacy of the redress provided to Te Runanga and other parties by the Crown under the Deed of Settlement; or

(iv) *the Settlement Legislation,*

(but not for the removal of such jurisdiction in respect of the implementation or interpretation of the Deed of Settlement or the Settlement Legislation).

[The Deed will provide that this clause will not prevent any Ngai Tahu Claimant from receiving redress under the legislation which results from the passing of the Maori Reserved Land Amendment Bill 1996 or other legislation which addresses the grievances intended to be addressed by that Bill.]

Mutual acknowledgements and agreements will include the following:

The parties acknowledge that:

- (A) *The provision relating to the removal of the jurisdiction of the Courts, the Waitangi Tribunal and any other tribunal referred to in [clause 2(b) above]:*
- (a) *is not intended to prevent any Ngai Tahu Claimant from pursuing claims against the Crown based on aboriginal title or customary rights which do not come within the definition of Ngai Tahu Claims or to prevent the Crown from disputing such claims or the existence of such title or rights; but*
 - (b) *is intended to prevent any Ngai Tahu Claimant from pursuing claims against the Crown (including claims based on aboriginal title or customary rights) if such claims come within the definition of Ngai Tahu Claims, such claims having been settled in accordance with [clause (1) above].*
- (B) *Nothing in this Deed extinguishes any aboriginal title or customary rights that Ngai Tahu may have or constitutes or implies any acknowledgement or acceptance by the Crown that such title or rights exist either generally or in any particular case, but this clause does not limit [clause (1) above]."*

The Deed and settlement legislation would acknowledge that the settlement does not diminish or in any way affect the Treaty of Waitangi or any of its Articles or the ongoing relationship between the Crown and Ngai Tahu in terms of the Treaty of Waitangi or undermine any rights under the Treaty of Waitangi, including rangatiratanga rights.

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Other Matters to be Dealt with in the Deed of Settlement

A number of other matters would need to be dealt with in the Deed of Settlement. These are:

- the Deed (and the legislation) would contain an historical preamble in the form previously agreed
- the Deed (and the legislation) would contain an apology in the form previously agreed
- the Deed would provide for the transfer to Ngai Tahu of the redress payment (less the \$10 million interim payment and the market value of assets transferred on settlement) twenty business days after the legislation comes into force. Ngai Tahu would be required to pay to the Crown the market value of other assets transferred as part of the redress package
- all redress would, unless otherwise specified, be transferred or vested at market value, and subject to pre-existing rights such as those provided for by section 40 of the Public Works Act
- the Deed would provide for payment to Ngai Tahu of accumulated rentals in respect of Crown forest assets acquired by Ngai Tahu pursuant to the deferred selection procedure. This would be in addition to the redress amount referred to above
- in the Deed Ngai Tahu would agree to, after legislation comes into force:
 - the removal of s27 memorials (and the obligation to impose memorials) on land in the Ngai Tahu takiwa
 - the cessation of the Ngai Tahu Maori Trust Board annuity
 - the cessation of the Ngai Tahu land bank
 - the Crown Forest Assets Act ceasing to operate in the Ngai Tahu takiwa
 - the discontinuance of all related litigation, including all litigation which is currently suspended
- the Deed would deal with GST in the same manner as the Deed of "On Account" Settlement

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- the Deed would include an indemnity for any income tax liability assessed on the settlement amount, including any top-up payments under the relativity clause (but not interest)
- in addition, Ngai Tahu would acknowledge that the Crown has acted honourably and reasonably and the settlement is fair and final.

At our meeting on 23 September 1996 I outlined what the Crown considers to be a generous proposal to settle all of Ngai Tahu's historical claims arising prior to 21 September 1992. The proposal set out in this letter is made with the aim of achieving closure and finality on a settlement package. If it is not possible to achieve finality on the basis of the Crown's proposal, negotiations would recommence at the point prior to the meeting of Crown and Ngai Tahu Principals on September 23.

This letter (and the more detailed material contained in the Schedules attached to this letter) is an outline of the issues discussed with your people during negotiations, expressed in general terms. There will obviously be a need for a considerable refinement and expansion of them in the Deed of Settlement to achieve the certainty and precision needed for such a document.

SCHEDULE 1

**MAHINGA KAI AND HIGH
COUNTRY STATIONS
CROWN PROPOSAL**

Released under the Official Information Act 1982

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SPECIFIC SITES

	SITE	LAND TYPE	AREA (approx. Only)	REMEDY
1	Aoraki Canterbury (Mt Cook)	national park	boundaries to be set	Deed of recognition or Statutory acknowledgment; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser
2	Te Mahaki o Tuterakiwhanoa - Otago (Mt Aspiring)	national park	boundaries to be set	Deed of recognition or Statutory acknowledgment; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser
3	Tutoko Southland (Fiordland National Park)	national park	boundaries to be set	Deed of recognition or Statutory acknowledgment; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser
4	Pikirakitahi Otago (Mt Earnslaw, Mt Aspiring National Park)	national park	boundaries to be set	Deed of recognition or Statutory acknowledgment; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser
5	Takitimu Range - Southland	conservation area	boundaries to be set - more than 45 000 ha	"Ngai Tahu Topuni" overlay reserve; and Statutory adviser
6	Kopuwai - Otago (the Obelisk, Old Man Range, Central Otago)	pastoral lease	<1 ha	Create reserve around obelisk and vest in Ngai Tahu or Title to obelisk with non-disturbance covenant
7	Parinui-o-Whiti - Nelson (White Cliffs, north of Lake Grassmere)	conservation area	<1 ha	Ngai Tahu able to erect pouwhenua; 20m radius reserve around pouwhenua
8	Motupohue Southland (Bluff Hill)	Scenic Reserve	150 ha	Acknowledgment of standing; and Rename reserve and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser
9	Matakaea - Otago (Shag Point, Otago)	recreation reserve	55 ha + islands	Transfer title to islands with covenant for non-disturbance and Deed of recognition or Statutory acknowledgment with respect to the reserve; and Rename reserve on island; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser with respect to reserve

	SITE	LAND TYPE	AREA (approx. Only)	REMEDY
10	Tokata - Otago (The Nuggets-Nugget Point, South Otago)	conservation area	40 ha + islands	Deed of recognition or Statutory acknowledgment; and Statutory advisor
11	Kawarau Gorge - Otago (natural bridge area, Central Otago)	marginal strip/pastoral lease	< 40 ha	Create historic reserve on marginal strip and vest in Ngai Tahu
12	Wanaka Peninsula - Otago (Mt Burke Station, Lake Wanaka)	pastoral lease	?	Awaiting information from LINZ on nature of tenure and possibly further information from Ngai Tahu on nature of interest.
13	Otukoro - Nelson (Kahurangi National Park, North Westland)	conservation area	15 ha	Create historic or local purpose reserve and vest in Ngai Tahu; and Closure of urupa (If not within National Park, require legislation)
14	Castle Hill - Canterbury (rock art site, North Canterbury)	conservation area	54 ha	Deed of recognition or Statutory acknowledgment; and Change name of area; and Interpretation; and Statutory adviser; and "Ngai Tahu Topuni" overlay reserve
15	Maerewhenua - Otago (rock art site, North Otago)	historic reserve	< 1 ha	Transfer title with public access covenant; require management plan that condition and values at date of transfer are maintained; or Vest reserve; or Transfer title with condition that management remain with Crown
16	Takiroa - Otago (rock art site, North Otago)	historic reserve	<1 ha	Transfer title with public access covenant; require management plan that condition and values at date of transfer are maintained; or Vest reserve; or Transfer title with condition that management remain with Crown
17	Pukekura Pa - Otago (Taiaaroa Head, Otago Peninsula)	mixed holdings (albatross colony)		Vesting of title in claimants with agreement for joint management by Department of Conservation, Dunedin City Council, Claimants and retention of existing interests.
18	Motutapu Island - West Coast (Grey River, Westland)	(see remarks)	unsurveyed	Transfer title with easement for water pipe
19	Lake Mahinapua - West Coast (North Westland)	scenic reserve	unsurveyed	Deed of recognition or Statutory acknowledgment; and statutory adviser; and Transfer title with covenants if necessary to protect existing public rights

	SITE	LAND TYPE	AREA (approx. Only)	REMEDY
20	Whakapoai Caves - West Coast/Nelson (near Kahurangi, the north-western boundary of the Ngai Tahu takiwa)	conservation area?	Boundaries to be set	Close caves to public access (if cave entrances not within National Park, require legislation)
21	Kahurangi - West Coast/Nelson (North Westland)	National Park	< 40 ha	Ngai Tahu able to erect pouwhenua; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser
22	Te Horo - Southland (Anita Bay, Milford Sound)	National park	Boundaries to be set	Deed of recognition or Statutory acknowledgment; and Closure of area; and Statutory adviser
23	Maukaatua - Otago (west of Taieri Plains)	scenic reserve	>1240 ha	Rename reserve; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser
24	Katiki - Otago (Moeraki Peninsula)	historic reserve	14 ha	Survey out pa site and transfer title with public access covenant; require management plan that condition and values at date of transfer are maintained; or Survey out pa site and Vest reserve; or Transfer title with condition that management remain with Crown
25	Tamakura - Nelson (Goose Bay, Kaikoura)		?	Awaiting clarification from Ngai Tahu on nature and area of interest.
26	Onawe Pa - Canterbury (Akaroa Harbour, Banks Peninsula)	historic reserve	28 ha	Transfer title with public access and historic protection covenant; or Vest reserve; or Deed of recognition or Statutory acknowledgment or Transfer title with condition that management remain with Crown
27	Omihi - Nelson (Kaikoura Coast)		?	Awaiting clarification from Ngai Tahu on nature and area of interest.
28	Kahutara - Nelson (Kaikoura Coast)	scenic reserve	?	4 sections to be vested freehold and 2 recreation reserves to be vested.
29	Ripapa - Canterbury (Lyttelton Harbour, Banks Peninsula)	historic reserve	1.6 ha	Interpretation at site; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser

	SITE	LAND TYPE	AREA (approx. Only)	REMEDY
30	Te Raka-hine- atea - Otago (Moeraki Peninsula, Otago)	see 24	see 24	see 24
31	Huriawa - Otago (Karitane, mouth of Waikouaiti, Otago)	historic reserve	13 ha	Transfer title with public access and non-disturbance covenants; or Vest reserve; or Transfer title with condition that management remain with Crown
32	Mapoutahi - Otago (Purakaunui, north of Otago Harbour)	historic reserve	1.6 ha	Transfer title with public access and non-disturbance covenants; or Vest reserve; or Transfer title with condition that management remain with Crown

Specific sites: Te Waihora

Crown proposal

Transfer title in the lakebed in respect of the defined area which more or less correlates with lake bed (extending up to Green Park Sands), subject to protection of the existing rights of public access, and subject to survey of the seaward boundary of M36/181, excluding the Selwyn Delta from M36/181 and M36/189.

- Area at mouth of lake (between Taumutu and the end of the Kaitorete Spit, bounded in the west by Maori reserve (MR878 and 889) and in the east by the locations marked at M37/30 and M37/26) to have easement in favour of Canterbury Regional Council to allow access for opening lake in accordance with the Council's lake opening authorisation.
- A covenant would be required to secure continued public access over the area between the lake and the coastal marine area.
- For transitional period of five years from settlement legislation, Ngai Tahu to agree to existing levels of maimai use.

Transfer title to up to four of the following small sites (as identified by the hatched areas on the overlay supplied), subject to farm drainage covenants where needed, at:

- M36/192: up to 2 ha (subject to survey) of upper part of area (with no conservation value) of Government Purpose Reserve in south west corner of lake;
- M36/187: Lower Selwyn Huts, subject to existing leases;
- M36/186: northern corner of area, house and grounds, subject to survey and District Council requirements pursuant to the Resource Management Act;
- Greenpark Sands Huts near end of Hudson's Rd (subject to existing leases); and
- M36/486: southern shore, grazed part of former timber landing reserve. Up to 2 ha subject to survey and District Council requirements under the Resource Management Act.

Ngai Tahu to advise which of these sites should be transferred to TRONT and which are in satisfaction of ancillary claim.

Recognise TRONT as statutory adviser to Minister of Conservation on management of Te Waihora conservation lands administered by the Minister of Conservation.

Minister of Conservation to request DoC and TRONT to develop joint management plan within five years, and invite Canterbury Regional Council, relevant district councils and the Regional Fish and Game Council to actively participate.

Notes

Freehold title to Ellesmere Landing is proposed to be transferred to Ngai Tahu (subject to protecting existing third party rights and subject to appropriate arrangements being made to survey and designate as a legal road the existing formed road) as redress for Ancillary Claim 13

Taumutu Commonage Reserve is subject to the Maori Reserved Lands Amendment Bill which will impose market rentals and provide lessor with a right of first refusal over leasehold interest.

Specific sites: lakebeds

Crown proposal:

- See separate proposal for Te Waihora.
- Deed of recognition or statutory acknowledgment for Lake Mahinapua; or fee simple but containing covenants if necessary to protect existing public rights and fishery management.
- Deed of recognition or statutory acknowledgment for the attached list of 12 lakes (those where Ngai Tahu seek sole or joint title or statutory recognition).
- Provide "nohoanga entitlements" for attached list of 13 lakes, subject to availability of Crown land (and without Crown undertaking to replace site in event of its loss).

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Lakebeds Schedule

(1) Deed of recognition or statutory acknowledgment.

1A - Great Lakes

- Takapo (Tekapo)
- Pukaki
- Ohau
- Hawea
- Wanaka
- Whakatipu-wai-maori
- Moturau (Manapouri)
- Hauroko
- Te Anau

1b - Tapu/Taoka Lakes

- Rotorua
- Mavora lakes

3A - Local Runanga Lakes

- Wairewa

(2) Nohoanga Licences

1a - Great Lakes

- Takapo (Tekapo)
- Pukaki
- Ohau
- Hawea
- Wanaka
- Whakatipu-wai-maori
- Moturau (Manapouri)
- Manoki-wai (Monowai)
- Hauroko
- Te Anau

1b - Tapu/Taoka Lakes

- Rotorua
- Mavora lakes

2b - Mahinga Kai Lakes

- O-Whakamatau (Lake Coleridge)

Specific sites: rivers

Crown proposal:

- Provide Deed of Recognition to Ngai Tahu in the Tasman, Greenstone and Caples rivers, to the extent that they are "navigable rivers" (using the Coal Mines Act concept).
- Provide "nohoanga entitlements" for attached list of 19 rivers, subject to availability of Crown land.

Notes

Greenstone and Caples rivers are partly in stations and Ngai Tahu may gain ownership of those parts through the redress provided in respect of the stations. This may also remove the need for nohoanga entitlements for those rivers.

Rivers Schedule

Nohoanga Entitlements (Land Aspects only)

Rivers

- Waiau Ua R
- Rakaia R
- Ashley (Rakahuri R) & tribs Okuku, Makirikiri, Saltwater Creek
- Pareora R
- Hook R
- Waihao R
- Waitaki R
- Waipori R > Lake Waipori & Waiholā
- Clutha R (Mataau)
- Pomahaka R > Lower Clutha
- Waiau R & tributaries incl. Mararoa
- Opihi & tribs Hae Hae Te Moana, Kakahu, Opuha, Tengawai > Pacific
- Waikouaiti R > Pacific
- Taieri R & tribs > Pacific

Tributaries to Lakes

- Hunter R Hawea
- Dart R > Wakatipu
- Caples R > Wakatipu
- Greenstone R > Wakatipu

Tributaries to Artificial Lakes

- Shotover R

WETLANDS

Crown proposal:

Provide fee simple ownership of Coopers Lagoon, near Te Waihora. Note that DoC would continue its standard advocacy functions, and the transfer of fee simple does not imply the Minister of Conservation would waive his ability to make submissions in respect of resource consent applications (eg for aquaculture) which relate to the lagoon.

Provide deed of recognition or statutory acknowledgment in respect of up to ten wetlands nominated by Ngai Tahu which can be adequately defined and which it is found that the Crown owns.

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Place Names

Crown proposal

- Alter 78 existing place names to create joint existing/Ngai Tahu names (see Schedule).
- English names to come first except in the case of Aoraki/Mount Cook.
- Amend s 8(1)(d) of the New Zealand Geographic Board Act 1946 so that an additional purpose of the Board is to "encourage the use of original Maori place names".
- One dedicated TRONT seat on New Zealand Geographic Board.

