



CABINET

CAB (96) M 38/16

This paper is the property of the New Zealand Government. As it includes material for Cabinet or Cabinet Committee purposes it must be handled with particular care, and in accordance with any security classification or other endorsement assigned to it. The information in it may be released only by persons having proper authority to do so, and strictly in terms of that authority.

Minister in Charge of Treaty of
Waitangi Negotiations

Copies to:

Prime Minister
Deputy Prime Minister
Minister of Finance
Attorney-General
Minister of Fisheries
Minister for the Environment
Minister of Conservation
Minister of Lands
Minister of Maori Affairs
Chief Parliamentary Counsel
Secretary of the Cabinet
Monitoring System

ADDITIONAL ITEM: NGAI TAHU: HEADS OF AGREEMENT

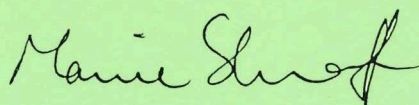
Reference: CAB (96) M 37/15; Paper, "Ngai Tahu: Heads of Agreement" tabled by the Minister in Charge of Treaty of Waitangi Negotiations

At the meeting on 7 October 1996 Cabinet:

- a noted that on 30 September 1996 it had authorised the Minister in Charge of Treaty of Waitangi Negotiations, acting in consultation with the Prime Minister, Deputy Prime Minister and Minister of Finance, to negotiate and sign a Heads of Agreement based on the Crown's proposal for a full and final and comprehensive settlement of Ngai Tahu's historical claims, on the basis referred to in CAB (96) M 37/15;
- b noted that in the course of the negotiations conducted in the week beginning 30 September 1996 both the Crown and Ngai Tahu had modified their approach from that noted by Cabinet on 30 September 1996;
- c noted that the major additions to the Crown proposal were:
 - interest at 5 year government stock rate on the outstanding balance of the redress quantum (\$160 million) between Heads of Agreement and settlement legislation being passed;

- Ngai Tahu to have a right of refusal over the Crown's interest in Christchurch International Airport second to the Christchurch City Council's existing pre-emptive right;
 - an increase from \$10 to \$30 million of the amount of its own money that Ngai Tahu can spend in the Deferred Selection Process;
 - increase the Ngai Tahu landbank from \$39.375 million cap to \$75 million as soon as possible. All properties placed in the landbank from the date the cap is increased must be taken by Ngai Tahu under the Deferred Selection Process;
 - the Crown to gift to Ngai Tahu redress for the Crown Titi Islands, Rarotoka, Arahura valley, mahinga kai and beneficial ancillary claims;
 - Ngai Tahu to have one seat dedicated on the New Zealand Conservation Authority;
 - instead of destocking the Mararoa Valley and Home Hill over six years, Ngai Tahu will have a grazing licence for no longer than 9 years, which will be reviewed three yearly by the Department of Conservation, Commissioner for Crown Lands and Ngai Tahu with provision for public input;
- d noted that the key issues which Ngai Tahu took off the table were:
- right of first refusal to cover State-Owned Enterprises surplus lands and any concessions offered to the public by the Department of Conservation;
 - right of first refusal methodology to be based on the section 40 offerback process in the Public Works Act 1981 (as opposed to the right of first refusal in the Waikato raupatu claim settlement);
 - Deferred Selection Process to include Landcorp financial instruments;
 - title to Aoraki/Mt Cook with leaseback to the Crown;
 - title to Greenpark sands part of Lake Ellesmere;
- e noted that on 5 October 1996 the Minister in Charge of Treaty of Waitangi Negotiations, acting in consultation with the Prime Minister and Minister of Finance, signed a Heads of Agreement with Ngai Tahu on behalf of the Crown, based on the decisions referred to in CAB (96) M 37/15, and in paragraphs (c) and (d) above;
- f endorsed the Heads of Agreement signed by Ngai Tahu and by the Minister in Charge of Treaty of Waitangi Negotiations;
- g noted that the Heads of Agreement:
- i is not legally binding but is an agreement-in-principle which records the terms of a proposed settlement with Ngai Tahu;
 - ii contains commitments from both parties to negotiate in good faith to settle the terms of a Deed of Settlement;
 - iii is subject to confirmation by the incoming Government;

- h agreed to lift the Ngai Tahu landbank cap from \$39.375 million to \$75 million, from within existing appropriations;
- i agreed that Ngai Tahu must take all properties placed in the landbank from the date the cap is increased under the Deferred Selection Process;
- j noted that the Office of Treaty Settlements will continue to monitor its ability to meet the Crown's commitments in respect of landbanking as a result of the increase to Ngai Tahu's landbank cap;
- k noted that the Heads of Agreement contains a commitment from the current Government to invite the incoming government to confirm the Heads of Agreement.



Secretary of the Cabinet

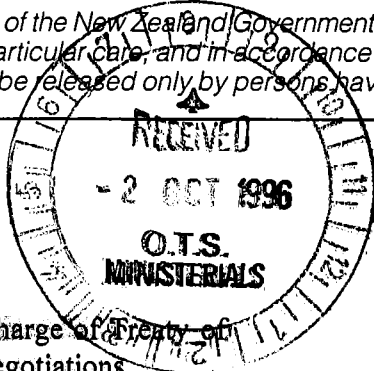
Released under the Official Information Act 1982



CABINET

CAB (96) M 37/14

This paper is the property of the New Zealand Government. As it includes material for Cabinet or Cabinet Committee purposes it must be handled with particular care, and in accordance with any security classification or other endorsement assigned to it. The information in it may be released only by persons having proper authority to do so, and strictly in terms of that authority.



Minister in Charge of Treaty of
Waitangi Negotiations

Copies to:

Prime Minister
Minister of Finance
Attorney-General
Minister of Justice
Minister of Maori Affairs

B Clark
H Tekohu
P Denson
M Thompson

**THE FULL AND FINAL SETTLEMENT OF HISTORICAL TREATY CLAIMS AND
ABORIGINAL TITLE: NGAI TAHU AND WHAKATOHEA CLAIMS**

Reference: CAB (96) 820

At the meeting on 1 October 1996 Cabinet:

- a noted the contents of the submission under CAB (96) 820 regarding the settlement of historical claims and the treatment of aboriginal title;
- b noted the further oral report by the Attorney-General and the Solicitor-General on the settlement of historical claims and the treatment of aboriginal title;
- c noted that:
 - i the Crown proposal to Ngai Tahu is for a full and final settlement of all Ngai Tahu's historical claims relating to land, water, minerals and other natural resources in the Ngai Tahu takiwa and coastal waters, whether arising under the Treaty of Waitangi, aboriginal title, customary law, statute or otherwise [CAB (96) M 37/15 refers]; and
 - ii the settlement legislation would contain a privative clause which would prevent the court or the Waitangi Tribunal from enquiring into any of the historical claims as defined;
- d noted that the approach set out in paragraph (c) above is consistent with the approach taken on Whakatohea [CAB (96) M 37/22 refers];

e " agreed that the approach set out in paragraphs (c) and (d) above be approved.

A handwritten signature in black ink, appearing to read "Mavis Slade". The signature is fluid and cursive, with a large, stylized initial 'M'.

Secretary of the Cabinet

Released under the Official Information Act 1982

COMMERCIAL IN CONFIDENCE
 Personal to: *Minister in Charge of
 Treaty of Waitangi Negotiations*
 Document 21



CABINET

CAB (96) M 37/15

This paper is the property of the New Zealand Government. As it includes material for Cabinet or Cabinet Committee purposes it must be handled with particular care, and in accordance with any security classification or other endorsement assigned to it. The information in it may be released only by persons having proper authority to do so, and strictly in terms of that authority.

~~Minister in Charge of Treaty of
 Waitangi Negotiations~~

Copies to:

Prime Minister
 Deputy Prime Minister
 Minister of Finance
 Attorney-General
 Minister of Fisheries
 Minister for the Environment
 Minister of Conservation
 Minister of Lands
 Minister of Maori Affairs
 Secretary of the Cabinet
 Monitoring System

NGAI TAHU (WAI 27): HEADS OF AGREEMENT

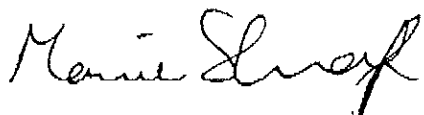
Reference: CAB (96) 818; CAB (96) M 37/14

At the meeting on ^{30 Sept} ~~1 October~~ 1996 Cabinet:

- a noted that, following a number of discussions at Cabinet, the Minister in Charge of Treaty of Waitangi Negotiations has made a proposal to Ngai Tahu, a copy of which is attached to the submission under CAB (96) 818, for a full, final and comprehensive settlement of its historical claims;
- b noted that if Ngai Tahu accepts the proposal referred to in paragraph (a) above, the parties would sign a non-binding Heads of Agreement;
- c noted that:
 - i the Crown proposal to Ngai Tahu is for a full and final settlement of all Ngai Tahu's historical claims relating to land, water, minerals and other natural resources in the Ngai Tahu takiwa and coastal waters, whether arising under the Treaty of Waitangi, aboriginal title, customary law, statute or otherwise; and
 - ii the settlement legislation would contain a privative clause which would prevent the court or the Waitangi Tribunal from enquiring into any of the historical claims as defined;

[CAB (96) M 37/14 also refers]

- d authorised the Minister in Charge of Treaty of Waitangi Negotiations to sign a letter to Sir Tipene O'Regan, Ngai Tahu Principal Negotiator, clarifying the Crown's position on the parameters of the proposed settlement, and in relation to aboriginal rights;
- e authorised the Minister in Charge of Treaty of Waitangi Negotiations, acting in consultation with the Prime Minister, Deputy Prime Minister and the Minister of Finance, to negotiate and sign a Heads of Agreement based on the Crown's proposal referred to in paragraph (a) above subject to the following amendments:
- i Place Names, p. 23
delete: Maori names to come first
substitute: existing names to come first, with traditional Maori names alongside
 - ii Arahura Claims, p. 48
Mawhera: 57a loggable forest: Ngai Tahu and Timberlands West coast to identify a suitable area of Timberlands West Coast *exotic* forest;
- f noted that if agreement is reached with Ngai Tahu the Deputy Prime Minister would, if possible, arrange for caucus members to be briefed before an announcement is made;
- g agreed that if a Heads of Agreement is concluded, Cabinet would invite the incoming Government to confirm the Heads of Agreement, work with Ngai Tahu towards a signed and ratified Deed of Settlement, and introduce legislation to give effect to the Deed of Settlement.



Secretary of the Cabinet



CABINET

CAB (96) 820

Document 22

27 September 1996

Copy No: 24

This paper is the property of the New Zealand Government. As it includes material for Cabinet or Cabinet Committee purposes it must be handled with particular care, and in accordance with any security classification or other endorsement assigned to it. The information in it may be released only by persons having proper authority to do so, and strictly in terms of that authority.

THE FULL AND FINAL SETTLEMENT OF HISTORICAL TREATY CLAIMS AND ABORIGINAL TITLE

LATE PAPER: The attached paper was received after the Cabinet deadline

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

- a note the contents of the submission under CAB (96) 820 regarding the settlement of historical claims and the treatment of aboriginal title;
- b note that:
 - i the Crown proposal to Ngai Tahu is for a full and final settlement of all Ngai Tahu's historical claims relating to land, water, minerals and other natural resources in the Ngai Tahu takiwa and coastal waters, whether arising under the Treaty of Waitangi, aboriginal title, customary law, statute or otherwise; and
 - ii that the settlement legislation would contain a privative clause which would prevent the court or the Waitangi Tribunal from enquiring into any of the historical claims as defined;
- c note that the approach set out in paragraph (b) above is consistent with the approach taken on Whakatohea [CAB (96) M 35/14 refers];
- d agree that the approach set out in paragraph (b) above be the approach taken in respect of the settlement of historical Treaty claims.

(Signed) Sarah Egan
for Secretary of the Cabinet

NOTE FOR MINISTERS

Purpose	The paper informs Ministers of issues arising from the settlement of historical claims against the Crown and the treatment of aboriginal title.
----------------	---



Office of the
**Minister in Charge of Treaty of Waitangi
Negotiations**

Te Tari o Te
**Minita Nōna te Mana Whakarite Take e pā ana ki
Te Tiriti o Waitangi**

27 September 1996

Marie Shroff
Secretary to the Cabinet
PARLIAMENT BUILDINGS

Dear Ms Shroff

The following papers need to be considered by Cabinet at its meeting on 30 September 1996:

- Ngai Tahu (Wai 27): Heads of Agreement
- Whakatohea (Wai 87): Deed of Settlement
- Generic claim instruments: Deeds of Recognition and Statutory Acknowledgement
- The full and final settlement of historical Treaty claims and aboriginal title

The papers ask Cabinet to make several key decisions relating to the Ngai Tahu and Whakatohea claims. Previously Cabinet has agreed to attempt to achieve settlement of these claims before the upcoming general election. I apologise for the lateness of the papers. Unfortunately as they relate to ongoing negotiations it has not been possible to meet the deadline for the submission of papers to Cabinet.

Yours sincerely

for Hon Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

Chair
Cabinet

THE FULL AND FINAL SETTLEMENT OF HISTORICAL TREATY CLAIMS AND ABORIGINAL TITLE

Purpose

1. This paper informs Ministers of issues arising from the settlement of historical claims against the Crown.

Background

2. Both the Deed of Agreement for Whakatohea and the Crown proposal to settle all of Ngai Tahu's historical claims contain the Crown's offer, and position in respect of the treatment of aboriginal title.
3. These two settlements raise a generic issue regarding the relationship between the settlement of claims for historical breaches of the Treaty and the potential existence of separate aboriginal rights.

Comment

4. Common law may recognise "aboriginal" or "customary" rights of Maori. What they actually are is often obscure and is the subject of jurisprudential development in Canada, Australia and New Zealand. Article II of the Treaty of Waitangi (the possession of fisheries, land etc.) can be interpreted as a manifestation of some of them but certainly not all of them. These aboriginal rights can be extinguished by legislation provided the intention to do so is clear. Some authorities suggest that compensation must be provided unless expressly excluded.
5. The Court of Appeal in 1994 on Ika Whenua noted that:
 - a) aboriginal title can only be extinguished to the Crown;
 - b) with the consent of Maori;
 - c) in strict compliance with relevant legislation; and
 - d) with proper compensation.
6. Historical claims are based on breaches of the Treaty and other breaches by the Crown. Claimants assert that:
 - a) the Crown failed to have due regard to their rights, and as a result;
 - b) Maori lost land and resources wrongfully.

7. The Crown's objective in settling historical Treaty claims is to achieve full and final settlements. To attain this objective, Deeds of Settlement need to be comprehensive, specific and clear as to what the Crown is settling and the quid pro quo secured from claimants.
8. The aim of the Crown is to settle all of a claimant's historical claims relating to water, minerals and other natural resources in the claimants' rohe and coastal waters, whether arising under the Treaty, aboriginal title, customary law, statute or otherwise. For both Whakatohea and Ngai Tahu, it is proposed to define historical claims as, inter alia, all claims relating to acts or omissions of the Crown or any legislation up until 21 September 1992 (the Sealords Settlement), whether notified to the Crown or not. Claims relating to culture and language would remain outside of the settlement. Defining claims in this way prevents "double dipping" by claimants, to come back and claim against a historical breach on new grounds.
9. For both Whakatohea and Ngai Tahu, the settlement legislation would contain a privative clause which would prevent the courts or the Waitangi Tribunal from enquiring into any of the historical claims as defined.
10. In both cases, 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 the claimants in terms of the Treaty of Waitangi or undermine any rights under the Treaty of Waitangi, including rangatiratanga rights.

Aboriginal Rights

11. A significant issue that has emerged during negotiations for both Whakatohea and Ngai Tahu is whether or not the settlement legislation should preclude claimants from asserting property rights based on aboriginal title to land and natural resources in the future.
12. One option facing the Crown would be to require an acknowledgment from claimants that the settlement package both settles the historical claims however they may have arisen, and substitutes for aboriginal rights. The substitution of aboriginal rights would mean that no court or tribunal could enforce them or enquire into them. The effect of this would be that aboriginal rights would be extinguished and that no claims could be brought before the courts based on these rights.
13. The risks to the Crown from not extinguishing aboriginal rights are:
 - uncertainty (as is now the case) of the Courts recognising aboriginal title to natural resources;
 - the possibility that the courts would find that failure to recognise aboriginal title is a breach of a fiduciary duty by the Crown for which a remedy could be obtained in the courts;
 - a top-up to settlements through judicial process;
 - costs associated with litigation being brought, even if ultimately unsuccessful.

14. An example of this risk would be that (as is now possible) a decision by the Crown to dam a river, provide a regime allowing for water to be taken out of a river, or allowing pollution of a river, or similar actions could be argued to be contrary to a claimant's aboriginal rights. Crown Law's view is that it is too hard to tell whether such a claim would succeed but the possibility would remain.
15. However, this set of risks needs to be considered against the risks to the Crown of attempting to render aboriginal rights valueless through the Treaty settlement process (in effect extinguishing aboriginal rights). These risks are:
- to go the extra step is to go further than to settle a historical grievance, and "buy" a potential legal right from a particular claimant when the existence and the content of that rights is unknown in law in general, and its effect and value for that claimant and for the Crown is unknown in particular;
 - if the extinguishment of rights to seek redress for future breaches of legal rights comes to be viewed in the future as "unfair" (either because claimants are thought not to understand what the Crown is proposing, or because there is no identifiable "consideration" given by the Crown for these rights) it is possible that the purported extinguishment will be found by a future court to be ineffective;
 - it is not proposed to extinguish Treaty rights to redress for future actions; and to distinguish between Treaty rights and aboriginal title implies that the Crown is more willing to honour the Treaty because it is less legally enforceable. This may be argued to imply a lack of good faith on the Crown's part;
 - if a court finds in favour of an asserted aboriginal right, the effect may be generic therefore possibly undermining the settlement of claims;
 - extinguishment may be interpreted as the Crown acknowledging the existence of aboriginal rights (which then could raise issues as to whether adequate compensation was paid);
 - the extinguishment of aboriginal rights has never been part of the Crown's Treaty settlement proposals. Maori have not been consulted on this issue. It could be argued that the Crown would be required to do so if the Settlement Envelope was to be used to go beyond the settlement of historical claims and to encompass the extinguishment of aboriginal rights.

Overview

16. Essentially the issue comes down to the question of what the Crown is trying to settle through its Treaty settlement process:
- a) historical claims of the Treaty and other legal rights; or
 - b) those historical claims as well as future breaches of aboriginal title rights (though not future Treaty breaches).
17. The broader option (b) has not been the subject of substantive analysis by officials.

18. The risks outlined above are finely balanced between the risks of claimants continuing to assert their aboriginal rights, and the courts recognising those rights (as is the case now), against the claimants not being willing to settle their Treaty claims, and the settlement policy encompassed within the Settlement Envelope being re-opened with Maori to consider the issue of aboriginal rights.
19. The options are to:
- a) expressly extinguish all such aboriginal rights so to avoid uncertainty as to the nature of rights Maori have to resources;
 - b) not expressly extinguish aboriginal rights but not provide any means for claimants to assert such rights i.e. render the aboriginal rights valueless, in order to achieve the above objective;
 - c) retain the status quo in respect of aboriginal title but comprehensively settle historical claims and therefore minimise the ability of aboriginal rights to be asserted in the future.
20. Weighing up these risks requires a political judgement of what constitutes fairness with respect to the Treaty partner. That judgement also involves consideration of what might constitute a durable settlement. The risks associated with extinguishing either explicitly or through taking away the ability of claimants to enforce their aboriginal rights are set out above.
21. Whilst not extinguishing aboriginal rights carries with it risks, these risks can be managed by the comprehensive settlement of historical claims. This would allow the Crown to argue that no such future interest could be claimed in the land and resources which are the subject of a settlement.

Financial Implications

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

Legislative Implications

23. There are no legislative implications arising from this paper.

Consultation

24. Crown Law, Treasury, the Ministry of Justice, Te Puni Kokiri, Department of Prime Minister and Cabinet

Recommendations

25. It is recommended that Cabinet:
- a. note the contents of this paper;
 - b. note that the Crown proposal to Ngai Tahu is for a full and final settlement of all Ngai Tahu's historical claims relating to land, water, minerals and other natural resources in the Ngai Tahu takiwa and coastal waters, whether arising under the Treaty, aboriginal title, customary law, statute or otherwise; and that the settlement legislation would contain a privative clause which would prevent the court or the Waitangi Tribunal from enquiring into any of the historical claims as defined;

- c. note that the approach set out in recommendation b) is consistent with the approach taken on Whakatohea [CAB(96)M35/14 refers];
- d. agree that the approach set out in recommendation b) be the approach taken in respect of the settlement of historical Treaty claims.



for

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

Released under the Official Information Act 1982



CABINET

377/5
COMMERCIAL: IN CONFIDENCE

Personal To: File

Document 23

CAB (96) 818

27 September 1996

Copy No: 24

This paper is the property of the New Zealand Government. As it includes material for Cabinet or Cabinet Committee purposes it must be handled with particular care, and in accordance with any security classification or other endorsement assigned to it. The information in it may be released only by persons having proper authority to do so, and strictly in terms of that authority.

NGAI TAHU (WAI 27): HEADS OF AGREEMENT

LATE PAPER: This paper was received after the Cabinet deadline.

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

- a note that the Minister in Charge of Treaty of Waitangi Negotiations has made a proposal to Ngai Tahu, a copy of which is attached to the submission under CAB (96) 818, for a full, final and comprehensive settlement of its historical claims;
- b note that if Ngai Tahu accepts the proposal referred to in paragraph (a) above, the parties would sign a non-binding Heads of Agreement;
- c authorise the Minister in Charge of Treaty of Waitangi Negotiations, acting in consultation with the Prime Minister and the Minister of Finance, to negotiate and sign a Heads of Agreement based on the Crown's proposal referred to in paragraph (a) above; and
- d agree that if a Heads of Agreement is concluded, Cabinet would invite the incoming Government to confirm the Heads of Agreement, work with Ngai Tahu towards a signed and ratified Deed of Settlement and introduce legislation to give effect to the Deed of Settlement.

(Signed) Sue Mackwell
for Secretary of the Cabinet

NOTE FOR MINISTERS: The contents of the proposal attached to the submission under CAB (96) 818 have been developed in consultation with the Prime Minister, Minister of Finance, Minister of Conservation, Minister for the Environment, Minister of Fisheries and the Minister of Lands. The proposal has not been considered by a Cabinet Committee since committees were discontinued in September 1996. The proposal is summarised in the letter from the Minister in Charge of Treaty of Waitangi Negotiations to Sir Tipene O'Regan on pages 3-10.



Office of the
**Minister in Charge of Treaty of Waitangi
Negotiations**

Te Tari o Te
**Minita Nōna te Mana Whakarite Take e pā ana ki
Te Tiriti o Waitangi**

27 September 1996

Marie Shroff
Secretary to the Cabinet
PARLIAMENT BUILDINGS

Dear Ms Shroff

The following papers need to be considered by Cabinet at its meeting on 30 September 1996:

- Ngai Tahu (Wai 27): Heads of Agreement

Out of scope

Out of scope

The papers ask Cabinet to make several key decisions relating to the Ngai Tahu and
Out of scope Previously, Cabinet has agreed to attempt to achieve settlement of
these claims before the upcoming general election. I apologise for the lateness of the
papers. Unfortunately as they relate to ongoing negotiations it has not been possible to
meet the deadline for the submission of papers to Cabinet.