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Place Names Schedule

Aoraki	Mount Cook
Parinui-o-whiti	White Cliffs
Waihora	Ellesmere
Te Ahu Patiki	Mount Herbert
Mataau	Clutha River
Rakiura	Stewart Island
Whenua Hou	Codfish Island
Rarotoka	Centre Island
Taramea	Howells Point
Hautere	Solander Island

a) West Coast

Poutini	Westland National Park
Hokonui	Greenstone River
Kaimata	New River
Tauotiraki	Rocky Point
Tumuaki	Island Hill
Kokiraki	Doughboy
Kaniere	Mount Harman
Noti Raureka	Browning Pass
Whakarewa	Lake Browning
Te Taumata o Uekanuku	Mount Upright
Waitaiki	Olderog
Takataka	Refuge Island, Lake Brunner
Waimatuku	7 Mile Creek, between Greymouth and Punakaiki
Kotorapi	9 Mile Creek, between Greymouth and Punakaiki
Waianiwanui	10 Mile Creek, between Greymouth and Punakaiki
Kotihotiho	Cave Creek
Torata	Knights Point, north of Haast
Kaohaihai	Gillespies Point, north of Haast
Maitahi	Bruce Bay
Okahu	Jackson Bay
Weheka	Fox Glacier
Waiau	Franz Joseph
Ka Roimata o Hine Hukatere	Franz Joseph Glacier

d) Kaikoura

Tuki-tuki-iwi	Monkey Face
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e) Canterbury

Whakaraupo	Lyttleton Harbour
Wairewa	Lake Forsyth
Koukourarata	Port Levy
Muriwai	Coopers Lagoon
Tarahaoa	Mount Peel
Huatekerekere	Little Mount Peel
Mahanui	Mount Harper
Kaumaira	Mount Nimrod
Manahuna	McKenzie Pass
Hakatere	Ashburton River

f) Otago

Otepopo
Te Kahurou
Matau
Wawahi Waka
Ari
Pekerakitahi
Ka Tiriti o te Moana
Tioripatea
Te Ara Whakatipu
Wawahi Waka
Whakatipu Ka Tuka
Whakatipu Waitai
Kopuwai
Haehaeata
Hikaroroa
Kaiwioteveka
Pahatea
Rangiriri
Kamau Taurua

Herbert (Peninsula)
Kurow, the hill above the Kurow town
Pig Island, Lake Wakatipu
Pigeon Island, Lake Wakatipu
Mt Alfred, Glenorchy
Mount Earnslaw
Southern Alps
Haast Pass
Harris Saddle, Routeburn Track
Lake Alabaster
Hollyford River
Lake McKerrow, Martins Bay, South Westland
Old Man Range
Leaning Rock
Mount Baldy, Waikouaiti area
Mount Baldy, Waikouaiti area
Mount Durden, Waikouaiti area
Goat Island, Otago Harbour
Quarantine Island, Otago Harbour

g) Murihiku

Otaupiri
Taukihepa
Oraka
Hananui
Piotirepo
Koromere
Whiore
Puhi-waero
Putatara
Pikihatiti
Tutaekawetoweto
Potiweta
Whaka a Te Wera
Aparima
Motupohue

Ships Cove Mountain in the Hokonui Mountain Range
Big South Cape, Titi Island off west coast of Rakiura
Colac Bay, near Riverton
Mount Anglem, Rakiura
Port William, Rakiura, facing Foveaux St
East Cape, Rakiura
South Cape, Rakiura
South West Cape
Raggedy, Rakiura, N-W corner
Pegasus Harbour, Rakiura
Lords River, Rakiura
Port Adventure, Rakiura
Patterson's Inlet, Rakiura
Riverton
Bluff Hill

Statutory Board Membership

Crown proposal:

- Two dedicated Ngai Tahu seats nominated by TRONT on all conservation boards within Ngai Tahu rohe, except for the northern SI Boards, where Ngai Tahu will have one dedicated seat, along with one for the northern iwi.
- One dedicated position on Guardians of Manapouri as nominated by TRONT.
- One dedicated position on Guardians of Wanaka as nominated by TRONT.
- Minister of Conservation to write to Regional Fish and Game Councils within the Ngai Tahu rohe and suggest it is in their interests to co-opt one Ngai Tahu member as nominated by TRONT to each council.
- One dedicated TRONT seat as nominated by TRONT on New Zealand Geographic Board.
- One dedicated TRONT seat as nominated by TRONT on the New Zealand Conservation Authority

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Resource Management Act

Crown proposal:

Outline of existing government processes and policies to be contained in Deed.

Government note that MfE's work programme will contain items that try to influence performance of regional and local government in medium to long term. These elements will be stated in the deed to arise from a coincidence of interest between the Ministry's existing work programme and Ngai Tahu:

- Undertake survey to see how councils have dealt with iwi management plans. Develop in consultation with Ngai Tahu and explore potential for ongoing relationship with Ngai Tahu for input of data.
- Scope the development, within the environmental indicators project, of a set of Maori values indicators. Once scoped, the project will be contracted out and Ngai Tahu will have an opportunity to bid for the contract.
- Joint MfE/Ngai Tahu project to investigate how Treaty of Waitangi obligations and responsibilities specified in the RMA are working in practice. Terms of reference should broadly reflect the MfE's existing work programme and would need to be agreed after consultation with local government. The report could address implementation of the water management provision in the RMA, such as the protection of instream "non extractive" uses.
- MfE regional staff will visit councils and discuss performance on Treaty provisions in RMA.

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Historic and Waahi Tapu Sites

Crown proposal:

Government to undertake review of Historic Places Trust Act and other relevant institutions and legislation for protecting historical and cultural heritage. The terms of reference to include reviewing:

- statutory powers;
- criteria for setting priorities;
- accountability mechanisms;
- funding;
- iwi representation.

As part of review, Government to establish a Focus Group of experienced and knowledgeable stakeholders, including Ngai Tahu, who will provide quality assurance of officials' problem definition and analysis and will provide recommendations direct to Ministers.

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Customary Fisheries

Crown proposal:

- Deed Preamble to specify Crown's current fisheries policy objectives (including research) and legal obligations in respect of Department of Conservation and Ministry of Fisheries. It should deal with customary fisheries and Ngai Tahu's role in those processes, and define policies and operational plans to define how occur (also ensure interface with MOU and RMA provisions).
- Recognise MKTONT as ad hoc statutory advisory committee to Minister of Fisheries (comparable to TWM) within Ngai Tahu rohe.
- Recognise MKTONT in the deed as ad hoc advisory committee to Minister of Conservation in respect of freshwater fish within rohe.
- If the NZ Customary Fisheries regulations have not been promulgated by the time the settlement legislation is introduced, initiate promulgation process of the kaitiaki provisions of those regulations in respect of the South Island.
- Mirror kaitiaki provisions of Customary Regulations for freshwater fisheries in South Island. This require statutory authority.
- Mirror kaitiaki provisions for freshwater fisheries managed by Ministry of Fisheries.
- Settlement legislation to contain a schedule of species that are currently managed only for conservation value (eg Canterbury Mudfish) to acknowledge Ngai Tahu's special relationship and require the Minister when making decisions on those species to "recognise and provide for Ngai Tahu's special relationship".
- Small number of species which are not currently taken under commercial permits or ITQs (eg toheroa, lamprey, but not whitebait) be formally excluded from commercial fishing, after formal consultation as required by Act. They could subsequently be put into QMS system by the process outlined in the Act.
- Provide Ngai Tahu with a right of first refusal of 30% of TACC with respect to five shellfish species (pipi, tuatua, cockle, mudsnails, surfclam) should these species be entered into the QMS.
- Re-establish in the Fisheries Act a provision for temporary closure of fisheries.
- Formally record in the deed of settlement the Crown's commitment to implement the eel proposal.

Customary fisheries Schedule

Customary regulations

Horse mussel/waharoa
Paua
Rock lobster/koura
Octopus/wheke
Green lipped mussel/kutae
Groper/hapuku
Sea trout/kahawai
Butterfish/marari
Frostfish/para
Lemon sole/patiki tore
NZ sole/patiki rore
Yellowbelly/patiki totara
Sand flounder/patiki
Rock cod/patukituki
Gurnard
Rig/pioke
Elephant fish/reperepe
Black flounder/patiki mohoao

Special relationship

Sea tulip/kaeo
Canterbury mudfish/hauhau
Giant kokopu/kokopu
Giant kokopara/kokopara
Bullies
Torrentfish/panaka
Common smelt/paraki
Freshwater shrimp/kohitihi

Formally exclude from commercial fishing

toheroa
karengo
rimurapa
lamprey
freshwater mussels
freshwater crayfish

Right of first refusal

pipi
tuatua
cockle/luaki
mudsnail
surfclam

Implementation of eel agreement

shortfin eel/tuna
longfin eel/tuna heke

Coastal

Crown proposal

In the event that coastal space in Kaikoura, Banks Peninsula, Fiordland, Otakou and Foveaux Strait/Rakiura (areas to be defined) is made subject to coastal tendering, then applications by TRONT for authorisations encompassing 10% of the space allocated (of fair average quality) for each area will be accepted at the relevant tender price. TRONT will then be able to use those authorisations to apply for coastal permits under the RMA.

Provide statutory acknowledgment of the special relationship of Ngai Tahu to the coastal space in Kaikoura, Banks Peninsula, Fiordland and Foveaux Strait/Rakiura. Regional councils and, where relevant, the Minister of Conservation, shall have regard to that special relationship when making decisions under the Resource Management Act. Ensure there is no impact on the decision making processes of the Fisheries Commission.

When the Minister for the Environment or the Minister of Conservation are carrying out monitoring functions under the Resource Management Act, they shall, where relevant, have regard to issues of concern to Ngai Tahu relating to coastal space within the Ngai Tahu rohe.

This allocation will not in any way prejudice applications by Te Runanga to give effect to mechanisms relating to customary fisheries, such as Taiapure and Mahinga Mataitai reserves.

Note:

In summary, the process for coastal tendering is as follows:

- a. the Governor-General makes an Order in Council that prevents a consent authority from issuing any coastal permits for the activity and area specified;
- b. the Minister of Conservation, after giving public notice, calls for tenders for "authorisations", which allow the holder to apply for a coastal permit in the area (or part of the area) covered by the Order in Council (not all the area covered by the Order in Council needs to be tendered);
- c. the RM Act gives the Minister considerable discretion in deciding who the successful tenderer will be. After having regard to the interests of the Crown, the Minister may accept any tender, whether or not the highest tender, and may enter into negotiation with any tenderer. (No process for considering tenders has yet been developed by the Department.);
- d. the successful tenderers are issued authorisations;
- e. the holder of an authorisation may apply for a coastal permit within the area covered by the authorisation;
- f. if a coastal permit is issued, the holder of the authorisation may proceed with the activity, subject to other controls, such as the need to get a marine farming permit under the Fisheries Act.

This process was designed to allow the Minister to make a choice as landowner, while still allowing the consent process to result in an activity being refused or constrained in response to community and environmental concerns.

The tendering process can be used only for occupation, extraction of sand and shingle, and reclamation and drainage.

Taonga Species (excluding fish)

Crown proposal

Taonga schedule

Taonga schedule in settlement legislation for species nominated by TRONT which provides:

- statutory recognition of their special significance and importance to Ngai Tahu;
- a requirement that the bodies actively managing each species consult with and have regard to the views of Ngai Tahu
- consultation on the preparation of any species management plan under section 41(e) of the Wildlife Act 1953, on the same basis as for species recovery groups (outlined below).

Involvement in management of wildlife

Ngai Tahu invited to join species recovery groups for those species for which it seeks a taonga relationship and for which a species recovery group exists, now or in the future, when the recovery group is concerned with a species which exists solely or predominantly within the rohe of Ngai Tahu. Ngai Tahu's membership will not change the functioning of the group (which is as a group of technical advisers) and will not be funded.

Input into other species management at conservancy level through dedicated staff. [For non-threatened species there are not usually management plans; for species without recovery plans there is not usually a national policy process for Ngai Tahu to have input to.]

Native ducks

Statutorily recognise TRONT as adviser to each Fish & Game Council within Ngai Tahu's rohe on matters relating to Ngai Tahu's interest in native ducks when councils make decisions on:

- annual Gazette notices relating to bag limits and season length; and
- management plans.

Minister of Conservation to write to Fish and Game Councils urging them to co-opt Ngai Tahu as a 13th member

Plants

- Ngai Tahu membership of recovery groups for plant species which have recovery groups on same basis as described above for wildlife;
- Protocols relating to cultural materials (refer to protocols).

Other

Amend the Wildlife Act to clarify that specimens of wildlife obtained before 1954 (including bones, skins feathers, egg shells of animals) do not require a permit and thus ownership is with the people who hold them.

Department of Conservation Protocols

Crown proposal

Protocols will be developed on the following policy issues:

- cultural materials;
- freshwater fisheries;
- culling of species of interest to Ngai Tahu;
- historic places;
- RMA involvement; and
- input into site management

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High Country Stations

Crown proposal

Transfer title to Te Runanga of the pink areas of the map supplied by the Crown. Te Runanga will immediately gift these areas to the nation in recognition of their conservation values.

Transfer title to Ngai Tahu in the farmable parts of the properties, subject to a number of covenants to safeguard public and conservation interests. Major covenants are:

Caples valley

- Valley will be fenced to confine stock to southern half of freehold valley, and set limit on stock units at current level to protect beech forest margin.
- "Wander at will" public access to the valley for tramping, hunting and fishing. Ngai Tahu permission required if hunters wish to bring dogs and parties will address safety issues.

Greenstone valley

- Greenstone valley phased retirement from cattle grazing over eight years.
- "Wander at will" public access to the valley for tramping, hunting and fishing. Ngai Tahu permission required if hunters wish to bring dogs and parties will address safety issues.
- Constraints on further tourist development in Greenstone valley to ensure that it is comparable with landscape and wilderness character. Development requiring a resource consent under the Resource Management Act is also to be approved by the Minister for the Environment.

Minor covenants are:

- Complete a boundary adjustment between Routeburn Station and Mt Aspiring National Park to add farmland to the station and exclude cattle from the Sylvan lake area of the Park.
- Protect Hillocks Kame field from disturbance.
- Protect remaining patches of beech forest above 5 ha.
- Provide for public access on foot over the freehold on the existing route (Scott Creek track) into Scott's Basin. (Permission will need to be sought to take guns and dogs).
- Implement a land exchange along the road between Kinloch and Greenstone roadend.
- Provide public access through a round trip walking track to Lake Rere.

Transfer title to Ngai Tahu in the non-farmable parts of the properties, subject to leaseback to Minister of Conservation for management and control as if conservation land in perpetuity, for peppercorn rent:

- Ngai Tahu retain the right to veto any commercial activity on the land.
- DoC develop a special consultation regime to recognise Ngai Tahu's ownership interest. This will be recognised in the DoC protocol.

Public Access

All public access must be free of charge.

Grazing Licence

The Crown proposes that the Deed will provide for the Mararoa Valley and Home Hill area of the Caples to be licensed for a term of 9 years by the Crown to Ngai Tahu for a peppercorn rental to allow Ngai Tahu to run stock in those areas. There would be tenure reviews for these areas to assess the ecological sustainability of the stocking levels every three years. The review process will be an open process (allowing Ngai Tahu, DOC and the Commissioner of Crown Lands to participate) with the final decision being made by the Minister of Conservation. Ngai Tahu would be required to ensure that stocking levels are no greater than those established by the most recent review as being sustainable, and the licence could be terminated in respect of any area before the end of the nine year term at 6 months' notice if, after a review, the Minister determines that stocking of that area is no longer ecologically sustainable. At the end of the 9 year term, the parties, without commitment, will review the position.

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DESCRIPTION OF GENERIC INSTRUMENTS

The instruments have been selected or designed to achieve five principal objectives:

- recognition of mana;
- providing for the exercise of customary fishing rights;
- management input;
- vesting; and
- providing an interest in the land.

MANA RECOGNITION

- **Acknowledgment of mana of site:** This includes name changes and the erection of signs, interpretation markers etc.

- *This is an existing concept*
- *It requires no legislation.*
- *This instrument would be available on an ongoing basis for every site. Only matters of particular importance are mentioned in the annexes.*

- **Deed of recognition:** A deed of recognition provides government recognition of mana and tangata whenua status with detail on the specific circumstances for each site, including the history of the ownership of the site, the grievance and its resolution, and future involvement of Ngai Tahu with the site.

- *This is an existing concept, which has been used for Takapourewa.*
- *It requires no legislation.*
- *It is very similar to the statutory acknowledgment instrument, but is presented in a deed.*

- **Statutory Acknowledgment**

There are two elements to the Statutory Acknowledgment.

1. Special relationship
Legislation will contain a section describing the essence of the relationship of Ngai Tahu to the specified area.

2. Standing

The provision of the Statutory Acknowledgment is intended to ensure that Ngai Tahu, as a person who has an interest "greater than the public generally", has standing to challenge applications under the RMA within the areas to which the Statutory Acknowledgment applies. This standing will also apply to applications made by the Crown under the RMA to the extent that the Crown is bound by the Act.

Settlement legislation will also provide that where a Statutory Acknowledgment applies to a particular place, Te Runanga o Ngai Tahu will be a person "directly affected" for the purposes of s.20(1) of the Historic Places Act 1993.

Note that provisions for standing are not appropriate under the Conservation Act or related Acts, since they relate to public lands or resources for which a public process is already provided.

- *This is a new concept.*
- *It would require legislation, but this could be the settlement legislation.*
- *It is an alternative to a deed of recognition and a more public way of achieving the objective of a deed of recognition.*

- **Transfer title with control and management vested in Minister:** The Reserves Act provides for private land to be managed by DoC as a reserve, but this arrangement can be revoked at the discretion of the Minister and the landowner. Crown is considering providing for a limited number of sites to be transferred to Ngai Tahu on the condition that the land is managed and controlled by the Minister of Conservation in perpetuity as a reserve. A memorial would be entered on the title deeming the land to be a reserve vested in and managed by the Minister of Conservation. The condition could be varied only upon agreement of the Minister of Conservation.

- *This is a new concept which is not fully developed.*
- *It is proposed to apply this concept only to small and discrete sites.*
- *It has similarity to both leasehold in perpetuity (without rental), and to statutory acknowledgment.*
- *It would require legislation.*

- **"Topuni" special area or reserve:** This entails the creation of a separate statutory "overlay" classification over land administered under the Conservation, National Parks or Reserves Acts. The status will be created by the settlement legislation for named sites.

The creation of a topuni special area or reserve would acknowledge the cultural, spiritual, historic or traditional values of the site. These special values will be outlined in the legislation which creates the topuni special

area or reserve on the basis of Ngai Tahu advice. The special status does not override the existing protection or classification of the land, but:

- the topuni would require Ngai Tahu and the administering body of the site (generally the Department of Conservation) to agree on what actions by the administering body would diminish or harm those values. This agreement would have to be reached on a site by site basis;
- the management of the topuni area, including the content of any CMS or CMP will take into account the values of the topuni area; and
- the administering body would have a duty to determine on the advice of Ngai Tahu what behaviours are appropriate and inappropriate on the site and how to publicise those. Where necessary, the planning process (through the CMS or CMP process) could recommend the enforcement of these through the promulgation of bylaws or regulations.

For most areas for which topuni are proposed, TRONT are also to be appointed as a statutory adviser.

- *This is a new concept and for the present, is being limited to the Ngai Tahu settlement legislation.*

MANAGEMENT INPUT

- **Statutory Advisor:** This involves Te Runanga o Ngai Tahu being appointed advisor to the Minister of Conservation in relation to specific sites.
 - It is a 'backstop' position which gives the right to advise the Minister when Minister considers CMS's and CMP's as they relate to specific sites.
 - The Minister is required to "recognise and take into account" advice received from Te Runanga o Ngai Tahu but no greater obligation imposed.
 - Other input into management is available through other instruments, for example, "Topuni" special area or reserve and the special protocol relationship.

- *This is a new concept.*
- *It would require amendment to the Reserves and Conservation Acts.*

- **Other mechanisms for management input:**

- It is envisaged that the Department of Conservation protocols may provide a generic process for establishing protocols for involving Ngai Tahu in management. The MoU might also specifically mention some particularly important sites.

- *This is a new concept.*
- *It requires no legislation.*

- The mahinga kai proposals include dedicated Ngai Tahu seats on conservation boards.
- There are existing statutory mechanisms for involving iwi in decisions on management.

VESTING

- **Vest reserve:** The Reserves Act provides that a reserve (e.g. historic reserve, local purpose reserve) can be controlled and managed by an administering body (e.g. Ngai Tahu) without title being vested in the body. If the administering body does not manage the area in accordance with the Reserves Acts the Crown is able to resume its interest. (The Crown has never exercised its resumption.)

- *This is an existing concept.*

INTEREST IN LAND

- **Fee simple:** Fee simple estate could be provided to Ngai Tahu, either with or without covenants and easements to protect access, conservation values and the like.

- *This is an existing concept.*
- *In respect of existing reserves, this requires revocation of reserve status (section 24) or overriding legislation to avoid the public consultation process set out in the Reserves Act.*

ENTITLEMENTS FOR CUSTOMARY FRESHWATER FISHING

There are two aspects to the Fisheries entitlements.

Customary fishing entitlements

This is designed to respond to grievances arising within ancillary claims relating to the loss or non-allocation of "Fenton Reserves" which provided areas where Ngai Tahu were able to exercise their customary fishing rights. The key elements are:

- It would provide a renewable entitlement to temporarily occupy exclusively a portion of lake or riverbed up to 100 metres in length, for the purpose of harvesting (on a non-commercial basis) customary fish species and gathering other natural resources.

- The drafting would ensure that no authority is provided by the easement to gather natural resources or to fish.
- The entitlement would be granted for up to 210 days a year, to be taken from between mid-August and the end of April.
- A number of constraints would apply:
 - it would not exclude public access along the waterway;
 - an entitlement would not be granted in respect of National Park land, esplanade reserves, marginal strips and scientific and nature reserves;
 - it would not be inconsistent with existing land use practices and patterns;
- The entitlement would be subject to all legislation, bylaws and regulations, and land and water management practices (weed & pest control; river control).
- Entitlements would be issued to persons entitled or their agreed representative body/ies in respect of the 5 ancillary sites which would be identified in the deed.
- If the Crown alienated the lake or riverbed or the area was lost due to moving rivers, etc., the Crown would take reasonable steps to provide another suitable site.
- Entitlements would be administered jointly by Minister of Maori Affairs and the landholding Minister (probably Minister of Conservation or Lands).
- The landholding Minister would have the ability to issue entitlements on a five year basis, subject to holders complying with conditions of use.

- | |
|--|
| <ul style="list-style-type: none"> • <i>This is a new concept.</i> • <i>It is designed to provide partial redress for breaches in relation to "Fenton Reserves".</i> |
|--|

Campsite Entitlements

This is designed to provide for Ngai Tahu's "nohoanga" ambitions (i.e., to exclusively camp for limited periods for the purpose of customary fishing). The key elements are:

- It would provide a renewable entitlement to occupy temporarily specific categories of Crown land adjacent to waterways (but set back from the marginal strip) for the purpose of harvesting (on a non-commercial basis) customary fisheries and gathering other natural resources.

- The drafting would ensure that no authority is provided by the entitlement to gather natural resources or to fish.
- Up to two entitlements of up to one hectare each would be issued for each catchment; these will be close to fishing areas and suitable for camping.
- For mahinga kai sites the entitlement would be granted to TRONT which would, in turn, regulate their use by iwi members.
- The entitlement would be granted for up to 210 days a year, to be taken from between mid-August and the end of April.
- A number of constraints would apply:
 - it would not exclude public access to water body along waterfront;
 - a licence would be granted only on Crown land and not in respect of National Park land, esplanade reserves, marginal strips and scientific and nature reserves;
 - it would not be allowed to interfere with existing land use practices and patterns;
- The entitlement would be subject to all legislation, bylaws and regulations, and land and water management practices (weed & pest control; river control).
- In respect of 5 ancillary claim sites **only**, if the Crown sold the land or the area was lost due to moving rivers, etc., the Crown would take reasonable steps to provide another suitable piece of land.
- Ancillary claim sites would be identified in the deed, but the mahinga kai sites could be identified post deed.
- Entitlements would be administered jointly by Minister of Maori Affairs and landholding Minister (probably Minister of Conservation or Lands).
- The Minister would have the ability to issue entitlements on a five year basis, subject to holders complying with conditions of use.

- | |
|--|
| <ul style="list-style-type: none"> • <i>This is a new concept.</i> • <i>In respect of ancillary claims, it is designed to provide partial redress for breaches in relation to "Fenton Reserves".</i> |
|--|

OTHER

- **Closure:** Close an area from public access. This may be appropriate for important burial sites, for instance.

- *This would extend the use of an existing concept to new areas.*
- *It requires legislation for areas that are not National Parks but otherwise can be accommodated within the existing legislation.*

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SCHEDULE 2

**ANCILLARY CLAIMS
CROWN PROPOSAL**

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Otakou Claims	6
Murihiku Claims	7

KAIKOURA: CLAIMS 1, 2, 101

SITE	CROWN PROPOSAL
White Bluffs - 45ha Crown land	- freehold title to Te Runanga o Ngai Tahu (TRONT) of 10ha on and south of the boundary of the rohe, as set out in s5 of Te Runanga o Ngai Tahu Act 1996 pursuant to decision of Maori Appellate Court 4SI ACM B 672 15 Nov 1990; subject to covenants to protect landscape values and rare plants if necessary; - Deed to state that this is landlocked land and Ngai Tahu seek no provision of access; - remainder of area to be designated scenic reserve, owned and managed by DOC
Tapuae o Uenuku	- Statutory advisor role for TRONT or its delegates - Topuni reserve site
Mt Uwerau Nature Reserve	special mention in the DOC Protocols on Issues of Concern to Ngai Tahu
Tuki Tuki Iwi	- lift historic reserve designation and vest fee simple in TRONT - change to name of trig point to be achieved by letter to Surveyor General from Ngai Tahu
Waipapa Point	vest sections Pt 1B of 2, 1C of 2, 33 and 5 as scenic reserve in TRONT
Map 7: sec. 1, SO 6917	transfer freehold title to ancillary claimants
Map 7: sec 1, SO 6949	transfer freehold title to ancillary claimants
Lots 4 and 5, DP6280	transfer freehold title to TRONT, subject to existing grazing licences
Map 8 - Pt sec 275	transfer freehold title to TRONT with: - right of way for public access over existing walkway (DOC would be responsible for maintenance) - covenant to protect open space values
Map 10 - Kahutara - section 36, part section 37	vest in TRONT as recreation reserve those parts which are not vested in Kaikoura District Council
Map 10 - Kahutara - sections 38, 47, pt 39, 44	vest in TRONT as recreation reserve
Omihi/Goose Bay: sections 9, 14, 15, 10	vest in TRONT as scenic reserve
Omihi/Goose Bay - sections 2, 10, 1, 18	- lift scenic reserve designation and replace with historic reserve designation over sections 1, 10, 18; management to remain with DOC; - section 2 to remain scenic reserve; management to remain with DOC
Map 12 - mouth of Oaro - sections 20, 21, 22, 23, 24	vest in TRONT as recreation reserve, subject to grazing licences

28/11

SITE	CROWN PROPOSAL
Takahanga Pa: pt section 411	legislate for this to be declared part of Takahanga Maori reservation
Takahanga Pa: section 473	Deed to record current status as Maori reservation, and that Crown will not seek to alter this.

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FISHERIES CLAIMS

CLAIM	CROWN PROPOSAL
claims 3 - 6, 10	- entitlement as described in mahinga-kai document, that provides for nominated individuals exclusively camp on identified areas set back from the marginal strip; - associated with customary fishing entitlement described below
claims 3 - 6, 10	- exclusive entitlement for nominated individuals to occupy a portion of river bed for fishing traditional species, as described in mahinga-kai document; - associated with the entitlement described above; - will apply to five ancillary claims only.
claim 8: Ahuriri	Ngai Tahu to nominate one block for this claim out of a number of blocks to be included in Te Waihora proposal
claim 11: Wainono	1.6ha block adjoining Wainao River - RES 26788, SO 4399 - freehold title transferred to ancillary claimants
claim 14: Lake Hawea	3 pieces of land to total area of approx. 25 - 30ha, as indicated on map of Lake Hawea tabled in ancillary claims meeting
claim 53: Tatawai	- purchase of 100a of Sinclair Wetlands on a willing seller/willing buyer basis, subject to: - before proceeding the Crown seeks written assurance that Ngai Tahu will take this land in the settlement
claim 55: Waikouaiti	recommendation to Minister of Conservation that under section 50 of the Reserves Act the beneficial owners of the Matainoka 1N reserve be entitled to a sustainable take of certain species

CANTERBURY CLAIMS

CLAIM	CROWN PROPOSAL
claim 13: Ellesmere Landing	• revoke present reserve classification and transfer fee simple to TRONT, provided following conditions are met: • interests of bach-holders protected • road to reserve is surveyed and designated a legal road to protect public access • paper roads adjacent on MR806 are closed and the costs of such disposal used to cover the expenses of road legalisation on R806 • interests of owners of dwellings on R806 vis a vis water supply to those dwellings are safeguarded.
claim 14: Hawea/Wanaka (SILNA)	• start the Maori Land Court process of identifying the beneficial owners; • offer to vest in them the remaining unallocated Crown land which exists in the former allocation; • offer to vest in the same people other unallocated Crown land adjacent to the former allocation to make up the area of the allocation. • note that this redress will not be offset against the Ngai Tahu settlement quantum

ARAHURA CLAIMS

CLAIM	CROWN PROPOSAL
claim 16: South Westland	10ha at Paringa River subject to covenants to protect landscape values
claim 16: South Westland	3 blocks at mouth of Arawhata, amounting to 14ha, in freehold title
claim 16: South Westland	5ha block on Moeraki river, seaward of Lake Moeraki.
claim 17: Arawhata MR1	20ha to be transferred freehold
claim 18: Bruce Bay	freehold title to land currently in Transit New Zealand ownership, subject to existing encroachment agreement
claim 18: Bruce Bay	freehold title to other land managed by Transit NZ; subject to public access easements to river, the state highway, and esplanade reserve
claim 18: Bruce Bay	freehold title to old aerodrome site, subject to grazing licence
claim 18: Bruce Bay: Community Hall	Ancillary claimants to choose either: 1. fee simple transfer subject to the granting of a lease to local hall committee for the use of the hall (note terms of the lease, esp rental, should not be more onerous than already exists), or 2. divide the land into portions use for hall purposes and not used for hall purposes. The portion of the land not for hall purposes is available fee simple without encumbrances, and the portion of the land for hall purposes would remain encumbered by local purpose hall reserve status.
Mawhera: Hokitika	freehold title to RS 5523 (SO 9683) Gaz 1993 p1031
Mawhera: Rapahoe	freehold title to Sec 1, 2 - SO 12138 Block I Cobden
Mawhera: Mawhera Chambers	freehold title to Mawhera Chambers
Mawhera: 57a loggable forest	Ngai Tahu and Timberlands West Coast to identify a suitable area of Timberlands West Coast forest
claim 33: Whakapoai	- initiate the Maori Land Court process to identify the beneficial owners; - when they have been found, either: (a) vest the SILNA land in them under s134 of TTWMA, subject to an immediate leaseback to the Minister of Conservation; and meet with the owners to negotiate any compensation; or (b) negotiate to vest alternative land in them, if some is available

OTAKOU CLAIMS

CLAIM	CROWN PROPOSAL
claim 50: Karitane	- Minister in Charge of Treaty of Waitangi Negotiations to write to Dunedin City Council to encourage them to attempt to reach an amicable agreement between the parties - Deed to note that s 131 of Te Ture Whenua Maori Act would be available to the owners if an agreement cannot be reached.
claim 51: Taiaaroa Heads	The Crown will undertake: - To vest under the Reserves Act 1977 such of Lot 33 as is situated on land administered by DOC, in the descendants of Karetai; and - To similarly vest the remainder of the land administered by DOC in Te Runanga Otakou; and - To endeavour to obtain the agreement of the Dunedin City Council (DCC) to a similar course of action, being the distribution of vesting recommended by the Waitangi Tribunal, with respect to reserve land administered by it at Taiaaroa Head: ON CONDITIONS TO GIVE EFFECT TO THE FOLLOWING PRINCIPLES: - Vesting in one claimant does not preclude the involvement of the other claimant in the area. - The reserves at Taiaaroa Head should be managed in a manner that is not inconsistent with the management objectives set out in the 1992 draft composite management plan. - DOC and the DCC will continue to be the management agencies for the vested reserves. - Oversight over reserve administration will be carried out by a body on which DOC, DCC, and Te Runanga Otakou are evenly represented, and there is also representation of the descendants of Karetai. - The activities of the Otago Peninsula Trust are permitted to continue
claim 52: Harrington Point	offer-back surplus public works land, at price set by LINZ

MURIHIKU CLAIMS

CLAIM	CROWN PROPOSAL
claim 56: Maranuku - Wilsher Bay scenic reserve	transfer title to reserve to ancillary claimants with condition that management and control remain with the Crown, the land to be deemed a reserve for all purposes including rating
claim 57: Maranuku	transfer to ancillary claimants of freehold title to recreation reserve areas north of Karoro Creek
claim 61: Waimumu (Hedgehope)	- offer-back lots 1,3 and 4 to former owners - transfer title to lot 2 to ancillary claimants, subject to a lease back to Broadcast Communications Limited in accordance with the format and process agreed to in the Assets working group
claim 75: Howell's Point reserve	Crown unable to provide redress as this reserve is vested in SDC under s26A of the Reserves Act. Crown will refer this matter to the Southland District Council - possibly via letter from Minister in Charge of Treaty of Waitangi Negotiations
claim 82: Ouetota	transfer to TRONT freehold title to Matariki Island
claim 92: Port Adventure/Toi Toi	- initiate the Maori Land Court process to identify the beneficial owners; - when they have been found, the Crown to meet with the owners and either (a) make the allocation on the original boundaries or (b) negotiate to alter the boundries in order to raise title. - any vesting will be at nil cost to Ngai Tahu settlement quantum



CABINET

377/5 COMMERCIAL: IN CONFIDENCE

CAB (96) 963

Document 18

17 December 1996

Copy No: 24

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NGAI TAHU HEADS OF AGREEMENT: RATIFICATION

The Minister in Charge of Treaty of Waitangi Negotiations recommends that Cabinet:

- a note that on 7 October 1996 Cabinet:
 - i endorsed the Heads of Agreement signed by Ngai Tahu and by the Minister in Charge of Treaty of Waitangi Negotiations;
 - ii noted that the Heads of Agreement is subject to confirmation by the incoming Government [CAB (96) M 38/16 refers];
- b note the copy of the Heads of Agreement attached to the submission under CAB (96) 963;
- c note that the Heads of Agreement has not yet been publicly released;
- d agree to confirm the Heads of Agreement signed by the Crown and Te Runanga o Ngai Tahu on 5 October 1996.

(Signed) Sue Sharp
for Secretary of the Cabinet

NOTE FOR MINISTERS

Purpose	The paper seeks Cabinet's confirmation of the Ngai Tahu Heads of Agreement.
Previous Cabinet/ Committee Consideration	On 5 October 1996 the Crown and Ngai Tahu signed a Heads of Agreement which was endorsed by Cabinet on 7 October 1996. Cabinet noted that the Heads of Agreement would be subject to confirmation by the incoming Government [CAB (96) M 38/16 refers].

Summary The paper notes that Te Runanga o Ngai Tahu has consulted with its people on the Heads of Agreement. As a consequence both Te Runanga o Ngai Tahu and the Hui a Tau (general hui) have ratified the Heads. Ngai Tahu is seeking information as to when the Crown will confirm the Heads.

The Heads of Agreement includes a reference to the need to seek the confirmation of "the Government in power after the forthcoming general election".

Baseline Implications None.

Legislative Implications The Crown and Ngai Tahu are currently working on negotiating a Deed of Settlement which is expected to be finalised in the second quarter of 1997. Legislation to implement the Deed of Settlement would then be introduced in the third quarter of 1997.

Timing Issues None indicated.

Announcement None indicated.

Consultation OTS, Treasury, Crown Law Office.

The Minister has indicated that caucus consultation and consultation with other parliamentary parties will not be required.

Chair,

Cabinet

Ratification of the Ngai Tahu Heads of Agreement

Purpose

1. The purpose of this paper is to seek Cabinet's confirmation of the Ngai Tahu Heads of Agreement.

Background

2. On 5 October 1996 the Crown and Ngai Tahu signed a Heads of Agreement recording the matters which the parties have agreed in principle are to be contained in a Deed of Settlement to effect a settlement of all of Ngai Tahu's historical claims and their agreement to negotiate in good faith to settle the terms of the Deed of Settlement.
3. In paragraph 4 of the Heads of Agreement, the parties acknowledged that Te Runanga o Ngai Tahu must obtain a mandate from the Ngai Tahu Whanui authorising Te Runanga to enter into the Deed of Settlement, and to settle Ngai Tahu's claims on the terms set out in that Deed. Te Runanga agreed to seek that mandate. In paragraph 5 of the Heads of Agreement, the parties further acknowledged that the Crown's agreements recorded in the Heads were subject to confirmation by the Government in power after the forthcoming general election [CAB (96) M 38/16 refers].
4. The Ngai Tahu Heads of Agreement is comprehensive and covers all of Ngai Tahu's historical claims.