Yours sincerely

for Hon Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

Chair
Cabinet

Ngai Tahu (Wai 27): Heads of Agreement

Purpose

1. This paper:
 - i. informs Ministers of a settlement proposal which the Minister in Charge of Treaty of Waitangi Negotiations has made to Ngai Tahu
 - ii. asks Ministers to authorise the Minister in Charge of Treaty of Waitangi Negotiations, acting in consultation with the Prime Minister and the Minister of Finance, to negotiate and sign a Heads of Agreement based on the Crown's proposal
 - iii. asks Ministers to agree that if a Heads of Agreement is concluded, Cabinet would invite the incoming Government to confirm the Heads of Agreement, work with Ngai Tahu towards a signed and ratified Deed of Settlement and introduce legislation to give effect to the Deed of Settlement

Background

2. In June 1996 negotiations recommenced between the Crown and Ngai Tahu for a settlement of all of Ngai Tahu's historical claims.
3. On 23 September 1996 the Minister in Charge of Treaty of Waitangi negotiations met with Ngai Tahu Principals. At that meeting the Minister set out the Crown's proposal for a full, final and comprehensive settlement of Ngai Tahu's claims. The contents of the proposal, or elements of it, had been developed in consultation with the Prime Minister, Minister of Finance, Minister of Conservation, Minister for the Environment, Minister of Fisheries and Minister of Lands. Subsequently Ngai Tahu requested that the proposal be set out in writing. The proposal was forwarded to Ngai Tahu in writing on 25 of September (a copy is attached). The Crown asked Ngai Tahu for a response to the proposal by 12 noon 27 September 1996.

Comment

4. If Ngai Tahu accepts the Crown's 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. The Government would invite the incoming Government to confirm the Heads of Agreement, work with Ngai Tahu towards a signed and ratified Deed of Settlement and introduce legislation to give effect to the Deed of Settlement.

Financial Implications

5. A Heads of Agreement if signed would have no direct financial implications. The Office of Treaty Settlements will report back on the financial implications of any proposed settlement before the Crown signs the Deed of Settlement.

Legislative Implications

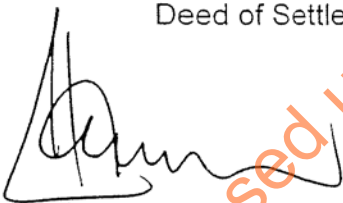
6. A Heads of Agreement if signed would have no legislative implications. A Deed of Settlement would require legislation.

Consultation

7. This submission was been prepared in consultation with the Crown Law Office and Treasury.

Recommendations

8. It is recommended that Cabinet:
 - a. note that the Minister in Charge of Treaty of Waitangi Negotiations has made a proposal to Ngai Tahu for a full, final and comprehensive settlement of its historical claims;
 - b. note that if Ngai Tahu accepts the proposal the parties would sign a non-binding Heads of Agreement;
 - c. authorise the Minister in Charge of Treaty of Waitangi Negotiations, acting in consultation with the Prime Minister and the Minister of Finance, to negotiate and sign a Heads of Agreement based on the Crown's proposal; and
 - d. agree that if a Heads of Agreement is concluded, Cabinet would invite the incoming Government to confirm the Heads of Agreement, work with Ngai Tahu towards a signed and ratified Deed of Settlement and introduce legislation to give effect to the Deed of Settlement.



Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations



Office of the
**Minister in Charge of Treaty of Waitangi
Negotiations**

Te Tari o Te
**Minita Nōna te Mana Whakarite Take e pā ana ki
Te Tiriti o Waitangi**

Sir Tipene O'Regan
Ngai Tahu Principal Negotiator
Te Runanga o Ngai Tahu
PO Box 13-046
CHRISTCHURCH

Dear Sir Tipene

**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 \$160 million would be adjusted to reflect CPI movements between 31 December 1996 and the payment date. The remaining \$10 million was paid as part of an on account settlement agreed between the Crown and Ngai Tahu on 14 June 1996.

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 a 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. This includes 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 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 \$180 million, less the value of all other properties and assets to be transferred to Ngai Tahu under the Deed (i.e. Ngai Tahu may use up to \$10 million of non-settlement funds to purchase properties under the DSP)
- 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.

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. Department of Conservation land swap transactions would not trigger the RFR. 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 Crown 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.

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
- 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.

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.

Rarotoka (Centre Island)

The Deed would provide for Rarotoka to be vested in 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 title to the Crown Titi Islands to be vested in Ngai Tahu in fee simple, 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 vesting of title to this land in 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' dated 25 September 1996. The essential features that the Deed would provide for are:

- the transfer 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 5% of the **coastal space** allocated under coastal tendering for Kaikoura, Banks Peninsula, Fiordland 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 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 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. The Deed would provide redress to settle 33 ancillary claims upheld by the Waitangi Tribunal, and eight 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.

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 Te 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.

Comprehensive Settlement

The settlement would be a full and final settlement of all of Ngai Tahu's historical claims (whether tribal or ancillary) relating to land, water, minerals and other natural resources in the Ngai Tahu takiwa and coastal waters - and whether arising under the Treaty, aboriginal title, customary law, statute or otherwise. This would include but would not be confined to, the Wai 27 claims. Historical claims would be defined to include inter alia all claims relating to acts or omissions of the Crown or any legislation up until 21 September 1992, in respect of the subject matter of the settlement and whether notified to the Crown or not. Claims relating to culture and language would remain outside of the settlement.

The settlement legislation would contain a privative clause which would prevent the court or the Waitangi Tribunal from enquiring into any of the historical claims as defined.

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:

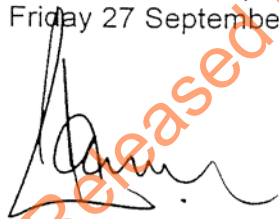
- the Deed (and the legislation) would contain an historical preamble in the form previously agreed
- the Deed (and the legislation) would contain an apology in the form previously agreed
- the Deed would provide for the transfer to Ngai Tahu of the redress payment (less the \$10 million interim payment 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 litigation
- the Deed would deal with GST in the same manner as the Deed of "On Account" Settlement
- 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 attachments) 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.

In order to meet the very tight deadline required for this proposal to be considered by Cabinet on 30 September, I look forward to a response from Ngai Tahu by 12.00 noon Friday 27 September.



Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

MAHINGA KAI AND HIGH COUNTRY STATIONS CROWN PROPOSAL

Released under the Official Information Act 1982

Supplied to Ngai Tahu 25 September 1996

CONTENTS

	PAGE
Mahinga kai specific sites	13
Te Waihora	17
Lakebeds	18
Rivers	20
Wetlands	22
Place Names	23
Statutory Board Membership	26
Resource Management Act	27
Historic and Waahi Tapu Sites	28
Customary Fisheries	29
Coastal	31
Taonga Species	32
Department of Conservation Protocols	33
High Country Stations	34
Annex Generic Instruments	35

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 (Taiaroa 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?	<i>Boundaries to be set</i>	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	<i>Boundaries to be set</i>	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

Released under the Official Information Act 1982

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).

Released under the Official Information Act 1982

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.

Released under the Official Information Act 1982

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 & Waiholo
- 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

Released under the Official Information Act 1982

Specific sites: 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.

Released under the Official Information Act 1982

Place Names

Crown proposal

- Alter 78 existing place names to create joint existing/Ngai Tahu names (see Schedule).
- Maori names to come first.
- 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.

Released under the Official Information Act 1982

Place Names Schedule

Aoraki
Parinui-o-whiti
Waihora
Te Ahu Patiki
Mataau
Rakiura
Whenua Hou
Rarotoka
Taramea
Hautere

Mount Cook
White Cliffs
Ellesmere
Mount Herbert
Clutha River
Stewart Island
Codfish Island
Centre Island
Howells Point
Solander Island

a) West Coast

Poutini
Hokonui
Kaimata
Tauotiraki
Tumuaki

Westland National Park
Greenstone River
New River
Rocky Point
Island Hill

Kokiraki
Kaniere
Noti Raureka
Whakarewa
Te Taumata o Uekanuku
Waitaiki
Takataka
Waimatuku
Kotorapi
Waianiwanui
Kotihotiho
Torata
Kaohiahi
Maitahi
Okahu
Weheka
Waiau
Ka Roimata o Hine Hukatere

Doughboy
Mount Harman
Browning Pass
Lake Browning
Mount Upright
Olderog
Refuge Island, Lake Brunner
7 Mile Creek, between Greymouth and Punakaiki
9 Mile Creek, between Greymouth and Punakaiki
10 Mile Creek, between Greymouth and Punakaiki
Cave Creek
Knights Point, north of Haast
Gillespies Point, north of Haast
Bruce Bay
Jackson Bay
Fox Glacier
Franz Joseph
Franz Joseph Glacier

d) Kaikoura

Tuki-tuki-iwi

Monkey Face

e) Canterbury

Whakaraupo
Wairewa
Koukourarata
Muriwai
Tarahaoa
Huataekerekere
Mahanui
Kaumaira
Manahuna
Hakaterere

Lyttleton Harbour
Lake Forsyth
Port Levy
Coopers Lagoon
Mount Peel
Little Mount Peel
Mount Harper
Mount Nimrod
McKenzie Pass
Ashburton River

f) Otago

Otepopo	Herbert (Peninsula)
Te Kahurou	Kurow, the hill above the Kurow town
Matau	Pig Island, Lake Wakatipu
Wawahi Waka	Pigeon Island, Lake Wakatipu
Ari	Mt Alfred, Glenorchy
Pekerakitahi	Mount Earnslaw
Ka Tiriti o te Moana	Southern Alps
Tioripatea	Haast Pass
Te Ara Whakatipu	Harris Saddle, Routeburn Track
Wawahi Waka	Lake Alabaster
Whakatipu Ka Tuka	Hollyford River
Whakatipu Waitai	Lake McKerrow, Martins Bay, South Westland
Kopuwai	Old Man Range
Haehaeata	Leaning Rock
Hikaroroa	Mount Baldy, Waikouaiti area
Kaiwioteweka	Mount Baldy, Waikouaiti area
Pahatea	Mount Durden, Waikouaiti area
Rangiriri	Goat Island, Otago Harbour
Kamau Taurua	Quarantine Island, Otago Harbour

g) Murihiku

Otaupiri	Ships Cove Mountain in the Hokonui Mountain Range
Taukihepa	Big South Cape, Titi Island off west coast of Rakiura
Oraka	Colac Bay, near Riverton
Hananui	Mount Anglem, Rakiura
Piotirepo	Port William, Rakiura, facing Foveaux St
Koromere	East Cape, Rakiura
Whiore	South Cape, Rakiura
Puhi-waero	South West Cape
Putatara	Raggedy, Rakiura, N-W corner
Pikihatiti	Pegasus Harbour, Rakiura
Tutaekawetoweto	Lords River, Rakiura
Potiweta	Port Adventure, Rakiura
Whaka a Te Wera	Patterson's Inlet, Rakiura
Aparime	Riverton
Motupohue	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.
- One dedicated position on Guardians of Wanaka.
- 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 to each council.
- One dedicated TRONT seat on New Zealand Geographic Board.

Released under the Official Information Act 1982

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.

Released under the Official Information Act 1982

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.

Released under the Official Information Act 1982

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 mohoa

Special relationship

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

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 and Foveaux Strait/Rakiura (areas to be defined) is made subject to coastal tendering, then applications by TRONT for authorisations encompassing 5% of the space allocated 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.

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

Released under the Official Information Act 1982

High Country Stations

Crown proposal

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 freeholded 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.

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.
- 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.
- Destock Mararoa valley over a six year period.

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.*

- Crown/Ngai Tahu Reserves Board:
Board would provide advice in respect of Whenua Hou to the relevant Conservation Board. Equal membership by Crown and Ngai Tahu representatives.

- *This is not a new concept but has only been used sparingly.*
- *No legislative amendment needed.*

- 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 6 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.

- *This is a new concept.*
- *It is designed to provide partial redress for breaches in relation to "Fenton Reserves".*

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 6 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.

- *This is a new concept.*
- *In respect of ancillary claims, it is designed to provide partial redress for breaches in relation to "Fenton Reserves".*

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.*

Released under the Official Information Act 1982

ANCILLARY CLAIMS CROWN PROPOSAL

Released under the Official Information Act 1982

Supplied to Ngai Tahu 25 September 1996

CONTENTS

	PAGE
Kaikoura Claims	44
Fisheries Claims	46
Canterbury Claims	47
Arahura Claims	48
Otakou Claims	49
Murihiku Claims	50

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

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.