Comment

5. Te Runanga o Ngai Tahu has consulted with its people on the Heads of Agreement. As a consequence, both Te Runanga o Ngai Tahu and the Hui a Tau have ratified the Heads. Ngai Tahu have informed the Crown that it will continue to brief their constituents over January 1997 and are seeking information as to when the Crown will confirm the Heads of Agreement.
6. The Crown and Ngai Tahu are currently working on negotiating a Deed of Settlement which is expected to be finalised in the second quarter of 1997. Officials and Ngai Tahu are working on the details required to achieve this. Legislation to implement the Deed of Settlement would be introduced in the third quarter of 1997.

Financial Implications

7. There are no financial implications arising from this paper.

Legislative Implications

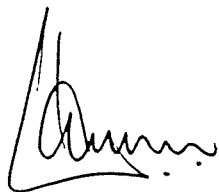
8. It is intended that legislation to implement the Ngai Tahu Settlement will be introduced in the third quarter 1997.

Consultation

9. The Crown Law Office and the Treasury have been consulted in the preparation of this paper, and their views have been incorporated.

Recommendation

10. It is recommended that Cabinet:
 - a) agree to confirm the Heads of Agreement signed by the Crown and Te Runanga o Ngai Tahu on 5 October 1996.



Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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CONSULTATION ON CABINET AND CABINET COMMITTEE SUBMISSIONS

Certification by Department:

The Cabinet Office will reject submissions if the necessary consultation does not appear to have taken place. The form which accompanies a submission sent to the Cabinet Office must have the original signatures of the Minister and official.		
I certify that the attached submission has implications for the following departments, whose views have been sought and are accurately reflected in the submission: Treasury Crown Law Office		
Signature	Name and Title	Date
M.A. Thompson	Mary Anne Thompson Group Manager Office of Treaty Settlements	17/12/96

Certification by Minister:

Consultation with other parties represented in Parliament on proposed legislation is coordinated by the Leader of the House. Consultation with other parties on matters other than legislation is coordinated by the Prime Minister. The relevant office should be contacted before any such consultation is undertaken.			
I certify that consultation on the issues raised in this paper with:			
	Has taken place	Will be needed	Is not required
the National party caucus			/
the New Zealand First party caucus			/
other parliamentary parties ¹			/
other interested groups ²			/
(¹) List parties which have been/are to be consulted:			
(²) List main interested groups:			
Signature	Name and Portfolio	Date	
	J. O. W.	17, 12, 96	

Parties

HER MAJESTY THE QUEEN

in right of New Zealand

and

TE RUNANGA O NGAI TAHU

HEADS OF AGREEMENT

5 October 1996

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HEADS OF AGREEMENT

THIS HEADS OF AGREEMENT is made on the 5th day of October 1996

BETWEEN

- (1) **HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister in Charge of Treaty of Waitangi Negotiations (*the Crown*)
- (2) **TE RUNANGA O NGAI TAHU** (*Te Runanga*)

BACKGROUND

A The Treaty of Waitangi provides:

"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 Atanoho 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 wahikatoa 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 kua 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 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.

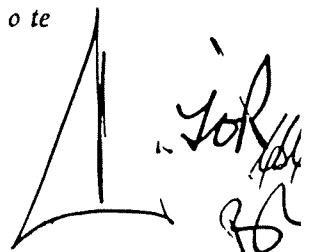
Ko te Tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai 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 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.

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Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaetanga 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
Consul and Lieutenant-Governor

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 wakaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

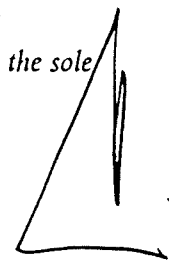
Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te wakaminenga."

"HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those Islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article The First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.



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Article The Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article The Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W. HOBSON Lieutenant Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

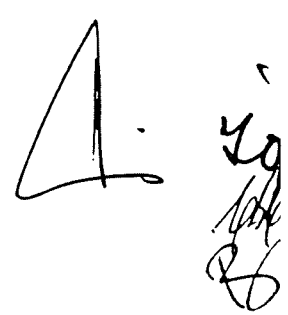
Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty."

Transfer of Ngai Tahu lands

- B In the years following the signing of the Treaty, the Crown, through its representatives and agents, sought the transfer of land from the Ngai Tahu people to the Crown. This was achieved through ten major purchases: Otakou 1844, Canterbury (Kemp's) 1848, Port Cooper 1849, Port Levy 1849, Akaroa 1856, Murihiku 1853, North Canterbury 1857, Kaikoura 1859, Arahura 1860, and Rakiura 1864.

Ngai Tahu have long sought to have their grievances redressed

- C From an early date, Ngai Tahu has pursued claims against the Crown of unfair purchase practices and of breaches of the deeds of purchase. Matiaha Tira

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Morehu, Hori Kerei Taiaroa, Tiemi Hipi, Tipene O'Regan, and Henare Rakiihia Tau and their wives and families were most prominent in these claims.

- D As a result of Ngai Tahu petitions and protests, some dating back to the 1840s, Ngai Tahu's grievances have been considered by a number of inquiries. Some dismissed them after cursory investigation, but those which investigated in detail generally found validity in Ngai Tahu's complaints. However, the Crown accepts that Ngai Tahu's grievances were not remedied. In particular, the Ngaitahu Claim Settlement Act 1944 was enacted without prior consultation with the tribe and did not debar the tribe from further pursuing its claim.

Claim under the Treaty of Waitangi Act 1975

- E Through enactment of the Treaty of Waitangi Amendment Act 1985, the Crown made it possible for Maori to bring claims before the Waitangi Tribunal in respect of historic grievances arising after 6 February 1840.
- F On 26 August 1986, a claim was submitted to the Waitangi Tribunal by Henare Rakiihia Tau and the Ngai Tahu Maori Trust Board, which represented the Ngai Tahu iwi and was chaired by Tipene O'Regan. That claim was subsequently elaborated upon by way of several amendments.
- G The Ngai Tahu claim, registered with the Waitangi Tribunal as Wai 27, was investigated in hearings before the Tribunal over the years 1987 to 1989.
- H On 1 February 1991, the Waitangi Tribunal reported on the main elements of the Ngai Tahu claim, described collectively as the 'Nine Tall Trees' of Ngai Tahu's grievances, and on 6 September 1991 issued a supplementary report recommending the creation by statute of a representative tribal body for Ngai Tahu.
- I The Waitangi Tribunal made a further report on 27 April 1995 in respect of Ngai Tahu's Ancillary Claims.

Findings of the Tribunal: the 'Nine Tall Trees'

- J After considering the elements of the Ngai Tahu claim, the Waitangi Tribunal found substantially in Ngai Tahu's favour, both in relation to the elements referred to as the 'Nine Tall Trees', and to the Ancillary Claims. In particular, the Tribunal could not reconcile the Crown's enduring failure to meet its obligations to Ngai Tahu with its duty to act towards its Treaty partner reasonably and with the utmost good faith. The Tribunal also emphasised that, in acquiring some 34.5 million acres of land from Ngai Tahu for £14,750, the Crown acted unconscionably and

in repeated breach of the Treaty of Waitangi. The Tribunal considered that the Crown's actions left Ngai Tahu with insufficient land to maintain its way of life, and to enable the tribe's full participation in subsequent economic development.

- K The Tribunal indicated in general terms the nature and scope of the redress which Ngai Tahu ought properly to receive. The Tribunal considered that the Crown ought to have restored to Ngai Tahu sufficient land to provide for the future economic, social and cultural development of the tribe.

L *Otakou*

The Tribunal found that the Crown was under a residual obligation to make further provision for Ngai Tahu, in addition to the reserves agreed upon during the purchase of the Otakou Block, and that the Crown failed to satisfy this obligation. The Tribunal considered that the Crown's obligation might have been satisfied by the creation of 'Tenths', or by other adequate provision.

Canterbury

The Tribunal found that the Crown, in acquiring the Canterbury Block, failed to negotiate fairly, failed to meet its undertaking to reserve sufficient food resources for Ngai Tahu, and failed to meet its obligation to provide ample reserves for the existing and future needs of Ngai Tahu. The Crown did not set aside the area from coast to coast defined by the Waimakariri and Kawari Rivers, as requested by Ngai Tahu. The Tribunal found that, in so acting, and in its subsequent failure to remedy these faults, the Crown breached its duty to act with the utmost good faith towards Ngai Tahu.

Banks' Peninsula

The Tribunal found that the Crown granted the Nanto-Bordelaise Company an interest in 30,000 acres of land on Banks' Peninsula, that Ngai Tahu had not agreed to relinquish most of this land and were not compensated for its loss, and that the Crown used high-handed and unfair methods in its dealings with Ngai Tahu over the Port Cooper and Port Levy Blocks. Significant to the Tribunal's findings on the Port Levy Purchase was the Crown's refusal to make reserves, as requested by Ngai Tahu, at Okains Bay, Kaituna Valley and Pigeon Bay. The Tribunal further found that the Crown had dealt with land on Banks' Peninsula before it had been lawfully acquired from Ngai Tahu and that the Crown failed to meet its obligation to provide ample reserves for the existing and future needs of Ngai Tahu.



Murihiku

The Tribunal found that the Crown, in purchasing the Murihiku Block, failed to set aside reserves that were requested by Ngai Tahu, failed to preserve for Ngai Tahu reasonable access to food resources, and failed to ensure that Ngai Tahu retained sufficient land for their existing and future needs. The Tribunal found that, in so acting, and in its subsequent failure to remedy these faults through the Middle Island Half-Caste Crown Grants Act 1877 and South Island Landless Natives Act 1906, the Crown breached its duty to act with the utmost good faith towards Ngai Tahu.

North Canterbury and Kaikoura

The Tribunal found that Ngai Tahu's interests and rangatiratanga in the North Canterbury and Kaikoura Blocks were gravely prejudiced by the Crown's transactions with other tribes, particularly in the Wairau Purchase 1847, and by the Crown's disposal of land without Ngai Tahu's consent. It found that the Crown failed both to act fairly and honourably in negotiating for the subsequent purchase of Ngai Tahu's interests, and to provide sufficient reserves in the North Canterbury and Kaikoura Blocks for the existing and future needs of Ngai Tahu.

Arahura

The Tribunal found that the Crown did not act fairly in its negotiations for the Arahura Block, and that the Crown failed both to set aside certain areas that Ngai Tahu wished to retain, and to preserve for Ngai Tahu reasonable access to food resources. It found that the Crown failed to protect the right of Ngai Tahu to retain possession and control of all pouamu. The Tribunal also found that the Crown failed to respect Ngai Tahu's interests and wishes when enacting a system of perpetual leases over Ngai Tahu reserves.

Rakiura

The Tribunal found that Ngai Tahu was disadvantaged by the delay in implementing the terms of the Rakiura purchase, the Crown having failed in its duty actively to protect Maori interests.

Mahinga Kai

The Tribunal found that, when purchasing Ngai Tahu lands, the Crown failed to ensure that Ngai Tahu retained reasonable access to places where the tribe produced or procured food, and especially unimpeded access to Lakes Waihora and Wairewa.

Schools and Hospitals

The Tribunal found that the expectation of being provided with schools and hospitals was an inducement to Ngai Tahu in selling the Kemp and Murihiku

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Blocks, that the Crown failed to act promptly to provide these benefits, and that Ngai Tahu was disadvantaged by the delay in meeting their expectations.

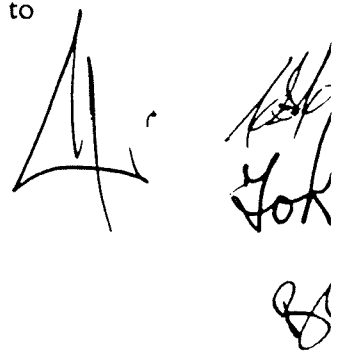
Negotiations between Ngai Tahu and the Crown

- M In 1990, the Crown entered into an interim agreement with Ngai Tahu to safeguard surplus Crown lands for the future settlement of Ngai Tahu's claims.
- N The Crown accepted the thrust of the 1991 Waitangi Tribunal report, and, in consequence of that acceptance, in September 1991 the Crown and Ngai Tahu entered into negotiations to seek resolution of the Ngai Tahu grievances.
- O During the period 1991-1994, the Crown and Ngai Tahu endeavoured to negotiate a settlement.
- P Following the passing of the Te Runanga o Ngai Tahu Act 1996, Te Runanga o Ngai Tahu, as defined in that Act, is recognised for all purposes as the representative of Ngai Tahu Whanui pursuant to section 15 of that Act.
- Q In 1996, the Crown and Ngai Tahu negotiated in good faith in a further attempt to achieve a full and final settlement of Ngai Tahu's historic Treaty claims and to remove the continuing sense of grievance felt by Ngai Tahu.
- R On 14 June 1996, the Crown and Te Runanga o Ngai Tahu entered into a Deed of 'On Account' Settlement, pursuant to which the Crown agreed to provide certain redress to Te Runanga o Ngai Tahu on an 'on account' basis as a sign of good faith and a demonstration of the Crown's goodwill.

Settlement of Claims

- S The Crown, having acknowledged that Ngai Tahu has suffered grave injustices which significantly impaired Ngai Tahu's economic, social and cultural development, now wishes to enter into a heads of agreement in the spirit of co-operation and compromise necessary to achieve a settlement of all of Ngai Tahu's historical claims, and Te Runanga o Ngai Tahu also wishes to enter into such a heads of agreement.

ACCORDINGLY the parties record on a without prejudice basis the matters which the parties have agreed in principle are to be contained in a Deed of Settlement to effect a settlement of Ngai Tahu's claims and their agreement to negotiate in good faith to settle the terms of the Deed of Settlement.



1 AGREEMENT IN PRINCIPLE

The parties record their agreement in principle to the matters set out in the Appendix to this Heads of Agreement (which comprises the text of the letter dated 25 September 1996 from the Minister in Charge of Treaty of Waitangi Negotiations to the Ngai Tahu Principal Negotiator, and its attachments, amended to incorporate changes and refinements referred to in subsequent correspondence and discussions between the Crown and Te Runanga).

2 NEGOTIATION OF DEED OF SETTLEMENT

The parties agree to negotiate with each other in good faith to settle the terms of the Deed of Settlement and to use reasonable endeavours to remove any obstacles to such good faith negotiations proceeding.

3 NATURE OF THIS HEADS OF AGREEMENT

The parties acknowledge to each other that this Heads of Agreement is not intended to create legal obligations by either party to the other party or by either party in favour of any third party, and that the implementation of the settlement will require the resolution of a number of practical issues, agreement on the terms of the Deed of Settlement and the passing of legislation.

4 NGAI TAHU MANDATE

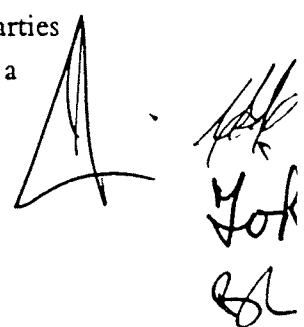
The parties acknowledge that Te Runanga must obtain a mandate from the Ngai Tahu Whanui authorising Te Runanga to enter into the Deed of Settlement on behalf of the Ngai Tahu Whanui, and to settle Ngai Tahu's claims on the terms set out in that Deed. Te Runanga agrees to seek that mandate.

5 CROWN MANDATE

The parties acknowledge that the Crown's agreements recorded in this Heads of Agreement are subject to confirmation by the Government in power after the forthcoming general election and that an invitation will be made to the incoming Government to give that confirmation.

6 AGREEMENT TO REVIEW

The parties agree that if the parties have not, by the date which is 6 months after the date of this Heads of Agreement, entered into a Deed of Settlement, the parties will jointly review the continued operation of this Heads of Agreement. If, as a result of that review, the parties conclude that they will be unable to reach

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agreement on any matter or matters relating to the Deed of Settlement, they may terminate this Heads of Agreement.

7 DEED OF SETTLEMENT

The parties agree that the Deed of Settlement will supersede this Heads of Agreement from the date on which the Deed of Settlement is signed. The Deed of Settlement will be conditional on the passing of the legislation required to give effect to the settlement.

EXECUTED on 5 October 1996

SIGNED for and on behalf of
HER MAJESTY THE QUEEN in right
of New Zealand by DOUGLAS
ARTHUR MONTROSE GRAHAM,
Minister in Charge of Treaty of Waitangi
Negotiations, in the presence of:

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Witness:

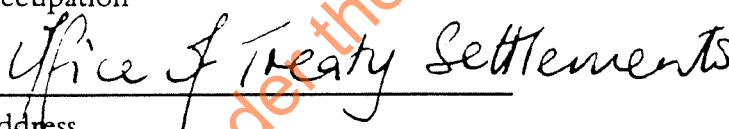
B. R. Clark



Signature



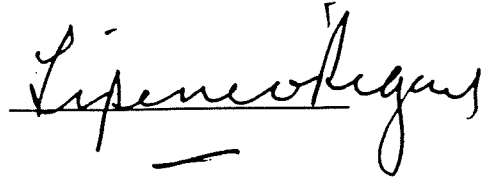
Occupation



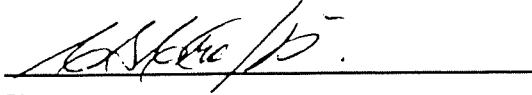
Address



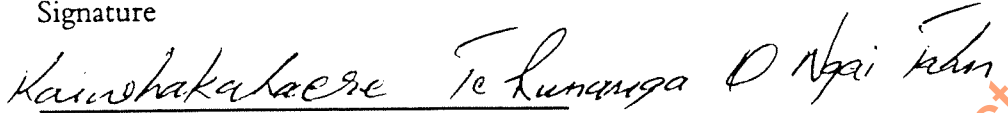
SIGNED by TIPENE GERARD)
O'REGAN (KNIGHT BACHELOR) as)
duly authorised representative of)
TE RUNANGA O NGAI TAHU in the)
presence of:)



Witness:



Signature



Occupation

Address

Released under the Official Information Act 1982



APPENDIX

Text of letter dated 25 September 1996 from the Minister in Charge of Treaty of Waitangi Negotiations to Sir Tipene O'Regan, Ngai Tahu Principal Negotiator, amended to incorporate changes and refinements referred to in subsequent correspondence and discussions between the Crown and Te Runanga.

**CROWN PROPOSAL FOR FULL AND FINAL SETTLEMENT OF
ALL OF NGAI TAHU'S HISTORICAL CLAIMS**

It was good to meet with you and other Ngai Tahu Principals on Monday 23 September 1996 to discuss Wigram and significant outstanding issues relating to the full and final settlement of all of Ngai Tahu's historical claims.

At that meeting the Crown agreed to grant Ngai Tahu an option to purchase Wigram Airbase on the agreed fundamental terms. The option will be exercisable on the terms of a sale and purchase agreement which is currently being developed. The purchase of Wigram by Ngai Tahu will be outside of the settlement.

At that same meeting I set out the Crown's proposal for a comprehensive settlement with Ngai Tahu. As I indicated then, the proposal is without prejudice and is yet to be approved by Cabinet. As requested by Mr Ashton, I am now setting out that proposal in writing.

I believe that the proposal, set out below, is a result of considerable progress made by the Crown and Ngai Tahu at the officials level. If Ngai Tahu is prepared to proceed on the basis outlined in this proposal, the parties would sign a Heads of Agreement. The Heads would not be legally binding, but would record the terms of the proposal and contain commitments to negotiate and agree on a Deed of Settlement, and obtain the necessary mandates to execute it. This Government would invite the incoming Government to work with Ngai Tahu towards a signed and ratified Deed of Settlement as proposed in the Heads of Agreement and to introduce legislation to give effect to the Deed of Settlement.

I expect the incoming Government would need to be satisfied that a majority of the House supports the settlement legislation. From past experience that support should be forthcoming.

The Crown's proposal is as follows.

Redress Amount

The total redress quantum would be \$170 million, of which \$10 million was paid by way of an on account settlement agreed between the Crown and Ngai Tahu on 14 June 1996. The Deed will provide that the Crown would pay interest on the remaining \$160 million at a rate equal to the 5 year Government Stock rate at the close of business on 3 October 1996 (being 7.91%) for the period between the date on which the Heads of Agreement is signed by the parties and the payment date, which would be 20 business days after the Deed becomes unconditional.

Deferred Selection Process

In the Deferred Selection Process (DSP) Ngai Tahu would select Crown properties from an agreed schedule. The Crown would transfer the selected properties to Ngai Tahu at the price, on terms and on a date which would be established by a process set out in the Deed of Settlement.

The DSP would cover a list of specified properties, including those in the Ngai Tahu landbank, those referred to in the 4 April 1995 list and Crown forest assets (Aoraki forests, Crown forest licensed lands and agreed parts of Timberlands West Coast). The Crown and Ngai Tahu are working to agree the final list from those properties put forward by Ngai Tahu. The Crown intends that this will include certain lands owned by Canterbury Health, Department for Courts, Government Property Services, Healthcare Otago, Healthlink South, Ministry of Education, New Zealand Police, New Zealand Post, Landcorp, Radio New Zealand, Works Consultancy, DOC and Telecom. Some of the latter properties would require leasebacks to enable public services to be maintained as in the Waikato Settlement.

For the DSP the Deed would provide that:

- Ngai Tahu could select properties which have a total market value of no more than \$200 million, less the value of all other properties and assets to be transferred to Ngai Tahu under the Deed (other than by way of gift) (i.e. Ngai Tahu may use up to \$30 million of non-settlement funds to purchase properties under the DSP)
- it is intended that a significant proportion of the assets, both by number and value, would be valued and selected before the settlement legislation is enacted and then, if selected, transferred shortly afterwards

- Ngai Tahu would be required to make its final selection no later than 12 months after the settlement legislation comes into force and final transfers would take place no more than 3 months later
- the Crown would be required to disclose to Ngai Tahu material information relating to the properties
- all properties would be valued as at the date the Deed is signed
- the market value of each property would be established by a process involving the Crown, or the owner of the property, providing its assessment of market value and Ngai Tahu indicating its agreement to that value or requiring determination by an independent person
- where the property is to be transferred subject to a lease back to its current owner, the Deed would contain a process which ensures all the terms of the lease can be agreed or determined
- all assets covered by the DSP that are not taken by Te Runanga under the DSP and which come within the categories of properties to which the RFR applies shall be subject to the RFR.

Aoraki Forests

The Crown agrees to facilitate the transfer to Ngai Tahu for the purposes of the settlement of the land under the Aoraki forests (including the McLaren Gully forest) by separating, where requested, the land from the trees in a manner analogous to the creation of a crown forest licence (with the Crown or its nominee as the licensee). If Ngai Tahu selects such land for transfer pursuant to the DSP, the land would be transferred on a basis which is no less favourable to Ngai Tahu (apart from the requirement to pay the market value to the Crown) than would otherwise be the case if the land were returned to Ngai Tahu (subject to the licence) pursuant to a final recommendation under section 8HB(1)(a) of the Treaty of Waitangi Act 1975 and section 36(1)(b) of the Crown Forests Assets Act 1989 did not apply.

Transitional Arrangements

The Crown agrees that from the date of signing of this Heads of Agreement land sales will continue in the normal course of business. The Crown would also agree to increase the landbank cap to \$75 million as soon as possible, on condition that all properties placed in the landbank from the time the cap is increased must be

taken by Te Runanga under the DSP. The Crown also agrees that the landbank scope will be increased to include all items included under the DSP and the RFR.

Right of First Refusal

The Deed would include a right of first refusal (RFR) over land in the categories referred to below and owned by the relevant agencies at the time the Deed of Settlement is signed. The process would be the same as the Waikato RFR. The Deed will include a requirement that the Crown will, if requested by Te Runanga, convene a meeting of representatives of the Crown and Te Runanga during the one month period after the Crown has given notice to Te Runanga of the proposed price and sale terms for a property, to negotiate in good faith to agree the price, terms and conditions on which the property is to be transferred to Te Runanga. If no such agreement is reached, the Crown can then sell the property on no more favourable terms within a defined period. Nothing in this requirement will limit the Crown's ability to determine the method by which the Crown sets the price the Crown offers to Ngai Tahu or the Crown's freedom to negotiate with other parties. Department of Conservation land swap transactions would not trigger the RFR.

The RFR would be triggered, in addition to the event of sale, if any of the relevant properties were transferred to a new Crown body which was subsequently sold within one year of the transfer. The RFR would also be triggered if the Crown entered into a lease over a relevant property for more than 50 years (in which case the same leasehold interest would first be offered to Te Runanga under the RFR process).

The categories of land covered by the RFR would be land in the Ngai Tahu takiwa owned by:

- the Crown (Departmental land, Crown land including land managed by Timberlands West Coast and unallocated Crown land)
- Crown Research Institutes
- Crown Health Enterprises (except the RFR would not be triggered where land is being transferred to community trusts)
- Landcorp
- Transit New Zealand
- Tertiary Education Institutes

- New Zealand Fire Service

The RFR would also apply to two specified properties of The Power Company Limited and Crown forest assets subject to the DSP which are not taken under the DSP. Where Ngai Tahu takes only land or trees in respect of Aoraki forests or the selected TWC forests under the DSP the trees or land not taken under the DSP would become subject to the RFR.

In addition, the Crown agrees that the Deed would provide Ngai Tahu with a similar RFR over the assets listed below which are less frequently traded. This RFR would cover the following assets:

- Highbank hydro-station (subject to Ngai Tahu's right being exercised through a joint venture with Electricity Ashburton)
- Crown shares in the Dunedin and Invercargill airport companies
- Crown shares in the Christchurch airport company, subject to the requirements of the articles or constitution of the company, particularly the Crown's obligations under the existing pre-emption provisions
- Landcorp financial instruments (if they are sold as an ongoing business and without prejudice to the rights of the parties to each instrument)
- Milford Airport (other than land).

Relativity Clause

The Deed would include a relativity clause which would be drafted so as to provide that the criteria for, and timing of, any top-up payments to Ngai Tahu would be the same as those provided in the Waikato relativity clause. The relativity percentage used to quantify any top-up payment would be calculated by dividing the \$170 million redress, adjusted to reflect CPI movements since 31 December 1994, by \$1 billion. This would be likely to lead to a percentage of about 16.3-16.4%.

High Country Stations

The Crown proposes to transfer title of the farmable parts of the property to Ngai Tahu, subject to a number of covenants to safeguard public and conservation interests which are set out in the document "Mahinga Kai and High Country Stations Crown Proposal" dated 25 September 1996, a copy of which is attached as

Schedule 1. These include covenants to allow for public access over the areas referred to in that document free of charge.

The Crown accepts the Ngai Tahu proposition that the pink areas on the maps previously supplied by the Crown shall be vested in Te Runanga. Te Runanga would immediately gift these areas to the nation in recognition of their conservation values.

The Crown proposes to transfer title to Ngai Tahu of the non-farmable parts of the properties, subject to leaseback to the Minister of Conservation in perpetuity and for a peppercorn rental, for management and control as if conservation land (yellow area on the map previously supplied to you). Ngai Tahu would have the right to veto any commercial activity over the land leased to the Minister of Conservation.

The Crown proposes that the Deed would provide for the Mararoa Valley and Home Hill area of the Caples to be licensed for a term of 9 years by the Crown to Ngai Tahu for a peppercorn rental to allow Ngai Tahu to run stock in those areas. There would be tenure reviews for these areas to assess the ecological sustainability of the stocking levels every three years. The review process will be an open process (allowing Ngai Tahu, DOC and the Commissioner of Crown Lands to participate), with the final decision being made by the Minister of Conservation. Ngai Tahu would be required to ensure that stocking levels are no greater than those established by the most recent review as being sustainable, and the licence could be terminated in respect of any area before the end of the 9 year term at 6 months notice if, after a review, the Minister determines that stocking of that area is no longer ecologically sustainable. At the end of the 9 year term, the parties, without commitment, will review the position.

The Crown and Te Runanga agree that these stations will be transferred at their market value (reflecting the covenants etc) not the Crown's purchase price.

Rarotoka (Centre Island)

The Deed would provide for the freehold title to Rarotoka to be transferred by way of gift to Ngai Tahu, exempt from the requirement for marginal strips, subject to a lease to the Maritime Safety Authority for the lighthouse and a surrounding area on the island. A regime to give Ngai Tahu management rights in respect of fisheries would be established in the area covering the reefs adjacent to the island (a radius of approximately 450-500 metres offshore).

Whenua Hou (Codfish Island)

The Deed would provide for the establishment of a special sub-committee of the Southland Conservation Board comprising Rakiura Maori (the sub-committee could be a body which already exists such as Kaitiaki Roopu). Provision would be made for Ngai Tahu to have access to Whenua Hou and the sub-committee and the Regional Conservator would prepare mutually agreed conditions for this access. In addition the sub-committee would provide advice to the Regional Conservator on the issue of entry permits. Although title to Whenua Hou would remain within the Crown, the Crown proposes a Deed of Recognition in respect of it.

Crown Titi Islands

The Deed would provide for the freehold title to the Crown Titi Islands to be transferred by way of gift to Ngai Tahu, exempt from the requirement for marginal strips. The Islands would be managed by Ngai Tahu as if they were a nature reserve, subject to the traditional rights of Rakiura Maori to take titi as set out in the Titi Regulations. Ngai Tahu would be required to prepare a management plan in accordance with the Reserves Act. Ngai Tahu and the Crown would agree a joint work programme each year for the islands. The Minister of Conservation or his representative would be given the right of access to the islands on reasonable request and would be able to attend meetings of the administering body about management of the Islands.

Arahura Valley

The Deed would provide for the closure of legal but unformed roads along the middle third of the Arahura river and the transfer by way of gift of freehold title to this land to the Mawhera Incorporation, exempt from requirement for marginal strips and subject to easements to secure legal access for affected private sections. The Crown would preserve existing levels of public access. A legal but unformed road in the area of the bottom third of the river would also be closed. The Crown would establish a reserve covering the catchment of the top third of the river which recognises both the historic importance of the area to Ngai Tahu and its natural values. This reserve would be vested in Mawhera Incorporation under the Reserves Act. Management responsibilities would be shared with the Department of Conservation. For example, the Department of Conservation would retain ownership of and responsibility for six swing bridges in the reserve area.

Mahinga Kai

The Crown's proposals for mahinga kai redress are summarised below. A more detailed outline is contained in the document entitled "Mahinga Kai Crown Proposals" a copy of which is attached as Schedule 1. The essential features that the Deed would provide for are:

- the transfer by way of gift of **ownership rights** and title to Ngai Tahu in specified sites. This would include the transfer of freehold title to the beds of Te Waihora and Lake Mahinapua
- authorisations at the tender price encompassing 10% of the **coastal space** allocated under coastal tendering for Kaikoura, Banks Peninsula, Fiordland, Otakou and Foveaux Strait/Rakiura, should these areas be tendered
- the provision to Ngai Tahu with respect to **specific sites**, including wetlands, lake and river beds, of a range of other existing and new instruments, including deeds of recognition, statutory acknowledgements, a statutory adviser role, topuni special areas and transfer of title with management by Minister of Conservation
- guaranteed exclusive temporary **occupation** for Ngai Tahu to defined areas adjacent to 32 rivers and lakes for customary fishing purposes
- involvement by Ngai Tahu in the **management** of a number of reserves
- involvement by Ngai Tahu with the Ministry for the Environment on improving the implementation of the **Resource Management Act**, with particular reference to Treaty and Maori provisions
- changes to 78 **place names** with provision for joint Maori and English names (with the English names to come first except Aoraki/Mount Cook) and amendment of the New Zealand Geographic Board Act to encourage the use of Maori names, and provision of one dedicated position on the New Zealand Geographic Board
- increased Ngai Tahu participation in the management of **customary fisheries**, recognition of Ngai Tahu's special relationship with certain species of fish and providing Ngai Tahu with a right of first refusal to 30% of TACC with respect to five shellfish species, should they be entered into the QMS
- mana recognition and management input for Ngai Tahu in specified **plant and animal taonga species**

- dedicated **membership** (on the recommendation of Ngai Tahu) on the New Zealand Conservation Authority all Conservation Boards within the Ngai Tahu takiwa, the Guardians of Lake Wanaka and Manapouri, and Crown to seek the agreement of each Regional Fish & Game Council within the Ngai Tahu takiwa to co-opt one Ngai Tahu member
- the Crown including within its review of **heritage protection** participation for Ngai Tahu
- Department of conservation (DOC) to issue, after input from Ngai Tahu, a set of **protocols** which express, within the terms of current policy, how DOC will conduct its business in relation to matters of cultural significance to Ngai Tahu.

Ancillary Claims

The Crown's proposals for ancillary claims are summarised below. A more detailed outline is contained in the document entitled "Ancillary Claims Crown Proposals" dated 25 September 1996, a copy of which is attached as Schedule 2. The Deed would provide redress to settle 33 ancillary claims upheld by the Waitangi Tribunal, and either claims not upheld. The Crown is committed to continuing to work with Ngai Tahu to finalise for inclusion in the Deed redress in respect of claims 7, 66, 67, 72, 73 and 112 consistent with the way in which the other Ancillary Claims have been resolved.

The essential features that the Deed would provide are:

- identification of the beneficial owners of land allocated under the 1906 **South Island Landless Natives Act (SILNA)**, but never transferred. This relates to claim 14, Hawea/Wanaka; claim 33, Whakapoai, and claim 92, Port Adventure/Toi Toi. The Crown would negotiate with the owners to settle their claims. The value of any land vested in beneficial owners of land under the South Island Landless Natives Act would not be offset against the Ngai Tahu settlement.
- in respect of ancillary claims relating to **fishing reserves**, the Deed would establish an entitlement to temporarily occupy specific sites owned by the Crown, as set out in the mahinga kai proposal, and an associated right to occupy a portion of the riverbed as redress for ancillary claims 3, 4, 5, 6 and 10. Title would be transferred to particular sites in respect of claims 7, 8, 11 and 14. For claim 53, Tatawai, the Crown would attempt to purchase part of the Sinclair Wetlands area, subject to Ngai Tahu's undertaking to take the land as part of the settlement.

- in **Kaikoura**, title to a number of reserves would be transferred to Te Runanga o Ngai Tahu. An area at White Bluffs would be vested with Ngai Tahu so that a pou whenua could be erected to mark the boundary of the Ngai Tahu takiwa. On two reserves of national importance, Tapuae o Uenuku and Mt Uwerau Nature Reserve, Ngai Tahu would have management input through the instruments developed by the mahinga kai working group. In addition unencumbered freehold title to two properties would be given to individual claimants.
- in the **Canterbury** region, the Ellesmere Landing reserve would be vested in Ngai Tahu. This is in addition to the instruments and land that would be provided as redress for the Canterbury fishing claims and the Hawea fishing claims.
- in the area of the **Arahura** purchase, a number of properties would be transferred in fee simple to the individual claimants, and in some cases to the Mawhera Incorporation.
- in **Otakou**, there would be redress for four ancillary claims, including the resolution of the claim to Taiaroa Heads along the lines of the Waitangi Tribunal recommendation, and the offer-back to the former owners of the surplus property at Harington Point.
- in the area of the **Murihiku** purchase, title to land at Tautuku, Maranuku, Invercargill and Riverton would be transferred to claimants when agreement has been reached on the appropriate sites. Title to Matariki Island would be vested in Te Runanga o Ngai Tahu.
- the Crown would work with Ngai Tahu to develop a **trust structure** to receive properties being transferred to ancillary claimants, and a process to identify the beneficiaries as efficiently as possible.
- the Crown would transfer to Ngai Tahu by way of gift any interests being returned to beneficial interests (i.e., not to tribal interests) as redress for ancillary claims up to the value of \$1 million (excluding SILNA compensation).