Released under the Official Information Act 1982

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 Waihao 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: Whakapoa	- 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 FRONT 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

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

.....

.....

Signature	Name and Title	Date
	MARY ANNE THOMPSON GROUP MANAGER OFFICE OF TREATY SETTLEMENTS	26/9/96

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 [CO (95) 8 refers].

I certify that consultation on the issues raised in this paper with:

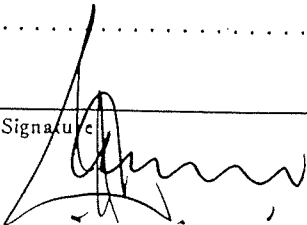
	Has taken place	Will be needed	Is not required
the National party caucus			/
the United NZ party caucus			/
other parliamentary parties ¹			/
other interested groups ²			/

(¹) List parties which have been/are to be consulted:

.....

(²) List main interested groups:

.....

Signature	Name and Portfolio	Date
	T. O. W.	26/9/96

350



CABINET

CAB (96) M 13/4A(2)

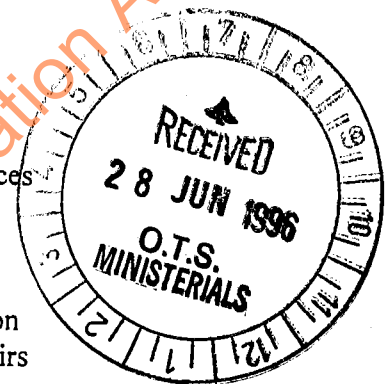
This paper is the property of the New Zealand Government. As it includes material for Cabinet or Cabinet Committee purposes it must be handled with particular care, and in accordance with any security classification or other endorsement assigned to it. The information in it may be released only by persons having proper authority to do so, and strictly in terms of that authority.

Minister in Charge of Treaty of Waitangi Negotiations

Copies to:

Prime Minister
Minister of Finance
Minister of State Services
Attorney-General
Minister of Fisheries
Minister of Justice
Minister of Conservation
Minister of Maori Affairs
Minister of Commerce
Secretary, CSC
Monitoring System

M Smith
M Thompson
A Manson 12.9.96



NGAI TAHU: SETTLEMENT PROCESS

References: CAB (96) 218, CSC (96) M 10/3a, b & c

This minute amends and replaces CSC (96) M 10/3a, b & c

At the meeting on 15 April 1996, following reference from the Cabinet Strategy Committee, Cabinet:

OVERVIEW

- 1 a noted that the Government needs to consider whether a full and final settlement of all Ngai Tahu's claims can be reached this year;
- b agreed that:
 - i the Government should recommence negotiations only if it has a high level of confidence that there are no significant barriers to settlement which cannot be resolved within parameters acceptable to both sides;

- ii the critical success factors on which a high level of confidence is required are as follows:
 - A Te Runanga O Ngai Tahu Bill;
 - B suspension of litigation by Ngai Tahu;
 - C comprehensiveness;
 - D redress package;
 - E range of assets and other components to be included in any redress package;
 - F specific assets with conservation implications;
 - G timetable; and
 - H process of negotiations;

LITIGATION

- 2 a noted that Ngai Tahu is currently pursuing actions against the Crown in both the courts and the Waitangi Tribunal, and that it is Government policy that the Crown will not negotiate with any party which is actively pursuing redress through another forum;
- b agreed that, as part of any agreement to recommence negotiations, Ngai Tahu needs to agree that:
 - i the following proceedings be adjourned *sine die* and no further steps taken in the proceedings during negotiations:
 - A Wai 27 amended statements of claim dated 20 December 1994 and 6 July 1995;
 - B *Tau and Te Runanga o Ngai Tahu v Durie* (CP215/95); and
 - C *Tau v Minister of Finance and Minister for State Owned Enterprises* (CP81/95);
 - ii Landcorp properties to be withheld from sale during negotiations be identified and a consent memorandum filed with the court varying the interim order to allow Landcorp to dispose of those properties not being withheld from sale;
 - iii necessary consent memoranda be filed with the High Court/Waitangi Tribunal to ensure that all three proceedings are adjourned *sine die*;
 - iv the status quo in relation to the Coalcorp proceedings (*Te Runanga o Ngai Tahu Limited v Attorney-General* CP115/95) be continued;

- v the status quo in relation to the pounamu proceedings (*Ngai Tahu Maori Trust Board v Attorney-General* CP236/94) be continued;
- vi the Katiwaewae proceedings (*Te Runaka o Katiwaewae v Chief Judge Durie and Maori Land Court* CP91/95) continue in the normal fashion;
- c invited the Prime Minister in conjunction with the Minister in Charge of Treaty of Waitangi Negotiations to write to Ngai Tahu setting out the Crown's expectations in relation to the suspension of litigation (as set out in paragraph 2(b) above);

COMPREHENSIVENESS

- 3 a agreed that the Crown's objective is a full and final settlement of all Ngai Tahu's claims within a total redress package;
- b noted that Ngai Tahu may propose that mahinga kai and the many ancillary claims be settled separately;
- c agreed that the negotiation of some site specific redress could be put on a longer timeframe, provided that it is agreed before recommencing that the Deed of Settlement will clearly record:
 - i that all grievances have been settled within the total redress quantum;
 - ii the portion of total redress quantum set aside as redress for site specific settlements;
 - iii the process to address the provision of site specific redress; and
 - iv agreement about the legal and policy parameters within which the Crown is able to work to deliver site specific redress to Ngai Tahu;

REDRESS

- 4 a noted that a total redress package could include a mixture of:
 - i **Envelope redress:** This would include cash and assets to be offset against the Envelope;
 - ii **non-Envelope fiscal redress:** This would include a relativity clause, a first right of refusal on the purchase of surplus Crown lands in the Ngai Tahu rohe, and the payment of interest on the outstanding balance of redress quantum;
 - iii **non-Envelope non-fiscal redress:** This would include an apology, mana recognition (e.g. re-naming mountain tops), certain assets which the Crown may wish to gift to Ngai Tahu and the return of pounamu;
- b agreed to seek Ngai Tahu's agreement to a significant cash component of the total redress quantum;

- c noted that Ngai Tahu does not accept the Envelope and will not distinguish assets to be charged to it, but that it should be possible to make progress by focusing on the composition of a redress package rather than on labels used by the Crown;
- d noted that from a preliminary scoping there do not appear to be significant policy barriers to the use of many Crown commercial assets within the Ngai Tahu rohe as settlement redress, but that there are likely to be a range of detailed and complex implementation issues which would need to be addressed;
- e noted that there are different scenarios for the composition of a total redress package;

SPECIFIC ASSETS WITH CONSERVATION IMPLICATIONS

- 5 a noted that the Prime Minister has undertaken to write to Sir Tipene O'Regan to confirm the Crown's understanding of the outstanding issues and the effective options available on pounamu, Tutaepatu, Rarotoka, Whenua Hou, Crown Titi Islands, the Otago high country stations and the Arahura valley;

Pounamu

- b i noted that on 25 October 1994, Cabinet agreed to a definition of pounamu as all nephrite and bowenite in the Ngai Tahu rohe, plus all serpentine in three specific zones in the Ngai Tahu rohe (identified on the maps attached to the submission under CAB (94) 965). (This excludes all non-pounamu forms of tremolite and serpentine outside the specified zones) [CAB (94) M 40/10 refers];
- ii noted that on 25 October 1994, Cabinet also agreed to:

"the introduction of special legislation to vest in Ngai Tahu the current Crown rights to bowenite and nephrite in the Ngai Tahu rohe, and to serpentine in the three specific zones (identified in the maps attached to the submission under CAB (94) 965). Note "current Crown rights" do not include privately owned pounamu in land held under Victorian title;"

[decision (i)(ii) of CAB (94) M 40/10 refers]
- iii rescinded the decision referred to in paragraph 5(b)(ii) above; and instead
- iv agreed, subject to a decision by Cabinet to recommence negotiations with Ngai Tahu (to be considered following the Prime Minister's report back from his next meeting with Sir Tipene O'Regan, paragraph 6(d) below refers) to vest in Ngai Tahu the current Crown rights to pounamu in the Ngai Tahu rohe out to the 12 mile limit;
- v noted that access to conservation land for the purpose of extracting pounamu is dealt with in a separate report from the Minister of Energy, which will be submitted to the Cabinet Strategy Committee on 17 April 1996;
- c agreed, subject to a decision by Cabinet to recommence negotiations with Ngai Tahu (to be considered following the Prime Minister's report back from his next meeting with Sir Tipene O'Regan, paragraph 6(d) below refers):

Tutaepatu

- i A that the Crown should provide a further \$150,000 (GST inclusive) for the restoration of Tutaepatu;
- B that this money be offset against any settlement of the Ngai Tahu claim;

Rarotoka

- ii to vest in Ngai Tahu the title in fee simple to Rarotoka exempt from the marginal strip requirements, but subject to an easement to protect the lighthouse and secure access to it;
- iii that the Crown should work with Ngai Tahu (at the local level if acceptable to Ngai Tahu) to develop a management regime which meets Ngai Tahu objectives in relation to the control and harvest of paua under fisheries and related legislation;

Whenua Hou

- iv that an annual visitation programme be established between Ngai Tahu and the Regional Conservator;
- v that:
 - A the Crown is willing to develop with Ngai Tahu (at the local level, if acceptable to Ngai Tahu), a legal mechanism which provides Ngai Tahu with a meaningful advisory role in managing Whenua Hou as part of the conservation estate;
 - B the Crown considers that there is a range of options by which this could be achieved including a reserve board, a body with a role similar to that of a conservation board, or an equivalent to the Takapourewa model, and that any of these options would be acceptable to the Crown;
 - C Ngai Tahu should be invited to inform the Crown of its preference;

Crown Titi Islands

- vi to vest in Ngai Tahu the freehold title to the Crown Titi Islands, exempt from the marginal strip requirements and subject to the islands being managed as a nature reserve;
- vii that the Crown should manage the Crown Titi Islands with Ngai Tahu having a meaningful legal advisory role and that the Government and Ngai Tahu should explore how to give effect to this (at the local level, if acceptable to Ngai Tahu);

Arahura Valley

- viii that this is a difficult issue which should be addressed later in negotiations in light of the outcomes of other matters;

Greenstone/Elfin Bay/Routeburn Stations

- ix that this is a difficult issue which requires further consideration by the Crown and should be dealt with later in the negotiations in the context of other outcomes;

Financial Implications

- d agreed that if the pounamu, Tutaepatu, Rarotoka and Crown Titi Islands are transferred to Ngai Tahu (paragraphs 5(b), 5(c)(i)-(iii) and (vi)-(vii) above refer), then the interests in land being vested with Ngai Tahu should be ascribed a notional market value;

Legislative Implications

- e noted that vesting with Ngai Tahu the pounamu, Tutaepatu, Rarotoka and Crown Titi Islands (paragraphs 5(b), 5(c)(i)-(iii) and (vi)-(vii) above refer) will require special legislation, and that it is intended that this be included with legislation enacted to implement any overall settlement of Ngai Tahu's claims;
- f invited the Prime Minister, in consultation with the Minister in Charge of Treaty of Waitangi Negotiations, Minister of Conservation and Minister of Energy, to write to Ngai Tahu setting out the Government's approach on the issues in paragraphs 5(a) - (e) above;

AGREED TIMETABLE

- 6 a noted that the Prime Minister and Sir Tipene O'Regan intend to meet after Easter to discuss a number of elements critical to determining whether to recommence negotiations with a view to seeking an overall settlement of Ngai Tahu's claims in 1996;
- b invited the Prime Minister to indicate to Sir Tipene at their next meeting the Government's willingness to reach a comprehensive settlement based on the approach outlined above;
- c agreed that the Government should recommence negotiations with Ngai Tahu only if there is a high degree of confidence that:
- i both parties are aiming to achieve a comprehensive settlement of all Ngai Tahu's claims within the proposed timeframe; and
- ii if a total redress package can be agreed within parameters acceptable to both parties;
- d invited the Prime Minister to report back to the Cabinet Strategy Committee on whether there is sufficient closeness in the parties' positions to recommence negotiations;

- e agreed that in place of a heads of agreement the Crown should seek agreement in principle with Ngai Tahu, through an exchange of letters, on the following matters by 31 May 1996:
- i Quantum;
 - ii Comprehensiveness;
 - iii Range of assets and other components to be included in any final settlement package;
 - iv Process for interim disposal of Crown assets; and
 - v Milestones for achieving a settlement;
- f agreed that the Crown should seek Ngai Tahu's agreement to work within the following timeframe:

PROCESS AND TIMETABLE OF NEGOTIATIONS		
Stage 1 Scoping Now - 30 April	OBJECTIVE	ACTION
	Assess prospects of both sides agreeing on critical success factors: • Ngai Tahu Bill • suspension of litigation • comprehensiveness • redress principles • range of assets and other components to be included in any final settlement package • specific redress issues with conservation implications • timetable • process of negotiations	Prior to next meeting with Sir Tipene: Sir Tipene responds to PM's letter and outlines range of assets sought Cabinet authorises PM's discussions with Ngai Tahu Crown sends letters to Ngai Tahu on specific conservation related matters and litigation At next meeting with Sir Tipene (say 12 April) Assess prospects of agreement on critical success factors, in particular quantum and comprehensiveness Post next meeting with Sir Tipene PM to report back to CSC on discussions; Officials report to CSC on structure of negotiations if required.