Comprehensive Settlement

The settlement would be a comprehensive full and final settlement of all of Ngai Tahu's historical claims. The Deed would be drafted to include the following provisions:

"Ngai Tahu Claims:

- (a) *means all claims made at any time by any Ngai Tahu Claimant and:*
- (i) *founded on rights arising in or by the Treaty of Waitangi, the principles of the Treaty of Waitangi, statute, common law (including customary law and aboriginal title), fiduciary duty or otherwise; and*
 - (ii) *arising out of or relating to any loss of interests in land, water, rivers, harbours, coastal marine areas [as defined in the Resource Management Act] minerals, forests or any natural and physical resources [as defined in the Resource Management Act] in the Ngai Tahu Claim Area, caused by acts or omissions by or on behalf of the Crown or by or under legislation, being a loss that occurred prior to 21 September 1992;*
- whether or not the claims have been researched, registered, or notified; and*
- (b) *includes all of the claims made by Ngai Tahu against the Crown arising from those historical grievances of Ngai Tahu which are referred to in the following Ngai Tahu Wai 27 claims to the Waitangi Tribunal:*
- (i) *General Claim of 26 August 1986;*
 - (ii) *Amended Claim of 24 November 1986;*
 - (iii) *Amended Claim of 16 December 1986;*
 - (iv) *Amended Claim of 2 June 1987;*
 - (v) *Amended Claim of 5 September 1987*
 - (vi) *Amended Claim of 13 April 1988;*
 - (vii) *Amended Claim of 20 December 1994;*
 - (viii) *Amended Claim of 12 June 1995;*
 - (ix) *Amended Claim of 6 July 1995;*
 - (x) *Amended Statement of Claim of 7 May 1996; and*
- (c) *includes all Wai 27 Ancillary Claims made to the Waitangi Tribunal; and*

- (d) includes the claims to the Waitangi Tribunal designated Wai 189, Wai 324, Wai 348, Wai 380, Wai 482 and Wai 597, Wai 618 and Wai 622; but
- (e) excludes claims insofar as they relate to language and culture which are not claims which come within paragraphs (a)-(d) above.

In this definition, loss in relation to any of the interests referred to in paragraph (a)(ii) includes extinguishment of, diminution of, or adverse effect on, any such interest and interest includes any legal or equitable right, title, power, privilege or benefit.

Ngai Tahu Claim Area means the Takiwa of Ngai Tahu Whanui and that part of the New Zealand fisheries waters (as defined in section 2 of the Fisheries Act 1996) adjacent to the coastal boundary of the Takiwa of Ngai Tahu Whanui.

Ngai Tahu Claimant means any of Te Runanga, any claimant in respect any of the Ancillary Claims, Ngai Tahu, one or more individuals, whanau, marae, hapu or papatipu runanga of Ngai Tahu, or any person acting on behalf of any one of the above.

Te Runanga's acknowledgements and agreements in relation the Ngai Tahu Claims will include acknowledgements and agreements that:

- (1) the Deed of Settlement and the Settlement Legislation will, when the Deed becomes unconditional, settle all the Ngai Tahu Claims and the Crown is released and discharged in respect thereof, and the Settlement Legislation will contain a provision to that effect;
- (2) the Settlement Legislation will:
 - (a) declare that, without limiting the acknowledgements expressed in, or any of the provisions of, this Deed, the Settlement is final; and
 - (b) provide for the removal of the jurisdiction of the Courts, the Waitangi Tribunal and any other tribunal in respect of:
 - (i) the Ngai Tahu Claims; or
 - (ii) the validity of the Deed of Settlement; or
 - (iii) the adequacy of the redress provided to Te Runanga and other parties by the Crown under the Deed of Settlement; or

(iv) *the Settlement Legislation,*

(but not for the removal of such jurisdiction in respect of the implementation or interpretation of the Deed of Settlement or the Settlement Legislation).

[The Deed will provide that this clause will not prevent any Ngai Tahu Claimant from receiving redress under the legislation which results from the passing of the Maori Reserved Land Amendment Bill 1996 or other legislation which addresses the grievances intended to be addressed by that Bill.]

Mutual acknowledgements and agreements will include the following:

The parties acknowledge that:

- (A) *The provision relating to the removal of the jurisdiction of the Courts, the Waitangi Tribunal and any other tribunal referred to in [clause 2(b) above]:*
- (a) *is not intended to prevent any Ngai Tahu Claimant from pursuing claims against the Crown based on aboriginal title or customary rights which do not come within the definition of Ngai Tahu Claims or to prevent the Crown from disputing such claims or the existence of such title or rights; but*
 - (b) *is intended to prevent any Ngai Tahu Claimant from pursuing claims against the Crown (including claims based on aboriginal title or customary rights) if such claims come within the definition of Ngai Tahu Claims, such claims having been settled in accordance with [clause (1) above].*
- (B) *Nothing in this Deed extinguishes any aboriginal title or customary rights that Ngai Tahu may have or constitutes or implies any acknowledgement or acceptance by the Crown that such title or rights exist either generally or in any particular case, but this clause does not limit [clause (1) above]."*

The Deed and settlement legislation would acknowledge that the settlement does not diminish or in any way affect the Treaty of Waitangi or any of its Articles or the ongoing relationship between the Crown and Ngai Tahu in terms of the Treaty of Waitangi or undermine any rights under the Treaty of Waitangi, including rangatiratanga rights.

Other Matters to be Dealt with in the Deed of Settlement

A number of other matters would need to be dealt with in the Deed of Settlement. These are:

- the Deed (and the legislation) would contain an historical preamble in the form previously agreed
- the Deed (and the legislation) would contain an apology in the form previously agreed
- the Deed would provide for the transfer to Ngai Tahu of the redress payment (less the \$10 million interim payment and the market value of assets transferred on settlement) twenty business days after the legislation comes into force. Ngai Tahu would be required to pay to the Crown the market value of other assets transferred as part of the redress package
- all redress would, unless otherwise specified, be transferred or vested at market value, and subject to pre-existing rights such as those provided for by section 40 of the Public Works Act
- the Deed would provide for payment to Ngai Tahu of accumulated rentals in respect of Crown forest assets acquired by Ngai Tahu pursuant to the deferred selection procedure. This would be in addition to the redress amount referred to above
- in the Deed Ngai Tahu would agree to, after legislation comes into force:
 - the removal of s27 memorials (and the obligation to impose memorials) on land in the Ngai Tahu takiwa
 - the cessation of the Ngai Tahu Maori Trust Board annuity
 - the cessation of the Ngai Tahu land bank
 - the Crown Forest Assets Act ceasing to operate in the Ngai Tahu takiwa
 - the discontinuance of all related litigation, including all litigation which is currently suspended
- the Deed would deal with GST in the same manner as the Deed of "On Account" Settlement

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- the Deed would include an indemnity for any income tax liability assessed on the settlement amount, including any top-up payments under the relativity clause (but not interest)
- in addition, Ngai Tahu would acknowledge that the Crown has acted honourably and reasonably and the settlement is fair and final.

At our meeting on 23 September 1996 I outlined what the Crown considers to be a generous proposal to settle all of Ngai Tahu's historical claims arising prior to 21 September 1992. The proposal set out in this letter is made with the aim of achieving closure and finality on a settlement package. If it is not possible to achieve finality on the basis of the Crown's proposal, negotiations would recommence at the point prior to the meeting of Crown and Ngai Tahu Principals on September 23.

This letter (and the more detailed material contained in the Schedules attached to this letter) is an outline of the issues discussed with your people during negotiations, expressed in general terms. There will obviously be a need for a considerable refinement and expansion of them in the Deed of Settlement to achieve the certainty and precision needed for such a document.

SCHEDULE 1

**MAHINGA KAI AND HIGH
COUNTRY STATIONS
CROWN PROPOSAL**

Released under the Official Information Act 1982

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SPECIFIC SITES

	SITE	LAND TYPE	AREA (approx. Only)	REMEDY
1	Aoraki Canterbury (Mt Cook)	national park	boundaries to be set	Deed of recognition or Statutory acknowledgment; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser
2	Te Mahaki o Tuterakiwhanoa - Otago (Mt Aspiring)	national park	boundaries to be set	Deed of recognition or Statutory acknowledgment; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser
3	Tutoko Southland (Fiordland National Park)	national park	boundaries to be set	Deed of recognition or Statutory acknowledgment; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser
4	Pikirakitahi Otago (Mt Earnslaw, Mt Aspiring National Park)	national park	boundaries to be set	Deed of recognition or Statutory acknowledgment; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser
5	Takitimu Range - Southland	conservation area	boundaries to be set - more than 45 000 ha	"Ngai Tahu Topuni" overlay reserve; and Statutory adviser
6	Kopuwaiti - Otago (the Obelisk, Old Man Range, Central Otago)	pastoral lease	<1 ha	Create reserve around obelisk and vest in Ngai Tahu or Title to obelisk with non-disturbance covenant
7	Parinui-o-Whiti - Nelson (White Cliffs, north of Lake Grassmere)	conservation area	<1 ha	Ngai Tahu able to erect pouwhenua; 20m radius reserve around pouwhenua
8	Motupohue Southland (Bluff Hill)	Scenic Reserve	150 ha	Acknowledgment of standing; and Rename reserve and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser
9	Matakaea - Otago (Shag Point, Otago)	recreation reserve	55 ha + islands	Transfer title to islands with covenant for non-disturbance and Deed of recognition or Statutory acknowledgment with respect to the reserve; and Rename reserve on island; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser with respect to reserve

	SITE	LAND TYPE	AREA (approx. Only)	REMEDY
10	Tokata - Otago (The Nuggets-Nugget Point, South Otago)	conservation area	40 ha + islands	Deed of recognition or Statutory acknowledgment; and Statutory advisor
11	Kawarau Gorge - Otago (natural bridge area, Central Otago)	marginal strip/pastoral lease	< 40 ha	Create historic reserve on marginal strip and vest in Ngai Tahu
12	Wanaka Peninsula - Otago (Mt Burke Station, Lake Wanaka)	pastoral lease	?	Awaiting information from LINZ on nature of tenure and possibly further information from Ngai Tahu on nature of interest.
13	Otukoro - Nelson (Kahurangi National Park, North Westland)	conservation area	15 ha	Create historic or local purpose reserve and vest in Ngai Tahu; and Closure of urupa (If not within National Park, require legislation)
14	Castle Hill - Canterbury (rock art site, North Canterbury)	conservation area	54 ha	Deed of recognition or Statutory acknowledgment; and Change name of area; and Interpretation; and Statutory adviser; and "Ngai Tahu Topuni" overlay reserve
15	Maerewhenua - Otago (rock art site, North Otago)	historic reserve	< 1 ha	Transfer title with public access covenant; require management plan that condition and values at date of transfer are maintained; or Vest reserve; or Transfer title with condition that management remain with Crown
16	Takiroa - Otago (rock art site, North Otago)	historic reserve	<1 ha	Transfer title with public access covenant; require management plan that condition and values at date of transfer are maintained; or Vest reserve; or Transfer title with condition that management remain with Crown
17	Pukekura Pa - Otago (Taiaaroa Head, Otago Peninsula)	mixed holdings (albatross colony)		Vesting of title in claimants with agreement for joint management by Department of Conservation, Dunedin City Council, Claimants and retention of existing interests.
18	Motutapu Island - West Coast (Grey River, Westland)	(see remarks)	unsurveyed	Transfer title with easement for water pipe
19	Lake Mahinapua - West Coast (North Westland)	scenic reserve	unsurveyed	Deed of recognition or Statutory acknowledgment; and statutory adviser; and Transfer title with covenants if necessary to protect existing public rights

	SITE	LAND TYPE	AREA (approx. Only)	REMEDY
20	Whakapoai Caves - West Coast/Nelson (near Kahurangi, the north-western boundary of the Ngai Tahu takiwa)	conservation area?	Boundaries to be set	Close caves to public access (if cave entrances not within National Park, require legislation)
21	Kahurangi - West Coast/Nelson (North Westland)	National Park	< 40 ha	Ngai Tahu able to erect pouwhenua; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser
22	Te Horo - Southland (Anita Bay, Milford Sound)	National park	Boundaries to be set	Deed of recognition or Statutory acknowledgment; and Closure of area; and Statutory adviser
23	Maukaatua - Otago (west of Taieri Plains)	scenic reserve	>1240 ha	Rename reserve; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser
24	Katiki - Otago (Moeraki Peninsula)	historic reserve	14 ha	Survey out pa site and transfer title with public access covenant; require management plan that condition and values at date of transfer are maintained; or Survey out pa site and Vest reserve; or Transfer title with condition that management remain with Crown
25	Tamakura - Nelson (Goose Bay, Kaikoura)		?	Awaiting clarification from Ngai Tahu on nature and area of interest.
26	Onawe Pa - Canterbury (Akaroa Harbour, Banks Peninsula)	historic reserve	28 ha	Transfer title with public access and historic protection covenant; or Vest reserve; or Deed of recognition or Statutory acknowledgment or Transfer title with condition that management remain with Crown
27	Omihi - Nelson (Kaikoura Coast)		?	Awaiting clarification from Ngai Tahu on nature and area of interest.
28	Kahutara - Nelson (Kaikoura Coast)	scenic reserve	?	4 sections to be vested freehold and 2 recreation reserves to be vested.
29	Ripapa - Canterbury (Lyttelton Harbour, Banks Peninsula)	historic reserve	1.6 ha	Interpretation at site; and "Ngai Tahu Topuni" overlay reserve; and Statutory adviser

	SITE	LAND TYPE	AREA (approx. Only)	REMEDY
30	Te Raka-hine- atea - Otago (Moeraki Peninsula, Otago)	see 24	see 24	see 24
31	Huriawa - Otago (Karitane, mouth of Waikouaiti, Otago)	historic reserve	13 ha	Transfer title with public access and non-disturbance covenants; or Vest reserve; or Transfer title with condition that management remain with Crown
32	Mapoutahi - Otago (Purakaunui, north of Otago Harbour)	historic reserve	1.6 ha	Transfer title with public access and non-disturbance covenants; or Vest reserve; or Transfer title with condition that management remain with Crown

Specific sites: Te Waihora

Crown proposal

Transfer title in the lakebed in respect of the defined area which more or less correlates with lake bed (extending up to Green Park Sands), subject to protection of the existing rights of public access, and subject to survey of the seaward boundary of M36/181, excluding the Selwyn Delta from M36/181 and M36/189.

- Area at mouth of lake (between Taumutu and the end of the Kaitorete Spit, bounded in the west by Maori reserve (MR878 and 889) and in the east by the locations marked at M37/30 and M37/26) to have easement in favour of Canterbury Regional Council to allow access for opening lake in accordance with the Council's lake opening authorisation.
- A covenant would be required to secure continued public access over the area between the lake and the coastal marine area.
- For transitional period of five years from settlement legislation, Ngai Tahu to agree to existing levels of maimai use.

Transfer title to up to four of the following small sites (as identified by the hatched areas on the overlay supplied), subject to farm drainage covenants where needed, at:

- M36/192: up to 2 ha (subject to survey) of upper part of area (with no conservation value) of Government Purpose Reserve in south west corner of lake;
- M36/187: Lower Selwyn Huts, subject to existing leases;
- M36/186: northern corner of area, house and grounds, subject to survey and District Council requirements pursuant to the Resource Management Act;
- Greenpark Sands Huts near end of Hudson's Rd (subject to existing leases); and
- M36/486: southern shore, grazed part of former timber landing reserve. Up to 2 ha subject to survey and District Council requirements under the Resource Management Act.

Ngai Tahu to advise which of these sites should be transferred to TRONT and which are in satisfaction of ancillary claim.

Recognise TRONT as statutory adviser to Minister of Conservation on management of Te Waihora conservation lands administered by the Minister of Conservation.

Minister of Conservation to request DoC and TRONT to develop joint management plan within five years, and invite Canterbury Regional Council, relevant district councils and the Regional Fish and Game Council to actively participate.

Notes

Freehold title to Ellesmere Landing is proposed to be transferred to Ngai Tahu (subject to protecting existing third party rights and subject to appropriate arrangements being made to survey and designate as a legal road the existing formed road) as redress for Ancillary Claim 13

Taumutu Commonage Reserve is subject to the Maori Reserved Lands Amendment Bill which will impose market rentals and provide lessor with a right of first refusal over leasehold interest.

Specific sites: lakebeds

Crown proposal:

- See separate proposal for Te Waihora.
- Deed of recognition or statutory acknowledgment for Lake Mahinapua; or fee simple but containing covenants if necessary to protect existing public rights and fishery management.
- Deed of recognition or statutory acknowledgment for the attached list of 12 lakes (those where Ngai Tahu seek sole or joint title or statutory recognition).
- Provide "nohoanga entitlements" for attached list of 13 lakes, subject to availability of Crown land (and without Crown undertaking to replace site in event of its loss).

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Lakebeds Schedule

(1) Deed of recognition or statutory acknowledgment.

1A - Great Lakes

- Takapo (Tekapo)
- Pukaki
- Ohau
- Hawea
- Wanaka
- Whakatipu-wai-maori
- Moturau (Manapouri)
- Hauroko
- Te Anau

1b - Tapu/Taoka Lakes

- Rotorua
- Mavora lakes

3A - Local Runanga Lakes

- Wairewa

(2) Nohoanga Licences

1a - Great Lakes

- Takapo (Tekapo)
- Pukaki
- Ohau
- Hawea
- Wanaka
- Whakatipu-wai-maori
- Moturau (Manapouri)
- Manoki-wai (Monowai)
- Hauroko
- Te Anau

1b - Tapu/Taoka Lakes

- Rotorua
- Mavora lakes

2b - Mahinga Kai Lakes

- O-Whakamatau (Lake Coleridge)

Specific sites: rivers

Crown proposal:

- Provide Deed of Recognition to Ngai Tahu in the Tasman, Greenstone and Caples rivers, to the extent that they are "navigable rivers" (using the Coal Mines Act concept).
- Provide "nohoanga entitlements" for attached list of 19 rivers, subject to availability of Crown land.

Notes

Greenstone and Caples rivers are partly in stations and Ngai Tahu may gain ownership of those parts through the redress provided in respect of the stations. This may also remove the need for nohoanga entitlements for those rivers.