Stage 1 output	EITHER A Proceed - Cabinet decides to recommence negotiations; - PM and Ministers send letter to Ngai Tahu; - Ngai Tahu responds and suspends litigation; and - Cabinet agrees Crown negotiating brief for agreement in principle; OR B Exit	
Stage 2 Negotiation of in-principle agreement 1-31 May	OBJECTIVE	ACTION
	Seek formal in-principle agreement on: • Quantum • Comprehensiveness • Range of assets • Process for disposal of Crown assets • Milestones for achieving settlement	Formal negotiations be undertaken by specialist negotiations teams: • prepare draft letters setting out agreement in-principle • submit letters to CSC for ratification • Ngai Tahu agree to agreement in-principle
Stage 2 output	EITHER A Exchange of letters setting out in-principle agreement on five critical factors OR B Exit	
Stage 3 Negotiate Deed of Settlement 1 June - 31 July	OBJECTIVE	ACTION
	Seek to agree detailed and legally binding Deed of Settlement	Formalise detail of Deed Papers submitted to CSC seeking mandate as required
Stage 3 Output	draft Deed of Settlement	
Stage 4 Ratify Deed of Settlement 1 August - Mid-September	OBJECTIVE	ACTION
	Seek to ratify Deed of Settlement	Ngai Tahu internal ratification Cabinet ratification of Deed and Ngai Tahu ratification Sign Deed of Settlement
Stage 4 output	Ratified and legally binding Deed of Settlement	

PROCESS OF NEGOTIATIONS

- 7 a agreed to have a small, dedicated team of officials negotiate settlement with Ngai Tahu of its claim;

- b noted that the structure and processes of the negotiating teams will be crucial to successfully negotiating an overall settlement of Ngai Tahu's claims within this year;
- c agreed that the Crown negotiating team should consist of officials from the Office of Treaty Settlements, the Crown Law Office, Treasury and the Department of the Prime Minister and Cabinet (ex officio) plus an external lawyer as needed, and that the negotiating team would seek the input of other departments as required;
- d directed officials to report back to the Cabinet Strategy Committee on 17 April 1996 on guidelines for the Crown negotiating team for reporting on the progress of negotiations to key departments, particularly the Department of Conservation and Te Puni Kokiri.



Secretary of the Cabinet

Released under the Official Information Act 1982



CABINET

COMMERCIAL : IN CONFIDENCE

Personal To: Rt Hon J. Bolger

Document 25

CAB (96) 218

12 April 1996

Copy No: 1

This paper is the property of the New Zealand Government. As it includes material for Cabinet or Cabinet Committee purposes it must be handled with particular care, and in accordance with any security classification or other endorsement assigned to it. The information in it may be released only by persons having proper authority to do so, and strictly in terms of that authority.



REPORT OF THE CABINET STRATEGY COMMITTEE : WEEK ENDED 11 APRIL 1996

Cabinet is asked to confirm the decisions in the attached report on the work of the Cabinet Strategy Committee for the week ended 11 April 1996.

Item No	Title	Page No
Out of scope		
3	Ngai Tahu : Settlement Process	4-11

(Signed) Sarah Egan
for Secretary of the Cabinet

COMMERCIAL : IN CONFIDENCE

3 NGAI TAHU : SETTLEMENT PROCESS

CSC (96) M 10/3a, b & c, CSC (96) 51, 52 and 53

OVERVIEW

- 1
 - a noted that the Government needs to consider whether a full and final settlement of all Ngai Tahu's claims can be reached this year;
 - b agreed that:
 - i the Government should recommence negotiations only if it has a high level of confidence that there are no significant barriers to settlement which cannot be resolved within parameters acceptable to both sides;
 - ii the critical success factors on which a high level of confidence is required are as follows:
 - A Te Runanga O Ngai Tahu Bill;
 - B suspension of litigation by Ngai Tahu;
 - C comprehensiveness;
 - D redress package;
 - E range of assets and other components to be included in any redress package;
 - F specific assets with conservation implications;
 - G timetable; and
 - H process of negotiations;

LITIGATION

- 2
 - a noted that Ngai Tahu is currently pursuing actions against the Crown in both the courts and the Waitangi Tribunal, and that it is Government policy that the Crown will not negotiate with any party which is actively pursuing redress through another forum;
 - b agreed that, as part of any agreement to recommence negotiations, Ngai Tahu needs to agree that:
 - i the following proceedings be adjourned *sine die* and no further steps taken in the proceedings during negotiations:
 - A Wai 27 amended statements of claim dated 20 December 1994 and 6 July 1995;

- B *Tau and Te Runanga o Ngai Tahu v Durie* (CP215/95); and
- C *Tau v Minister of Finance and Minister for State Owned Enterprises* (CP81/95);
- ii Landcorp properties to be withheld from sale during negotiations be identified and a consent memorandum filed with the court varying the interim order to allow Landcorp to dispose of those properties not being withheld from sale;
- iii necessary consent memoranda be filed with the High Court to ensure that all three proceedings are adjourned sine die;
- iv the status quo in relation to the Coalcorp proceedings (*Te Runanga o Ngai Tahu Limited v Attorney-General* CP115/95) be continued;
- v the status quo in relation to the pounamu proceedings (*Ngai Tahu Maori Trust Board v Attorney-General* CP236/94) be continued;
- vi the Katiwaewae proceedings (*Te Runaka o Katiwaewae v Chief Judge Durie and Maori Land Court* CP91/95) continue in the normal fashion;
- c invited the Prime Minister in conjunction with the Minister in Charge of Treaty of Waitangi Negotiations to write to Ngai Tahu setting out the Crown's expectations in relation to the suspension of litigation (as set out in paragraph 2(b) above);

COMPREHENSIVENESS

- 3 a agreed that the Crown's objective is a full and final settlement of all Ngai Tahu's claims within a total redress package;
- b noted that Ngai Tahu may propose that mahinga kai and the many ancillary claims be settled separately;
- c agreed that the negotiation of some site specific redress could be put on a longer timeframe, provided that it is agreed before recommencing that the Deed of Settlement will clearly record:
 - i that all grievances have been settled within the total redress quantum;
 - ii the portion of total redress quantum set aside as redress for site specific settlements;
 - iii the process to address the provision of site specific redress; and
 - iv agreement about the legal and policy parameters within which the Crown is able to work to deliver site specific redress to Ngai Tahu;

REDRESS

- 4 a noted that a total redress package could include a mixture of:
- i **Envelope redress:** This would include cash and assets to be offset against the Envelope;
 - ii **non-Envelope fiscal redress:** This would include a relativity clause, a first right of refusal on the purchase of surplus Crown lands; and the payment of interest on the outstanding balance of redress quantum;
 - iii **non-Envelope non-fiscal redress:** This would include an apology, mana recognition (e.g. re-naming mountain tops), certain assets which the Crown may wish to gift to Ngai Tahu and the return of pounamu;
- b agreed to seek Ngai Tahu's agreement to a significant cash component of the total redress quantum;
- c noted that Ngai Tahu does not accept the Envelope and will not distinguish assets to be charged to it, but that it should be possible to make progress by focusing on the composition of a redress package rather than on labels used by the Crown;
- d noted that from a preliminary scoping there do not appear to be significant policy barriers to the use of many Crown commercial assets within the Ngai Tahu rohe as settlement redress, but that there are likely to be a range of detailed and complex implementation issues which would need to be addressed;
- e noted that there are different scenarios for the composition of a total redress package;

SPECIFIC ASSETS WITH CONSERVATION IMPLICATIONS

- 5 a noted that the Prime Minister has undertaken to write to Sir Tipene O'Regan to confirm the Crown's understanding of the outstanding issues and the effective options available on pounamu, Tutaepatu, Rarotoka, Whenua Hou, Crown Titi Islands, the Otago high country stations and the Arahura valley;

Pounamu

- b i noted that on 25 October 1994, Cabinet agreed to a definition of pounamu as all nephrite and bowenite in the Ngai Tahu rohe, plus all serpentine in three specific zones in the Ngai Tahu rohe (identified on the maps attached to the submission under CAB (94) 965). (This excludes all non-pounamu forms of tremolite and serpentine outside the specified zones) [CAB (94) M 40/10 refers];
- ii noted that on 25 October 1994, Cabinet also agreed to:

"the introduction of special legislation to vest in Ngai Tahu the current Crown rights to bowenite and nephrite in the Ngai Tahu rohe, and to serpentine in the three specific zones (identified in the maps attached to the submission under CAB (94) 965). Note "current Crown rights" do

not include privately owned pounamu in land held under Victorian title;"

[decision (i)(ii) of CAB (94) M 40/10 refers]

- iii rescinded the decision referred to in paragraph 5(b)(ii) above; and instead
 - iv agreed, subject to a decision by Cabinet to recommence negotiations with Ngai Tahu (to be considered following the Prime Minister's report back from his next meeting with Sir Tipene O'Regan, paragraph 6(d) below refers) to vest in Ngai Tahu the current Crown rights to pounamu in the Ngai Tahu rohe out to the 12 mile limit;
 - v noted that access to conservation land for the purpose of extracting pounamu is dealt with in a separate report from the Minister of Energy, which will be submitted to the Cabinet Strategy Committee on 17 April 1996;
- c agreed, subject to a decision by Cabinet to recommence negotiations with Ngai Tahu (to be considered following the Prime Minister's report back from his next meeting with Sir Tipene O'Regan, paragraph 6(d) below refers):

Tutaepatu

- i A that the Crown should provide a further \$150,000 (GST inclusive) for the restoration of Tutaepatu;
- B that this money be offset against any settlement of the Ngai Tahu claim;

Rarotoka

- ii to vest in Ngai Tahu the title in fee simple to Rarotoka exempt from the marginal strip requirements, but subject to an easement to protect the lighthouse and secure access to it;
- iii that the Crown should work with Ngai Tahu (at the local level if acceptable to Ngai Tahu) to develop a management regime which meets Ngai Tahu objectives in relation to the control and harvest of paua under the Fisheries Act 1983;

Whenua Hou

- iv that an annual visitation programme be established between Ngai Tahu and the Regional Conservator;
- v that:
 - A the Crown is willing to develop with Ngai Tahu (at the local level, if acceptable to Ngai Tahu), a legal mechanism which provides Ngai Tahu with a meaningful advisory role in managing Whenua Hou as part of the conservation estate;

B the Crown considers that there is a range of options by which this could be achieved including a reserve board, a body with a role similar to that of a conservation board, or an equivalent to the Takapourewa model, and that any of these options would be acceptable to the Crown;

C Ngai Tahu should be invited to inform the Crown of its preference;

Crown Titi Islands

- vi to vest in Ngai Tahu the freehold title to the Crown Titi Islands, exempt from the marginal strip requirements and subject to the islands being managed as a nature reserve;
- vii that the Crown should manage the Crown Titi Islands with Ngai Tahu having a meaningful statutory advisory role and that the Government and Ngai Tahu should explore how to give effect to this (at the local level, if acceptable to Ngai Tahu);