Rivers Schedule

Nohoanga Entitlements (Land Aspects only)

Rivers

- Waiau Ua R
- Rakaia R
- Ashley (Rakahuri R) & tribs Okuku, Makirikiri, Saltwater Creek
- Pareora R
- Hook R
- Waihao R
- Waitaki R
- Waipori R > Lake Waipori & Waihora
- Clutha R (Mataau)
- Pomahaka R > Lower Clutha
- Waiau R & tributaries incl. Mararoa
- Opihi & tribs Hae Hae Te Moana, Kakahu, Opuha, Tengawai > Pacific
- Waikouaiti R > Pacific
- Taieri R & tribs > Pacific

Tributaries to Lakes

- Hunter R Hawea
- Dart R > Wakatipu
- Caples R > Wakatipu
- Greenstone R > Wakatipu

Tributaries to Artificial Lakes

- Shotover R

WETLANDS

Crown proposal:

Provide fee simple ownership of Coopers Lagoon, near Te Waihora. Note that DoC would continue its standard advocacy functions, and the transfer of fee simple does not imply the Minister of Conservation would waive his ability to make submissions in respect of resource consent applications (eg for aquaculture) which relate to the lagoon.

Provide deed of recognition or statutory acknowledgment in respect of up to ten wetlands nominated by Ngai Tahu which can be adequately defined and which it is found that the Crown owns.

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Place Names

Crown proposal

- Alter 78 existing place names to create joint existing/Ngai Tahu names (see Schedule).
- English names to come first except in the case of Aoraki/Mount Cook.
- Amend s 8(1)(d) of the New Zealand Geographic Board Act 1946 so that an additional purpose of the Board is to "encourage the use of original Maori place names".
- One dedicated TRONT seat on New Zealand Geographic Board.

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Place Names Schedule

Aoraki	Mount Cook
Parinui-o-whiti	White Cliffs
Waihora	Ellesmere
Te Ahu Patiki	Mount Herbert
Mataau	Clutha River
Rakiura	Stewart Island
Whenua Hou	Codfish Island
Rarotoka	Centre Island
Taramea	Howells Point
Hautere	Solander Island

a) West Coast

Poutini	Westland National Park
Hokonui	Greenstone River
Kaimata	New River
Tauotiraki	Rocky Point
Tumuaki	Island Hill
Kokiraki	Doughboy
Kaniere	Mount Harman
Noti Raureka	Browning Pass
Whakarewa	Lake Browning
Te Taumata o Uekanuku	Mount Upright
Waitaiki	Olderog
Takataka	Refuge Island, Lake Brunner
Waimatuku	7 Mile Creek, between Greymouth and Punakaiki
Kotorapi	9 Mile Creek, between Greymouth and Punakaiki
Waianiwanui	10 Mile Creek, between Greymouth and Punakaiki
Kotihotiho	Cave Creek
Torata	Knights Point, north of Haast
Kaohaihai	Gillespies Point, north of Haast
Maitahi	Bruce Bay
Okahu	Jackson Bay
Weheka	Fox Glacier
Waiau	Franz Joseph
Ka Roimata o Hine Hukatere	Franz Joseph Glacier

d) Kaikoura

Tuki-tuki-iwi	Monkey Face
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e) Canterbury

Whakaraupo	Lyttleton Harbour
Wairewa	Lake Forsyth
Koukourarata	Port Levy
Muriwai	Coopers Lagoon
Tarahaoa	Mount Peel
Huatekerekere	Little Mount Peel
Mahanui	Mount Harper
Kaumaira	Mount Nimrod
Manahuna	McKenzie Pass
Hakatere	Ashburton River

f) Otago

Otepopo
Te Kahurou
Matau
Wawahi Waka
Ari
Pekerakitahi
Ka Tiriti o te Moana
Tioripatea
Te Ara Whakatipu
Wawahi Waka
Whakatipu Ka Tuka
Whakatipu Waitai
Kopuwai
Haehaeata
Hikaroroa
Kaiwioteveka
Pahatea
Rangiriri
Kamau Taurua

Herbert (Peninsula)
Kurow, the hill above the Kurow town
Pig Island, Lake Wakatipu
Pigeon Island, Lake Wakatipu
Mt Alfred, Glenorchy
Mount Earnslaw
Southern Alps
Haast Pass
Harris Saddle, Routeburn Track
Lake Alabaster
Hollyford River
Lake McKerrow, Martins Bay, South Westland
Old Man Range
Leaning Rock
Mount Baldy, Waikouaiti area
Mount Baldy, Waikouaiti area
Mount Durden, Waikouaiti area
Goat Island, Otago Harbour
Quarantine Island, Otago Harbour

g) Murihiku

Otaupiri
Taukihepa
Oraka
Hananui
Piotirepo
Koromere
Whiore
Puhi-waero
Putatara
Pikihatiti
Tutaekawetoweto
Potiweta
Whaka a Te Wera
Aparima
Motupohue

Ships Cove Mountain in the Hokonui Mountain Range
Big South Cape, Titi Island off west coast of Rakiura
Colac Bay, near Riverton
Mount Anglem, Rakiura
Port William, Rakiura, facing Foveaux St
East Cape, Rakiura
South Cape, Rakiura
South West Cape
Raggedy, Rakiura, N-W corner
Pegasus Harbour, Rakiura
Lords River, Rakiura
Port Adventure, Rakiura
Patterson's Inlet, Rakiura
Riverton
Bluff Hill

Statutory Board Membership

Crown proposal:

- Two dedicated Ngai Tahu seats nominated by TRONT on all conservation boards within Ngai Tahu rohe, except for the northern SI Boards, where Ngai Tahu will have one dedicated seat, along with one for the northern iwi.
- One dedicated position on Guardians of Manapouri as nominated by TRONT.
- One dedicated position on Guardians of Wanaka as nominated by TRONT.
- Minister of Conservation to write to Regional Fish and Game Councils within the Ngai Tahu rohe and suggest it is in their interests to co-opt one Ngai Tahu member as nominated by TRONT to each council.
- One dedicated TRONT seat as nominated by TRONT on New Zealand Geographic Board.
- One dedicated TRONT seat as nominated by TRONT on the New Zealand Conservation Authority

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Resource Management Act

Crown proposal:

Outline of existing government processes and policies to be contained in Deed.

Government note that MfE's work programme will contain items that try to influence performance of regional and local government in medium to long term. These elements will be stated in the deed to arise from a coincidence of interest between the Ministry's existing work programme and Ngai Tahu:

- Undertake survey to see how councils have dealt with iwi management plans. Develop in consultation with Ngai Tahu and explore potential for ongoing relationship with Ngai Tahu for input of data.
- Scope the development, within the environmental indicators project, of a set of Maori values indicators. Once scoped, the project will be contracted out and Ngai Tahu will have an opportunity to bid for the contract.
- Joint MfE/Ngai Tahu project to investigate how Treaty of Waitangi obligations and responsibilities specified in the RMA are working in practice. Terms of reference should broadly reflect the MfE's existing work programme and would need to be agreed after consultation with local government. The report could address implementation of the water management provision in the RMA, such as the protection of instream "non extractive" uses.
- MfE regional staff will visit councils and discuss performance on Treaty provisions in RMA.

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Historic and Waahi Tapu Sites

Crown proposal:

Government to undertake review of Historic Places Trust Act and other relevant institutions and legislation for protecting historical and cultural heritage. The terms of reference to include reviewing:

- statutory powers;
- criteria for setting priorities;
- accountability mechanisms;
- funding;
- iwi representation.

As part of review, Government to establish a Focus Group of experienced and knowledgeable stakeholders, including Ngai Tahu, who will provide quality assurance of officials' problem definition and analysis and will provide recommendations direct to Ministers.

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Customary Fisheries

Crown proposal:

- Deed Preamble to specify Crown's current fisheries policy objectives (including research) and legal obligations in respect of Department of Conservation and Ministry of Fisheries. It should deal with customary fisheries and Ngai Tahu's role in those processes, and define policies and operational plans to define how occur (also ensure interface with MOU and RMA provisions).
- Recognise MKTONT as ad hoc statutory advisory committee to Minister of Fisheries (comparable to TWM) within Ngai Tahu rohe.
- Recognise MKTONT in the deed as ad hoc advisory committee to Minister of Conservation in respect of freshwater fish within rohe.
- If the NZ Customary Fisheries regulations have not been promulgated by the time the settlement legislation is introduced, initiate promulgation process of the kaitiaki provisions of those regulations in respect of the South Island.
- Mirror kaitiaki provisions of Customary Regulations for freshwater fisheries in South Island. This require statutory authority.
- Mirror kaitiaki provisions for freshwater fisheries managed by Ministry of Fisheries.
- Settlement legislation to contain a schedule of species that are currently managed only for conservation value (eg Canterbury Mudfish) to acknowledge Ngai Tahu's special relationship and require the Minister when making decisions on those species to "recognise and provide for Ngai Tahu's special relationship".
- Small number of species which are not currently taken under commercial permits or ITQs (eg toheroa, lamprey, but not whitebait) be formally excluded from commercial fishing, after formal consultation as required by Act. They could subsequently be put into QMS system by the process outlined in the Act.
- Provide Ngai Tahu with a right of first refusal of 30% of TACC with respect to five shellfish species (pipi, tuatua, cockle, mudsnails, surfclam) should these species be entered into the QMS.
- Re-establish in the Fisheries Act a provision for temporary closure of fisheries.
- Formally record in the deed of settlement the Crown's commitment to implement the eel proposal.

Customary fisheries Schedule

Customary regulations

Horse mussel/waharoa
Paua
Rock lobster/koura
Octopus/wheke
Green lipped mussel/kutae
Groper/hapuku
Sea trout/kahawai
Butterfish/marari
Frostfish/para
Lemon sole/patiki tore
NZ sole/patiki rore
Yellowbelly/patiki totara
Sand flounder/patiki
Rock cod/patukituki
Gurnard
Rig/pioke
Elephant fish/reperepe
Black flounder/patiki mohoao

Special relationship

Sea tulip/kaeo
Canterbury mudfish/hauhau
Giant kokopu/kokopu
Giant kokopara/kokopara
Bullies
Torrentfish/panaka
Common smelt/paraki
Freshwater shrimp/kohitihi

Formally exclude from commercial fishing

toheroa
karengo
rimurapa
lamprey
freshwater mussels
freshwater crayfish

Right of first refusal

pipi
tuatua
cockle/luaki
mudsnail
surfclam

Implementation of eel agreement

shortfin eel/tuna
longfin eel/tuna heke

Coastal

Crown proposal

In the event that coastal space in Kaikoura, Banks Peninsula, Fiordland, Otakou and Foveaux Strait/Rakiura (areas to be defined) is made subject to coastal tendering, then applications by TRONT for authorisations encompassing 10% of the space allocated (of fair average quality) for each area will be accepted at the relevant tender price. TRONT will then be able to use those authorisations to apply for coastal permits under the RMA.

Provide statutory acknowledgment of the special relationship of Ngai Tahu to the coastal space in Kaikoura, Banks Peninsula, Fiordland and Foveaux Strait/Rakiura. Regional councils and, where relevant, the Minister of Conservation, shall have regard to that special relationship when making decisions under the Resource Management Act. Ensure there is no impact on the decision making processes of the Fisheries Commission.

When the Minister for the Environment or the Minister of Conservation are carrying out monitoring functions under the Resource Management Act, they shall, where relevant, have regard to issues of concern to Ngai Tahu relating to coastal space within the Ngai Tahu rohe.

This allocation will not in any way prejudice applications by Te Runanga to give effect to mechanisms relating to customary fisheries, such as Taiapure and Mahinga Mataitai reserves.

Note:

In summary, the process for coastal tendering is as follows:

- a. the Governor-General makes an Order in Council that prevents a consent authority from issuing any coastal permits for the activity and area specified;
- b. the Minister of Conservation, after giving public notice, calls for tenders for "authorisations", which allow the holder to apply for a coastal permit in the area (or part of the area) covered by the Order in Council (not all the area covered by the Order in Council needs to be tendered);
- c. the RM Act gives the Minister considerable discretion in deciding who the successful tenderer will be. After having regard to the interests of the Crown, the Minister may accept any tender, whether or not the highest tender, and may enter into negotiation with any tenderer. (No process for considering tenders has yet been developed by the Department.);
- d. the successful tenderers are issued authorisations;
- e. the holder of an authorisation may apply for a coastal permit within the area covered by the authorisation;
- f. if a coastal permit is issued, the holder of the authorisation may proceed with the activity, subject to other controls, such as the need to get a marine farming permit under the Fisheries Act.

This process was designed to allow the Minister to make a choice as landowner, while still allowing the consent process to result in an activity being refused or constrained in response to community and environmental concerns.

The tendering process can be used only for occupation, extraction of sand and shingle, and reclamation and drainage.

Taonga Species (excluding fish)

Crown proposal

Taonga schedule

Taonga schedule in settlement legislation for species nominated by TRONT which provides:

- statutory recognition of their special significance and importance to Ngai Tahu;
- a requirement that the bodies actively managing each species consult with and have regard to the views of Ngai Tahu
- consultation on the preparation of any species management plan under section 41(e) of the Wildlife Act 1953, on the same basis as for species recovery groups (outlined below).

Involvement in management of wildlife

Ngai Tahu invited to join species recovery groups for those species for which it seeks a taonga relationship and for which a species recovery group exists, now or in the future, when the recovery group is concerned with a species which exists solely or predominantly within the rohe of Ngai Tahu. Ngai Tahu's membership will not change the functioning of the group (which is as a group of technical advisers) and will not be funded.

Input into other species management at conservancy level through dedicated staff. [For non-threatened species there are not usually management plans; for species without recovery plans there is not usually a national policy process for Ngai Tahu to have input to.]

Native ducks

Statutorily recognise TRONT as adviser to each Fish & Game Council within Ngai Tahu's rohe on matters relating to Ngai Tahu's interest in native ducks when councils make decisions on:

- annual Gazette notices relating to bag limits and season length; and
- management plans.

Minister of Conservation to write to Fish and Game Councils urging them to co-opt Ngai Tahu as a 13th member

Plants

- Ngai Tahu membership of recovery groups for plant species which have recovery groups on same basis as described above for wildlife;
- Protocols relating to cultural materials (refer to protocols).

Other

Amend the Wildlife Act to clarify that specimens of wildlife obtained before 1954 (including bones, skins feathers, egg shells of animals) do not require a permit and thus ownership is with the people who hold them.

Department of Conservation Protocols

Crown proposal

Protocols will be developed on the following policy issues:

- cultural materials;
- freshwater fisheries;
- culling of species of interest to Ngai Tahu;
- historic places;
- RMA involvement; and
- input into site management

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High Country Stations

Crown proposal

Transfer title to Te Runanga of the pink areas of the map supplied by the Crown. Te Runanga will immediately gift these areas to the nation in recognition of their conservation values.

Transfer title to Ngai Tahu in the farmable parts of the properties, subject to a number of covenants to safeguard public and conservation interests. Major covenants are:

Caples valley

- Valley will be fenced to confine stock to southern half of freehold valley, and set limit on stock units at current level to protect beech forest margin.
- "Wander at will" public access to the valley for tramping, hunting and fishing. Ngai Tahu permission required if hunters wish to bring dogs and parties will address safety issues.

Greenstone valley

- Greenstone valley phased retirement from cattle grazing over eight years.
- "Wander at will" public access to the valley for tramping, hunting and fishing. Ngai Tahu permission required if hunters wish to bring dogs and parties will address safety issues.
- Constraints on further tourist development in Greenstone valley to ensure that it is comparable with landscape and wilderness character. Development requiring a resource consent under the Resource Management Act is also to be approved by the Minister for the Environment.

Minor covenants are:

- Complete a boundary adjustment between Routeburn Station and Mt Aspiring National Park to add farmland to the station and exclude cattle from the Sylvan lake area of the Park.
- Protect Hillocks Kame field from disturbance.
- Protect remaining patches of beech forest above 5 ha.
- Provide for public access on foot over the freehold on the existing route (Scott Creek track) into Scott's Basin. (Permission will need to be sought to take guns and dogs).
- Implement a land exchange along the road between Kinloch and Greenstone roadend.
- Provide public access through a round trip walking track to Lake Rere.

Transfer title to Ngai Tahu in the non-farmable parts of the properties, subject to leaseback to Minister of Conservation for management and control as if conservation land in perpetuity, for peppercorn rent:

- Ngai Tahu retain the right to veto any commercial activity on the land.
- DoC develop a special consultation regime to recognise Ngai Tahu's ownership interest. This will be recognised in the DoC protocol.

Public Access

All public access must be free of charge.

Grazing Licence

The Crown proposes that the Deed will provide for the Mararoa Valley and Home Hill area of the Caples to be licensed for a term of 9 years by the Crown to Ngai Tahu for a peppercorn rental to allow Ngai Tahu to run stock in those areas. There would be tenure reviews for these areas to assess the ecological sustainability of the stocking levels every three years. The review process will be an open process (allowing Ngai Tahu, DOC and the Commissioner of Crown Lands to participate) with the final decision being made by the Minister of Conservation. Ngai Tahu would be required to ensure that stocking levels are no greater than those established by the most recent review as being sustainable, and the licence could be terminated in respect of any area before the end of the nine year term at 6 months' notice if, after a review, the Minister determines that stocking of that area is no longer ecologically sustainable. At the end of the 9 year term, the parties, without commitment, will review the position.

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DESCRIPTION OF GENERIC INSTRUMENTS

The instruments have been selected or designed to achieve five principal objectives:

- recognition of mana;
- providing for the exercise of customary fishing rights;
- management input;
- vesting; and
- providing an interest in the land.

MANA RECOGNITION

- **Acknowledgment of mana of site:** This includes name changes and the erection of signs, interpretation markers etc.

- *This is an existing concept*
- *It requires no legislation.*
- *This instrument would be available on an ongoing basis for every site. Only matters of particular importance are mentioned in the annexes.*

- **Deed of recognition:** A deed of recognition provides government recognition of mana and tangata whenua status with detail on the specific circumstances for each site, including the history of the ownership of the site, the grievance and its resolution, and future involvement of Ngai Tahu with the site.