Arahura Valley

- viii that this is a difficult issue which should be addressed later in negotiations in light of the outcomes of other matters;

Greenstone/Elfin Bay/Routeburn Stations

- ix that this is a difficult issue which requires further consideration by the Crown and should be dealt with later in the negotiations in the context of other outcomes;

Financial Implications

- d agreed that if the freehold to pounamu, Tutaepatu, Rarotoka and Crown Titi Islands is transferred to Ngai Tahu then the interests in land being vested with Ngai Tahu should be ascribed a notional value;

Legislative Implications

- e noted that vesting with Ngai Tahu the freehold to pounamu, Tutaepatu, Rarotoka and Crown Titi Islands will require special legislation, and that it is intended that this be included with legislation enacted to implement any overall settlement of Ngai Tahu's claims;
- f invited the Prime Minister, in consultation with the Minister in Charge of Treaty of Waitangi Negotiations, Minister of Conservation and Minister of Energy, to write to Ngai Tahu setting out the Government's approach on the issues in paragraphs 5(a) - (e) above;

AGREED TIMETABLE

- 6 a noted that the Prime Minister and Sir Tipene O'Regan intend to meet after Easter to discuss a number of elements critical to determining whether to recommence negotiations with a view to seeking an overall settlement of Ngai Tahu's claims in 1996;
- b invited the Prime Minister to indicate to Sir Tipene at their next meeting the Government's willingness to reach a comprehensive settlement based on the redress packages agreed upon;
- c agreed that the Government should recommence negotiations with Ngai Tahu only if there is a high degree of confidence that:
- i both parties are aiming to achieve a comprehensive settlement of all Ngai Tahu's claims within the proposed timeframe; and
 - ii if a total redress package can be agreed within parameters acceptable to both parties;
- d invited the Prime Minister to report back to the Cabinet Strategy Committee on whether there is sufficient closeness in the parties' positions to recommence negotiations;
- e agreed that in place of a heads of agreement the Crown should seek agreement in principle with Ngai Tahu, through an exchange of letters, on the following matters by 31 May 1996:
- i Quantum;
 - ii Comprehensiveness;
 - iii Range of assets and other components to be included in any final settlement package;
 - iv Process for interim disposal of Crown assets; and
 - v Milestones for achieving a settlement;

- f agreed that the Crown should seek Ngai Tahu's agreement to work within the following timeframe:

PROCESS AND TIMETABLE OF NEGOTIATIONS		
Stage 1 Scoping Now - 30 April	OBJECTIVE	ACTION
	Assess prospects of both sides agreeing on critical success factors: • Ngai Tahu Bill • suspension of litigation • comprehensiveness • redress principles • range of assets and other components to be included in any final settlement package • specific redress issues with conservation implications • timetable • process of negotiations	Prior to next meeting with Sir Tipene: Sir Tipene responds to PM's letter and outlines range of assets sought Cabinet authorises PM's discussions with Ngai Tahu Crown sends letters to Ngai Tahu on specific conservation related matters and litigation At next meeting with Sir Tipene (say 12 April) Assess prospects of agreement on critical success factors, in particular quantum and comprehensiveness Post next meeting with Sir Tipene PM to report back to CSC on discussions; Officials report to CSC on structure of negotiations if required.
Stage 1 output	EITHER A Proceed - Cabinet decides to recommence negotiations; - PM and Ministers send letter to Ngai Tahu; - Ngai Tahu responds and suspends litigation; and - Cabinet agrees Crown negotiating brief for agreement in principle; OR B Exit	
Stage 2 Negotiation of in-principle agreement 1-31 May	OBJECTIVE	ACTION
	Seek formal in-principle agreement on: • Quantum • Comprehensiveness • Range of assets • Process for disposal of Crown assets • Milestones for achieving settlement	Formal negotiations be undertaken by specialist negotiations teams: • prepare draft letters setting out agreement in-principle • submit letters to CSC for ratification • Ngai Tahu agree to agreement in-principle

Stage 2 output	EITHER A Exchange of letters setting out in-principle agreement on five critical factors OR B Exit	
Stage 3 Negotiate Deed of Settlement 1 June - 31 July	OBJECTIVE	ACTION
	Seek to agree detailed and legally binding Deed of Settlement	Formalise detail of Deed Papers submitted to CSC seeking mandate as required
Stage 3 Output	draft Deed of Settlement	
Stage 4 Ratify Deed of Settlement 1 August - Mid-September	OBJECTIVE	ACTION
	Seek to ratify Deed of Settlement	Ngai Tahu internal ratification Cabinet ratification of Deed and Ngai Tahu ratification Sign Deed of Settlement
Stage 4 output	Ratified and legally binding Deed of Settlement	

PROCESS OF NEGOTIATIONS

- 7 a agreed to follow the example of the Waikato raupatu claims settlement and have a small, dedicated team of officials negotiate settlement with Ngai Tahu of its claim;
- b noted that the structure and processes of the negotiating teams will be crucial to successfully negotiating an overall settlement of Ngai Tahu's claims within this year;
- c agreed that the Crown negotiating team should consist of officials from the Office of Treaty Settlements, the Crown Law Office and Treasury plus an external lawyer as needed, and that officials from other departments will be co-opted as required;
- d directed officials to report back to the Cabinet Strategy Committee on 17 April 1996 on guidelines for the Crown negotiating team for reporting on the progress of negotiations to key departments, particularly the Department of Conservation and Te Puni Kokiri.



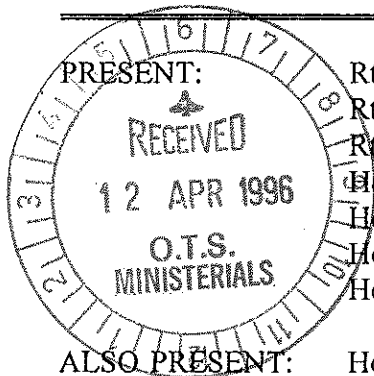
CABINET STRATEGY
COMMITTEE

CSC (96) M 10/3a,b&c

Copy No: 26

This paper is the property of the New Zealand Government. As it includes material for Cabinet or Cabinet Committee purposes it must be handled with particular care, and in accordance with any security classification or other endorsement assigned to it. The information in it may be released only by persons having proper authority to do so, and strictly in terms of that authority.

MINUTES of a meeting of the Committee held on Wednesday, 10 April 1996 at 9.15am



PRESENT: Rt Hon J B Bolger (Chair)
Rt Hon Don McKinnon (part of item)
Rt Hon W F Birch
Hon Philip Burdon (part of item)
Hon Dr Lockwood Smith (part of item)
Hon Wyatt Creech (part of item)
Hon Douglas Graham

M Thompson
S Macaskill
B Clerk
f Taylor

ALSO PRESENT: Hon Denis Marshall
Hon John Luxton (part of item)

IN ATTENDANCE: Officials from
Department of the Prime Minister and Cabinet
Treasury
State Services Commission
Office of Treaty Settlements
Te Puni Kōkiri
Ministry of Commerce
Department of Conservation
Crown Law Office

NGAI TAHU : SETTLEMENT PROCESS

Reference: CSC (96) 51, 52 and 53

OVERVIEW

- 1 a noted that the Government needs to consider whether a full and final settlement of all Ngai Tahu's claims can be reached this year;
- b agreed that:
 - i the Government should recommence negotiations only if it has a high level of confidence that there are no significant barriers to settlement which cannot be resolved within parameters acceptable to both sides;

- ii the critical success factors on which a high level of confidence is required are as follows:
 - A Te Runanga O Ngai Tahu Bill;
 - B suspension of litigation by Ngai Tahu;
 - C comprehensiveness;
 - D redress package;
 - E range of assets and other components to be included in any redress package;
 - F specific assets with conservation implications;
 - G timetable; and
 - H process of negotiations;

LITIGATION

- 2 a noted that Ngai Tahu is currently pursuing actions against the Crown in both the courts and the Waitangi Tribunal, and that it is Government policy that the Crown will not negotiate with any party which is actively pursuing redress through another forum;
- b agreed that, as part of any agreement to recommence negotiations, Ngai Tahu needs to agree that:
 - i the following proceedings be adjourned *sine die* and no further steps taken in the proceedings during negotiations:
 - A Wai 27 amended statements of claim dated 20 December 1994 and 6 July 1995;
 - B *Tau and Te Runanga o Ngai Tahu v Durie* (CP215/95); and
 - C *Tau v Minister of Finance and Minister for State Owned Enterprises* (CP81/95);
 - ii Landcorp properties to be withheld from sale during negotiations be identified and a consent memorandum filed with the court varying the interim order to allow Landcorp to dispose of those properties not being withheld from sale;
 - iii necessary consent memoranda be filed with the High Court to ensure that all three proceedings are adjourned *sine die*;
 - iv the status quo in relation to the Coalcorp proceedings (*Te Runanga o Ngai Tahu Limited v Attorney-General* CP115/95) be continued;

- v the status quo in relation to the pounamu proceedings (*Ngai Tahu Maori Trust Board v Attorney-General* CP236/94) be continued;
- vi the Katiwaewae proceedings (*Te Runaka o Katiwaewae v Chief Judge Durie and Maori Land Court* CP91/95) continue in the normal fashion;
- c invited the Prime Minister in conjunction with the Minister in Charge of Treaty of Waitangi Negotiations to write to Ngai Tahu setting out the Crown's expectations in relation to the suspension of litigation (as set out in paragraph 2(b) above);

COMPREHENSIVENESS

- 3 a agreed that the Crown's objective is a full and final settlement of all Ngai Tahu's claims within a total redress package;
- b noted that Ngai Tahu may propose that mahinga kai and the many ancillary claims be settled separately;
- c agreed that the negotiation of some site specific redress could be put on a longer timeframe, provided that it is agreed before recommencing that the Deed of Settlement will clearly record:
 - i that all grievances have been settled within the total redress quantum;
 - ii the portion of total redress quantum set aside as redress for site specific settlements;
 - iii the process to address the provision of site specific redress; and
 - iv agreement about the legal and policy parameters within which the Crown is able to work to deliver site specific redress to Ngai Tahu;

REDRESS

- 4 a noted that a total redress package could include a mixture of:
 - i **Envelope redress:** This would include cash and assets to be offset against the Envelope;
 - ii **non-Envelope fiscal redress:** This would include a relativity clause, a first right of refusal on the purchase of surplus Crown lands, and the payment of interest on the outstanding balance of redress quantum;
 - iii **non-Envelope non-fiscal redress:** This would include an apology, mana recognition (e.g. re-naming mountain tops), certain assets which the Crown may wish to gift to Ngai Tahu and the return of pounamu;
- b agreed to seek Ngai Tahu's agreement to a significant cash component of the total redress quantum;
- c noted that Ngai Tahu does not accept the Envelope and will not distinguish assets to be charged to it, but that it should be possible to make progress by focusing on the composition of a redress package rather than on labels used by the Crown;

- d noted that from a preliminary scoping there do not appear to be significant policy barriers to the use of many Crown commercial assets within the Ngai Tahu rohe as settlement redress, but that there are likely to be a range of detailed and complex implementation issues which would need to be addressed;
- e noted that there are different scenarios for the composition of a total redress package;

SPECIFIC ASSETS WITH CONSERVATION IMPLICATIONS

- 5 a noted that the Prime Minister has undertaken to write to Sir Tipene O'Regan to confirm the Crown's understanding of the outstanding issues and the effective options available on pounamu, Tutaepatu, Rarotoka, Whenua Hou, Crown Titi Islands, the Otago high country stations and the Arahura valley;

Pounamu

- b i noted that on 25 October 1994, Cabinet agreed to a definition of pounamu as all nephrite and bowenite in the Ngai Tahu rohe, plus all serpentine in three specific zones in the Ngai Tahu rohe (identified on the maps attached to the submission under CAB (94) 965). (This excludes all non-pounamu forms of tremolite and serpentine outside the specified zones) [CAB (94) M 40/10 refers];
- ii noted that on 25 October 1994, Cabinet also agreed to:

"the introduction of special legislation to vest in Ngai Tahu the current Crown rights to bowenite and nephrite in the Ngai Tahu rohe, and to serpentine in the three specific zones (identified in the maps attached to the submission under CAB (94) 965). Note "current Crown rights" do not include privately owned pounamu in land held under Victorian title;"

[decision (i)(ii) of CAB (94) M 40/10 refers]
- iii rescinded the decision referred to in paragraph 5(b)(ii) above; and instead
- iv agreed, subject to a decision by Cabinet to recommence negotiations with Ngai Tahu (to be considered following the Prime Minister's report back from his next meeting with Sir Tipene O'Regan, paragraph 6(d) below refers) to vest in Ngai Tahu the current Crown rights to pounamu in the Ngai Tahu rohe out to the 12 mile limit;
- v noted that access to conservation land for the purpose of extracting pounamu is dealt with in a separate report from the Minister of Energy, which will be submitted to the Cabinet Strategy Committee on 17 April 1996;
- c agreed, subject to a decision by Cabinet to recommence negotiations with Ngai Tahu (to be considered following the Prime Minister's report back from his next meeting with Sir Tipene O'Regan, paragraph 6(d) below refers):

Tutaepatu

- i A that the Crown should provide a further \$150,000 (GST inclusive) for the restoration of Tutaepatu;
- B that this money be offset against any settlement of the Ngai Tahu claim;

Rarotoka

- ii to vest in Ngai Tahu the title in fee simple to Rarotoka exempt from the marginal strip requirements, but subject to an easement to protect the lighthouse and secure access to it;
- iii that the Crown should work with Ngai Tahu (at the local level if acceptable to Ngai Tahu) to develop a management regime which meets Ngai Tahu objectives in relation to the control and harvest of paua under the Fisheries Act 1983;

Whenua Hou

- iv that an annual visitation programme be established between Ngai Tahu and the Regional Conservator;
- v that:
 - A the Crown is willing to develop with Ngai Tahu (at the local level, if acceptable to Ngai Tahu), a legal mechanism which provides Ngai Tahu with a meaningful advisory role in managing Whenua Hou as part of the conservation estate;
 - B the Crown considers that there is a range of options by which this could be achieved including a reserve board, a body with a role similar to that of a conservation board, or an equivalent to the Takapourewa model, and that any of these options would be acceptable to the Crown;
 - C Ngai Tahu should be invited to inform the Crown of its preference;

Crown Titi Islands

- vi to vest in Ngai Tahu the freehold title to the Crown Titi Islands, exempt from the marginal strip requirements and subject to the islands being managed as a nature reserve;
- vii that the Crown should manage the Crown Titi Islands with Ngai Tahu having a meaningful statutory advisory role and that the Government and Ngai Tahu should explore how to give effect to this (at the local level, if acceptable to Ngai Tahu);

Arahura Valley

- viii that this is a difficult issue which should be addressed later in negotiations in light of the outcomes of other matters;

Greenstone/Elfin Bay/Routeburn Stations

- ix that this is a difficult issue which requires further consideration by the Crown and should be dealt with later in the negotiations in the context of other outcomes;

Financial Implications

- d agreed that if the freehold to pounamu, Tutaepatu, Rarotoka and Crown Titi Islands is transferred to Ngai Tahu then the interests in land being vested with Ngai Tahu should be ascribed a notional value;

Legislative Implications

- e noted that vesting with Ngai Tahu the freehold to pounamu, Tutaepatu, Rarotoka and Crown Titi Islands will require special legislation, and that it is intended that this be included with legislation enacted to implement any overall settlement of Ngai Tahu's claims;
- f invited the Prime Minister, in consultation with the Minister in Charge of Treaty of Waitangi Negotiations, Minister of Conservation and Minister of Energy, to write to Ngai Tahu setting out the Government's approach on the issues in paragraphs 5(a) - (e) above;

AGREED TIMETABLE

- 6 a noted that the Prime Minister and Sir Tipene O'Regan intend to meet after Easter to discuss a number of elements critical to determining whether to recommence negotiations with a view to seeking an overall settlement of Ngai Tahu's claims in 1996;
- b invited the Prime Minister to indicate to Sir Tipene at their next meeting the Government's willingness to reach a comprehensive settlement based on the redress packages agreed upon;
- c agreed that the Government should recommence negotiations with Ngai Tahu only if there is a high degree of confidence that:
- i both parties are aiming to achieve a comprehensive settlement of all Ngai Tahu's claims within the proposed timeframe; and
- ii if a total redress package can be agreed within parameters acceptable to both parties;
- d invited the Prime Minister to report back to the Cabinet Strategy Committee on whether there is sufficient closeness in the parties' positions to recommence negotiations;

- e agreed that in place of a heads of agreement the Crown should seek agreement in principle with Ngai Tahu, through an exchange of letters, on the following matters by 31 May 1996:
- i Quantum;
 - ii Comprehensiveness;
 - iii Range of assets and other components to be included in any final settlement package;
 - iv Process for interim disposal of Crown assets; and
 - v Milestones for achieving a settlement;
- f agreed that the Crown should seek Ngai Tahu's agreement to work within the following timeframe:

PROCESS AND TIMETABLE OF NEGOTIATIONS		
Stage 1 Scoping Now - 30 April	OBJECTIVE	ACTION
	Assess prospects of both sides agreeing on critical success factors: • Ngai Tahu Bill • suspension of litigation • comprehensiveness • redress principles • range of assets and other components to be included in any final settlement package • specific redress issues with conservation implications • timetable • process of negotiations	Prior to next meeting with Sir Tipene: Sir Tipene responds to PM's letter and outlines range of assets sought Cabinet authorises PM's discussions with Ngai Tahu Crown sends letters to Ngai Tahu on specific conservation related matters and litigation At next meeting with Sir Tipene (say 12 April) Assess prospects of agreement on critical success factors, in particular quantum and comprehensiveness Post next meeting with Sir Tipene PM to report back to CSC on discussions; Officials report to CSC on structure of negotiations if required.

Stage 1 output	EITHER A Proceed - Cabinet decides to recommence negotiations; - PM and Ministers send letter to Ngai Tahu; - Ngai Tahu responds and suspends litigation; and - Cabinet agrees Crown negotiating brief for agreement in principle; OR B Exit	
Stage 2 Negotiation of in-principle agreement 1-31 May	OBJECTIVE	ACTION
	Seek formal in-principle agreement on: • Quantum • Comprehensiveness • Range of assets • Process for disposal of Crown assets • Milestones for achieving settlement	Formal negotiations be undertaken by specialist negotiations teams: • prepare draft letters setting out agreement in-principle • submit letters to CSC for ratification • Ngai Tahu agree to agreement in-principle
Stage 2 output	EITHER A Exchange of letters setting out in-principle agreement on five critical factors OR B Exit	
Stage 3 Negotiate Deed of Settlement 1 June - 31 July	OBJECTIVE	ACTION
	Seek to agree detailed and legally binding Deed of Settlement	Formalise detail of Deed Papers submitted to CSC seeking mandate as required
Stage 3 Output	draft Deed of Settlement	
Stage 4 Ratify Deed of Settlement 1 August - Mid-September	OBJECTIVE	ACTION
	Seek to ratify Deed of Settlement	Ngai Tahu internal ratification Cabinet ratification of Deed and Ngai Tahu ratification Sign Deed of Settlement
Stage 4 output	Ratified and legally binding Deed of Settlement	

PROCESS OF NEGOTIATIONS

- 7 a agreed to follow the example of the Waikato raupatu claims settlement and have a small, dedicated team of officials negotiate settlement with Ngai Tahu of its claim;

- b noted that the structure and processes of the negotiating teams will be crucial to successfully negotiating an overall settlement of Ngai Tahu's claims within this year;
- c agreed that the Crown negotiating team should consist of officials from the Office of Treaty Settlements, the Crown Law Office and Treasury plus an external lawyer as needed, and that officials from other departments will be co-opted as required;
- d directed officials to report back to the Cabinet Strategy Committee on 17 April 1996 on guidelines for the Crown negotiating team for reporting on the progress of negotiations to key departments, particularly the Department of Conservation and Te Puni Kokiri.


Sarah Egan
Secretary

COPIES TO:

Cabinet Strategy Committee
Chief Executive, PM&C
Secretary to the Treasury
State Services Commissioner
Solicitor-General
Chief Executive, Ministry of Fisheries
Secretary for Justice
Director, Office of Treaty Settlements
Minister of Conservation
Director-General of Conservation
Minister of Maori Affairs
Chief Executive, Te Puni Kokiri
Secretary of Commerce
Monitoring System

Released under the Official Information Act 1982



CABINET STRATEGY COMMITTEE

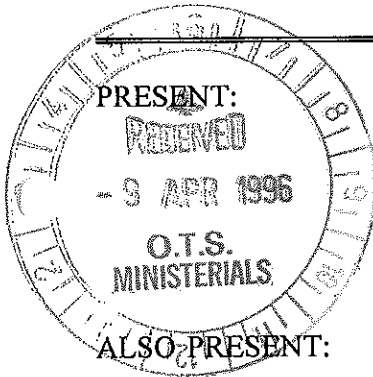
Document 27

CSC (96) M 9/6a, b, c

Copy No: 25

This paper is the property of the New Zealand Government. As it includes material for Cabinet or Cabinet Committee purposes it must be handled with particular care, and in accordance with any security classification or other endorsement assigned to it. The information in it may be released only by persons having proper authority to do so, and strictly in terms of that authority.

MINUTES of a meeting of the Committee held on Wednesday, 3 April 1996 at 9.15am



PRESENT: Rt Hon J B Bolger (Chair)
Rt Hon Don McKinnon
Rt Hon W F Birch
Hon Philip Burdon
Hon Simon Upton
Hon Dr Lockwood Smith

ALSO PRESENT: Hon Roger McClay
Hon Peter Dunne

B Clark
S Macaskill
M Thompson

IN ATTENDANCE: Officials from Department of the Prime Minister and Cabinet
Treasury
State Services Commission

NGAI TAHU : OVERVIEW

Reference: CSC (96) 51

The Committee deferred consideration of the submissions under CSC (96) 51, 52 and 53 until the meeting on 10 April 1996.

Sue Sharp
Secretary

COPIES TO:

Cabinet Strategy Committee
Chief Executive, PM&C
Secretary to the Treasury
State Services Commissioner
Solicitor-General
Secretary for Justice
Director, OTS
Minister of Maori Affairs
Chief Executive, Te Puni Kokiri
Monitoring System



CABINET STRATEGY COMMITTEE

COMMERCIAL : IN CONFIDENCE

Personal To: Director, O.T.S.

Document 28

CSC (96) 53

1 April 1996

Copy No: 25

This paper is the property of the New Zealand Government. As it includes material for Cabinet or Cabinet Committee purposes it must be handled with particular care, and in accordance with any security classification or other endorsement assigned to it. The information in it may be released only by persons having proper authority to do so, and strictly in terms of that authority.

Title

NGAI TAHU : REDRESS PACKAGE

LATE PAPER : This paper was received after the Cabinet deadline.

Purpose

This submission is one of a series of three papers which examine whether the Crown should recommence negotiations with Ngai Tahu, with a view to achieving an overall settlement of its claims this year.

This paper provides advice on the degree of comprehensiveness which should be required for any settlement with Ngai Tahu, and the size and broad composition of any redress package which may be offered to Ngai Tahu in settlement of its claim.

An Executive Summary is set out on page 1 of the paper.

Annex 1 on pages 8-10 sets out considerations which Ministers may wish to take into account when coming to a position on a total settlement quantum.

Annex 2 on pages 11-12 sets out the different assets Ngai Tahu may seek and any broad policy issues which may arise.