- *This is an existing concept, which has been used for Takapourewa.*
- *It requires no legislation.*
- *It is very similar to the statutory acknowledgment instrument, but is presented in a deed.*

- **Statutory Acknowledgment**

There are two elements to the Statutory Acknowledgment.

1. Special relationship
Legislation will contain a section describing the essence of the relationship of Ngai Tahu to the specified area.

2. Standing

The provision of the Statutory Acknowledgment is intended to ensure that Ngai Tahu, as a person who has an interest "greater than the public generally", has standing to challenge applications under the RMA within the areas to which the Statutory Acknowledgment applies. This standing will also apply to applications made by the Crown under the RMA to the extent that the Crown is bound by the Act.

Settlement legislation will also provide that where a Statutory Acknowledgment applies to a particular place, Te Runanga o Ngai Tahu will be a person "directly affected" for the purposes of s.20(1) of the Historic Places Act 1993.

Note that provisions for standing are not appropriate under the Conservation Act or related Acts, since they relate to public lands or resources for which a public process is already provided.

- *This is a new concept.*
- *It would require legislation, but this could be the settlement legislation.*
- *It is an alternative to a deed of recognition and a more public way of achieving the objective of a deed of recognition.*

- **Transfer title with control and management vested in Minister:** The Reserves Act provides for private land to be managed by DoC as a reserve, but this arrangement can be revoked at the discretion of the Minister and the landowner. Crown is considering providing for a limited number of sites to be transferred to Ngai Tahu on the condition that the land is managed and controlled by the Minister of Conservation in perpetuity as a reserve. A memorial would be entered on the title deeming the land to be a reserve vested in and managed by the Minister of Conservation. The condition could be varied only upon agreement of the Minister of Conservation.

- *This is a new concept which is not fully developed.*
- *It is proposed to apply this concept only to small and discrete sites.*
- *It has similarity to both leasehold in perpetuity (without rental), and to statutory acknowledgment.*
- *It would require legislation.*

- **"Topuni" special area or reserve:** This entails the creation of a separate statutory "overlay" classification over land administered under the Conservation, National Parks or Reserves Acts. The status will be created by the settlement legislation for named sites.

The creation of a topuni special area or reserve would acknowledge the cultural, spiritual, historic or traditional values of the site. These special values will be outlined in the legislation which creates the topuni special

area or reserve on the basis of Ngai Tahu advice. The special status does not override the existing protection or classification of the land, but:

- the topuni would require Ngai Tahu and the administering body of the site (generally the Department of Conservation) to agree on what actions by the administering body would diminish or harm those values. This agreement would have to be reached on a site by site basis;
- the management of the topuni area, including the content of any CMS or CMP will take into account the values of the topuni area; and
- the administering body would have a duty to determine on the advice of Ngai Tahu what behaviours are appropriate and inappropriate on the site and how to publicise those. Where necessary, the planning process (through the CMS or CMP process) could recommend the enforcement of these through the promulgation of bylaws or regulations.

For most areas for which topuni are proposed, TRONT are also to be appointed as a statutory adviser.

- *This is a new concept and for the present, is being limited to the Ngai Tahu settlement legislation.*

MANAGEMENT INPUT

- **Statutory Advisor:** This involves Te Runanga o Ngai Tahu being appointed advisor to the Minister of Conservation in relation to specific sites.
 - It is a 'backstop' position which gives the right to advise the Minister when Minister considers CMS's and CMP's as they relate to specific sites.
 - The Minister is required to "recognise and take into account" advice received from Te Runanga o Ngai Tahu but no greater obligation imposed.
 - Other input into management is available through other instruments, for example, "Topuni" special area or reserve and the special protocol relationship.

- *This is a new concept.*
- *It would require amendment to the Reserves and Conservation Acts.*

- **Other mechanisms for management input:**

- It is envisaged that the Department of Conservation protocols may provide a generic process for establishing protocols for involving Ngai Tahu in management. The MoU might also specifically mention some particularly important sites.

- *This is a new concept.*
- *It requires no legislation.*

- The mahinga kai proposals include dedicated Ngai Tahu seats on conservation boards.
- There are existing statutory mechanisms for involving iwi in decisions on management.

VESTING

- **Vest reserve:** The Reserves Act provides that a reserve (e.g. historic reserve, local purpose reserve) can be controlled and managed by an administering body (e.g. Ngai Tahu) without title being vested in the body. If the administering body does not manage the area in accordance with the Reserves Acts the Crown is able to resume its interest. (The Crown has never exercised its resumption.)

- *This is an existing concept.*

INTEREST IN LAND

- **Fee simple:** Fee simple estate could be provided to Ngai Tahu, either with or without covenants and easements to protect access, conservation values and the like.

- *This is an existing concept.*
- *In respect of existing reserves, this requires revocation of reserve status (section 24) or overriding legislation to avoid the public consultation process set out in the Reserves Act.*

ENTITLEMENTS FOR CUSTOMARY FRESHWATER FISHING

There are two aspects to the Fisheries entitlements.

Customary fishing entitlements

This is designed to respond to grievances arising within ancillary claims relating to the loss or non-allocation of "Fenton Reserves" which provided areas where Ngai Tahu were able to exercise their customary fishing rights. The key elements are:

- It would provide a renewable entitlement to temporarily occupy exclusively a portion of lake or riverbed up to 100 metres in length, for the purpose of harvesting (on a non-commercial basis) customary fish species and gathering other natural resources.

- The drafting would ensure that no authority is provided by the easement to gather natural resources or to fish.
- The entitlement would be granted for up to 210 days a year, to be taken from between mid-August and the end of April.
- A number of constraints would apply:
 - it would not exclude public access along the waterway;
 - an entitlement would not be granted in respect of National Park land, esplanade reserves, marginal strips and scientific and nature reserves;
 - it would not be inconsistent with existing land use practices and patterns;
- The entitlement would be subject to all legislation, bylaws and regulations, and land and water management practices (weed & pest control; river control).
- Entitlements would be issued to persons entitled or their agreed representative body/ies in respect of the 5 ancillary sites which would be identified in the deed.
- If the Crown alienated the lake or riverbed or the area was lost due to moving rivers, etc., the Crown would take reasonable steps to provide another suitable site.
- Entitlements would be administered jointly by Minister of Maori Affairs and the landholding Minister (probably Minister of Conservation or Lands).
- The landholding Minister would have the ability to issue entitlements on a five year basis, subject to holders complying with conditions of use.

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| <ul style="list-style-type: none"> • <i>This is a new concept.</i> • <i>It is designed to provide partial redress for breaches in relation to "Fenton Reserves".</i> |
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Campsite Entitlements

This is designed to provide for Ngai Tahu's "nohoanga" ambitions (i.e., to exclusively camp for limited periods for the purpose of customary fishing). The key elements are:

- It would provide a renewable entitlement to occupy temporarily specific categories of Crown land adjacent to waterways (but set back from the marginal strip) for the purpose of harvesting (on a non-commercial basis) customary fisheries and gathering other natural resources.

- The drafting would ensure that no authority is provided by the entitlement to gather natural resources or to fish.
- Up to two entitlements of up to one hectare each would be issued for each catchment; these will be close to fishing areas and suitable for camping.
- For mahinga kai sites the entitlement would be granted to TRONT which would, in turn, regulate their use by iwi members.
- The entitlement would be granted for up to 210 days a year, to be taken from between mid-August and the end of April.
- A number of constraints would apply:
 - it would not exclude public access to water body along waterfront;
 - a licence would be granted only on Crown land and not in respect of National Park land, esplanade reserves, marginal strips and scientific and nature reserves;
 - it would not be allowed to interfere with existing land use practices and patterns;
- The entitlement would be subject to all legislation, bylaws and regulations, and land and water management practices (weed & pest control; river control).
- In respect of 5 ancillary claim sites **only**, if the Crown sold the land or the area was lost due to moving rivers, etc., the Crown would take reasonable steps to provide another suitable piece of land.
- Ancillary claim sites would be identified in the deed, but the mahinga kai sites could be identified post deed.
- Entitlements would be administered jointly by Minister of Maori Affairs and landholding Minister (probably Minister of Conservation or Lands).
- The Minister would have the ability to issue entitlements on a five year basis, subject to holders complying with conditions of use.

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| <ul style="list-style-type: none"> • <i>This is a new concept.</i> • <i>In respect of ancillary claims, it is designed to provide partial redress for breaches in relation to "Fenton Reserves".</i> |
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OTHER

- **Closure:** Close an area from public access. This may be appropriate for important burial sites, for instance.

- *This would extend the use of an existing concept to new areas.*
- *It requires legislation for areas that are not National Parks but otherwise can be accommodated within the existing legislation.*

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SCHEDULE 2

**ANCILLARY CLAIMS
CROWN PROPOSAL**

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KAIKOURA: CLAIMS 1, 2, 101

SITE	CROWN PROPOSAL
White Bluffs - 45ha Crown land	- freehold title to Te Runanga o Ngai Tahu (TRONT) of 10ha on and south of the boundary of the rohe, as set out in s5 of Te Runanga o Ngai Tahu Act 1996 pursuant to decision of Maori Appellate Court 4SI ACM B 672 15 Nov 1990; subject to covenants to protect landscape values and rare plants if necessary; - Deed to state that this is landlocked land and Ngai Tahu seek no provision of access; - remainder of area to be designated scenic reserve, owned and managed by DOC
Tapuae o Uenuku	- Statutory advisor role for TRONT or its delegates - Topuni reserve site
Mt Uwerau Nature Reserve	special mention in the DOC Protocols on Issues of Concern to Ngai Tahu
Tuki Tuki Iwi	- lift historic reserve designation and vest fee simple in TRONT - change to name of trig point to be achieved by letter to Surveyor General from Ngai Tahu
Waipapa Point	vest sections Pt 1B of 2, 1C of 2, 33 and 5 as scenic reserve in TRONT
Map 7: sec. 1, SO 6917	transfer freehold title to ancillary claimants
Map 7: sec 1, SO 6949	transfer freehold title to ancillary claimants
Lots 4 and 5, DP6280	transfer freehold title to TRONT, subject to existing grazing licences
Map 8 - Pt sec 275	transfer freehold title to TRONT with: - right of way for public access over existing walkway (DOC would be responsible for maintenance) - covenant to protect open space values
Map 10 - Kahutara - section 36, part section 37	vest in TRONT as recreation reserve those parts which are not vested in Kaikoura District Council
Map 10 - Kahutara - sections 38, 47, pt 39, 44	vest in TRONT as recreation reserve
Omihi/Goose Bay: sections 9, 14, 15, 10	vest in TRONT as scenic reserve
Omihi/Goose Bay - sections 2, 10, 1, 18	- lift scenic reserve designation and replace with historic reserve designation over sections 1, 10, 18; management to remain with DOC; - section 2 to remain scenic reserve; management to remain with DOC
Map 12 - mouth of Oaro - sections 20, 21, 22, 23, 24	vest in TRONT as recreation reserve, subject to grazing licences

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SITE	CROWN PROPOSAL
Takahanga Pa: pt section 411	legislate for this to be declared part of Takahanga Maori reservation
Takahanga Pa: section 473	Deed to record current status as Maori reservation, and that Crown will not seek to alter this.

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FISHERIES CLAIMS

CLAIM	CROWN PROPOSAL
claims 3 - 6, 10	- entitlement as described in mahinga-kai document, that provides for nominated individuals exclusively camp on identified areas set back from the marginal strip; - associated with customary fishing entitlement described below
claims 3 - 6, 10	- exclusive entitlement for nominated individuals to occupy a portion of river bed for fishing traditional species, as described in mahinga-kai document; - associated with the entitlement described above; - will apply to five ancillary claims only.
claim 8: Ahuriri	Ngai Tahu to nominate one block for this claim out of a number of blocks to be included in Te Waihora proposal
claim 11: Wainono	1.6ha block adjoining Wainao River - RES 26788, SO 4399 - freehold title transferred to ancillary claimants
claim 14: Lake Hawea	3 pieces of land to total area of approx. 25 - 30ha, as indicated on map of Lake Hawea tabled in ancillary claims meeting
claim 53: Tatawai	- purchase of 100a of Sinclair Wetlands on a willing seller/willing buyer basis, subject to: - before proceeding the Crown seeks written assurance that Ngai Tahu will take this land in the settlement
claim 55: Waikouaiti	recommendation to Minister of Conservation that under section 50 of the Reserves Act the beneficial owners of the Matainoka 1N reserve be entitled to a sustainable take of certain species

CANTERBURY CLAIMS

CLAIM	CROWN PROPOSAL
claim 13: Ellesmere Landing	• revoke present reserve classification and transfer fee simple to TRONT, provided following conditions are met: • interests of bach-holders protected • road to reserve is surveyed and designated a legal road to protect public access • paper roads adjacent on MR806 are closed and the costs of such disposal used to cover the expenses of road legalisation on R806 • interests of owners of dwellings on R806 vis a vis water supply to those dwellings are safeguarded.
claim 14: Hawea/Wanaka (SILNA)	• start the Maori Land Court process of identifying the beneficial owners; • offer to vest in them the remaining unallocated Crown land which exists in the former allocation; • offer to vest in the same people other unallocated Crown land adjacent to the former allocation to make up the area of the allocation. • note that this redress will not be offset against the Ngai Tahu settlement quantum

ARAHURA CLAIMS

CLAIM	CROWN PROPOSAL
claim 16: South Westland	10ha at Paringa River subject to covenants to protect landscape values
claim 16: South Westland	3 blocks at mouth of Arawhata, amounting to 14ha, in freehold title
claim 16: South Westland	5ha block on Moeraki river, seaward of Lake Moeraki.
claim 17: Arawhata MR1	20ha to be transferred freehold
claim 18: Bruce Bay	freehold title to land currently in Transit New Zealand ownership, subject to existing encroachment agreement
claim 18: Bruce Bay	freehold title to other land managed by Transit NZ; subject to public access easements to river, the state highway, and esplanade reserve
claim 18: Bruce Bay	freehold title to old aerodrome site, subject to grazing licence
claim 18: Bruce Bay: Community Hall	Ancillary claimants to choose either: 1. fee simple transfer subject to the granting of a lease to local hall committee for the use of the hall (note terms of the lease, esp rental, should not be more onerous than already exists), or 2. divide the land into portions use for hall purposes and not used for hall purposes. The portion of the land not for hall purposes is available fee simple without encumbrances, and the portion of the land for hall purposes would remain encumbered by local purpose hall reserve status.
Mawhera: Hokitika	freehold title to RS 5523 (SO 9683) Gaz 1993 p1031
Mawhera: Rapahoe	freehold title to Sec 1, 2 - SO 12138 Block I Cobden
Mawhera: Mawhera Chambers	freehold title to Mawhera Chambers
Mawhera: 57a loggable forest	Ngai Tahu and Timberlands West Coast to identify a suitable area of Timberlands West Coast forest
claim 33: Whakapoai	- initiate the Maori Land Court process to identify the beneficial owners; - when they have been found, either: (a) vest the SILNA land in them under s134 of TTWMA, subject to an immediate leaseback to the Minister of Conservation; and meet with the owners to negotiate any compensation; or (b) negotiate to vest alternative land in them, if some is available

OTAKOU CLAIMS

CLAIM	CROWN PROPOSAL
claim 50: Karitane	- Minister in Charge of Treaty of Waitangi Negotiations to write to Dunedin City Council to encourage them to attempt to reach an amicable agreement between the parties - Deed to note that s 131 of Te Ture Whenua Maori Act would be available to the owners if an agreement cannot be reached.
claim 51: Taiaroa Heads	The Crown will undertake: - To vest under the Reserves Act 1977 such of Lot 33 as is situated on land administered by DOC, in the descendants of Karetai; and - To similarly vest the remainder of the land administered by DOC in Te Runanga Otakou; and - To endeavour to obtain the agreement of the Dunedin City Council (DCC) to a similar course of action, being the distribution of vesting recommended by the Waitangi Tribunal, with respect to reserve land administered by it at Taiaroa Head: ON CONDITIONS TO GIVE EFFECT TO THE FOLLOWING PRINCIPLES: - Vesting in one claimant does not preclude the involvement of the other claimant in the area. - The reserves at Taiaroa Head should be managed in a manner that is not inconsistent with the management objectives set out in the 1992 draft composite management plan. - DOC and the DCC will continue to be the management agencies for the vested reserves. - Oversight over reserve administration will be carried out by a body on which DOC, DCC, and Te Runanga Otakou are evenly represented, and there is also representation of the descendants of Karetai. - The activities of the Otago Peninsula Trust are permitted to continue
claim 52: Harrington Point	offer-back surplus public works land, at price set by LINZ

MURIHIKU CLAIMS

CLAIM	CROWN PROPOSAL
claim 56: Maranuku - Wilsher Bay scenic reserve	transfer title to reserve to ancillary claimants with condition that management and control remain with the Crown, the land to be deemed a reserve for all purposes including rating
claim 57: Maranuku	transfer to ancillary claimants of freehold title to recreation reserve areas north of Karoro Creek
claim 61: Waimumu (Hedgehope)	- offer-back lots 1,3 and 4 to former owners - transfer title to lot 2 to ancillary claimants, subject to a lease back to Broadcast Communications Limited in accordance with the format and process agreed to in the Assets working group
claim 75: Howell's Point reserve	Crown unable to provide redress as this reserve is vested in SDC under s26A of the Reserves Act. Crown will refer this matter to the Southland District Council - possibly via letter from Minister in Charge of Treaty of Waitangi Negotiations
claim 82: Ouetota	transfer to TRONT freehold title to Matariki Island
claim 92: Port Adventure/Toi Toi	- initiate the Maori Land Court process to identify the beneficial owners; - when they have been found, the Crown to meet with the owners and either (a) make the allocation on the original boundaries or (b) negotiate to alter the boundaries in order to raise title. - any vesting will be at nil cost to Ngai Tahu settlement quantum