The Minister in Charge of Treaty of Waitangi Negotiations recommends that the Committee:

- a note that the Prime Minister and Sir Tipene O'Regan intend to meet after Easter to discuss a number of elements critical to determining whether to recommence negotiations with a view to seeking an overall settlement of Ngai Tahu's claims in 1996;

COMPREHENSIVENESS

- b agree that the Crown's objective is a full and final settlement of all Ngai Tahu's claims within a total redress package;
- c note that Ngai Tahu may propose that mahinga kai and the many ancillary claims be settled separately;
- d agree that the negotiation of some site specific redress could be put on a longer timeframe, provided that it is agreed before recommencing that the Deed of Settlement will clearly record:
 - i that all grievances have been settled within the total redress quantum;

- ii the portion of total redress quantum set aside as redress for site specific settlements;
- iii the process to address the provision of site specific redress; and
- iv agreement about the legal and policy parameters within which the Crown is able to work to deliver site specific redress to Ngai Tahu;

REDRESS

- e note that a total redress package could include a mixture of:
 - i **Envelope redress:** This would include cash and assets to be offset against the Envelope;
 - ii **non-Envelope fiscal redress:** This would include a relativity clause, a first right of refusal on the purchase of surplus Crown lands, and the payment of interest on the outstanding balance of redress quantum;
 - iii **non-Envelope non-fiscal redress:** This would include an apology, mana recognition (e.g. re-naming mountain tops), certain assets which the Crown may wish to gift to Ngai Tahu and the return of pounamu;
- f agree to seek Ngai Tahu's agreement to a significant cash component of the total redress quantum;
- g note that Ngai Tahu does not accept the Envelope and will not distinguish assets to be charged to it, but that it should be possible to make progress by focusing on the composition of a redress package rather than on labels used by the Crown;
- h note that from a preliminary scoping there do not appear to be significant policy barriers to the use of many Crown commercial assets within the Ngai Tahu rohe as settlement redress, but that there are likely to be a range of detailed and complex implementation issues which would need to be addressed;

NEXT STEPS

- i note that there are different scenarios for the composition of a total redress package;
- j invite the Prime Minister to indicate to Sir Tipene at their next meeting the Government's willingness to reach a comprehensive settlement based on the redress packages agreed upon;
- k agree that the Government should recommence negotiations with Ngati Tahu only if there is a high degree of confidence that:
 - i both parties are aiming to achieve a comprehensive settlement of all Ngati Tahu's claims within the proposed timeframe; and
 - ii if a total redress package can be agreed within parameters acceptable to both parties;
- l invite the Prime Minister to report back to the Cabinet Strategy Committee on whether there is sufficient closeness in the parties' positions to recommence negotiations.

(Signed) Judith Wigglesworth

COPIES TO: (See over)

COPIES TO:

Cabinet Strategy Committee
Chief Executive, PM&C
Secretary to the Treasury
State Services Commissioner
Solicitor-General
Secretary for Justice
Director, Office of Treaty Settlements
Minister of Maori Affairs
Chief Executive, Te Puni Kokiri

Released under the Official Information Act 1982



Office of the
**Minister in Charge of Treaty of Waitangi
Negotiations**

Te Tari o Te
**Minita Nōna te Mana Whakarite Take e pā ana ki
Te Tiriti o Waitangi**

- 1 APR 1996

Ms Sue Sharp
Cabinet Office
Parliament Buildings
WELLINGTON

Dear Ms Sharp

Please find attached a submission to the Cabinet Strategy Committee entitled "Ngai Tahu: Redress Package". This is one of a suite of three papers on Ngai Tahu. I would appreciate it if the submission could be considered by the Committee as a late paper at its meeting on 3 April 1996.

The paper has been prepared in some haste following a meeting between the Prime Minister and Sir Tipene O'Regan and must be considered by Ministers prior to a further meeting between these two intended to be held shortly after Easter.

Yours sincerely

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

Chair
Cabinet Strategy Committee

Ngai Tahu: Redress package

Executive Summary

1. This is one of three papers which examine whether the Crown should recommence negotiations with Ngai Tahu, with a view to achieving an overall settlement of its claims this year. This paper provides advice to Ministers on the degree of comprehensiveness that Ministers should require for any settlement with Ngai Tahu; and the size and broad composition of the redress package Ministers may wish to offer to Ngai Tahu in settlement of its claim.
2. The Government should only recommence negotiations if a comprehensive settlement and redress package can be agreed within parameters acceptable to the Crown. It is recommended that the Crown communicate to Ngai Tahu that it wishes to comprehensively settle all Ngai Tahu claims within an agreed redress package. If the Crown agrees to defer providing certain site specific redress then the Deed of Settlement should clearly record:
 - that the grievances relating to the redress have been settled;
 - the portion of total redress quantum set aside for the site specific redress;
 - the process to provide the site specific redress; and
 - the legal and policy parameters within which the Crown is able to work to deliver the site specific redress.
3. Ministers are asked to note that a redress package could include cash and assets offset against the Settlement Envelope (redress quantum); redress with a cost to the Crown not offset against the Envelope such as a relativities clause or first right of refusal; and non fiscal redress such as an apology. Ministers are then asked to agree to different scenarios for the composition of a total redress package, having regard to a range of factors. It is proposed that the Prime Minister discuss these issues with Sir Tipene in a meeting on 12 April 1996 and report back to Cabinet Strategy Committee on whether there is sufficient closeness in the parties positions to recommence negotiations. Annex 1 outlines considerations Ministers may wish to take into account when coming to total settlement quantum and Annex 2 sets out the different assets Ngai Tahu may seek and any broad policy issues which may arise.

Comprehensiveness

4. The Government's policy is that the Crown should seek to settle all the claims of a claimant group in a full and final manner. This policy:
 - assists in achieving durable settlements and effectively addressing claimants' senses of grievance;
 - reduces the risk of claimants seeking to lever up the total redress by concluding a series of partial claims;

- provides for the cessation of litigation and the removal of all protection mechanisms on land affected by the claim, enabling the Crown to manage its remaining assets in an efficient manner; and
 - reduces the overall transaction costs of negotiating a number of different settlements with the same claimant group.
5. Ngai Tahu's claims have been the subject of reports by the Waitangi Tribunal. This provides full information to address and seek a settlement of Ngai Tahu's grievances. As well Ngai Tahu has representatives mandated to negotiate all Ngai Tahu claims. On this basis, the Crown should only recommence negotiations on the understanding that both parties expect to achieve a comprehensive settlement within a total redress package.
 6. It is possible that Ngai Tahu will propose that mahinga kai and the many ancillary claims be settled separately over a longer timeframe. Ministers should only agree to this separation if it is agreed between the parties that redress for those items will fall within the agreed total redress package (quantum) for the overall claim settlement.
 7. The Deed of Settlement would have to clearly record that the breaches relating to all Ngai Tahu claims had been settled, with only the details of redress to be negotiated within an agreed extended timeframe. This record should include agreement on the portion of total redress quantum set aside for site-specific settlements; the process to address the provision of site specific redress; and agreement about the legal and policy parameters within which the Crown is able to work in seeking to deliver site specific redress to Ngai Tahu.

Redress

8. The Government should only recommence negotiations if the parties' parameters on a total redress quantum are sufficiently close to provide a high degree of confidence that a full and final settlement is likely to be achieved this year. Ministers will need to make a careful judgement based on the exchange of parameters between the Prime Minister and Sir Tipene at their meeting proposed for shortly after Easter.
9. In making a decision about the size and composition of the settlement quantum that is charged to the Settlement Envelope, Ministers should have regard to a variety of factors. These include the nature, magnitude and impact of the breach, various strategic considerations, the Settlement Envelope, and claimant expectations. These factors are set out in greater depth in Annex 1 to this paper. Ministers may also wish to consider providing non-Envelope redress to Ngai Tahu as part of an overall package.
10. In coming to an agreement on any redress to be offered in addition to a settlement quantum, Ministers should consider:
 - relativities between claims: The overall composition of the total redress package establishes a benchmark against which future claimants will assess their relativity, and develop expectations as to the shape of their own redress package. The total redress package offered to Ngai Tahu should be sufficiently flexible to allow the Crown to meet other claimants' reasonable expectations; and
 - fiscal cost: the provision of non-Envelope fiscal redress to Ngai Tahu imposes additional costs onto the Crown.

11. The balance between Envelope and non-Envelope (fiscal and non-fiscal) redress is useful for the Crown to consider in developing its negotiating position. However, Ngai Tahu does not accept the Envelope and will not overtly distinguish between assets which are charged to it and those which are not. Nevertheless, it should be possible to make progress by focusing on the composition of a redress package rather than on labels used by the Crown

Envelope redress

12. Envelope redress is the quantum which will be offset against the Envelope. The size of the quantum is constrained by the need to preserve relativities within the Envelope.
13. The redress quantum could be a combination of cash and assets (as set out in Annex 2). Currently, the Crown is holding approximately \$38 million in property in the Ngai Tahu landbank which could be transferred to Ngai Tahu at short notice. The Crown should also encourage Ngai Tahu to take as much of the outstanding balance of any quantum in cash, as cash is less distortionary, has less transaction costs, and will facilitate achieving a settlement within the compressed timeframe available.
14. Officials have undertaken a preliminary scoping of the assets which the Crown might make available to Ngai Tahu as part of any settlement. There do not appear to be any significant policy barriers to the inclusion of most commercial Crown owned assets in Ngai Tahu's rohe. However, for many assets there are likely to be a range of complex and technical implementation issues to be addressed. Officials' preliminary scoping of policy issues is set out in Annex 2 to this paper.

Non-Envelope fiscal redress

15. This category of redress may potentially include a relativity clause, a first right of refusal to purchase surplus Crown properties that become available in Ngai Tahu's rohe, and the payment of interest on the diminishing unpaid balance of the settlement quantum. These items are not a charge to the Envelope, but their provision would incur additional costs on the Crown, and confer additional benefits on claimants. As the Crown provided each of these elements in some form to Waikato, it is likely Ngai Tahu has an expectation that the Crown will also offer them as part of its settlement package.

Relativity clause

16. The Waikato settlement included a mechanism which guarantees Waikato 17% of the total redress value provided in settlement of all historical claims. This means that should the value of the redress provided to Waikato fall below 17% of the net present value of the total redress provided by the Crown in settlement of historical Treaty of Waitangi grievances, the Crown will 'top-up' Waikato's redress. This top-up requires the Crown to provide additional redress to ensure the real value of Waikato's redress is 17% of the real value of total claim redress.

Risks of a relativity clause

- *Fiscal:* The redress payable under a relativity clause may be considerable, depending on the total expenditure of the Crown on settlements, and the timing of that expenditure. The extent of this risk is directly proportional to the pressure which claim quantum place on the Envelope;

- *Precedent:* Providing a relativity clause to Ngai Tahu may also encourage other claimants to seek such a clause, although the Crown may be able to limit its provision to only the largest claims.

Benefits of a relativity clause

- *Discipline:* A relativity clause provides a discipline on future Governments to remain within the broad parameters of the Settlement Envelope. This will encourage a consistent basis for settling claims, and consequently may improve their durability.
- *Insurance policy:* A relativity clause also confers a benefit to Ngai Tahu by, in effect, providing an insurance policy against the Crown materially increasing total redress for settlement of historical Treaty claims.

17. All in all, officials advise that Ngai Tahu is unlikely to settle without a relativity clause. Should the Crown offer a relativity clause to Ngai Tahu, then it should be of the same form as provided to Waikato.

Interest

18. The Waikato settlement involved the Crown paying interest at 5 year Government Stock Rate on the diminishing unpaid balance of the settlement redress. This was paid from the time of the signing of the Heads of Agreement, to put Waikato in the same position as if it had received and invested settlement redress at the time of the signing of the Heads. The final cost to the Crown of the agreement to pay interest to Waikato is considerable, and may be as great as \$40 million, depending on the final timing of transfer of redress.
 - Interest from Heads to Deed: This was paid as a 'first mover' advantage to Waikato for concluding an in-principle settlement in an uncertain and largely hostile environment. On this basis, it would not be expected that the Crown offer such redress for other settlements.
 - Interest from Deed: Waikato received interest from the signing of the Deed to compensate for delay in the return of redress. Should Ngai Tahu receive a largely cash based settlement, including land-banked properties which can be quickly transferred, and with minimum of redress paid over an implementation period, any interest component of a redress package would not be high.

First Right of Refusal to Purchase Surplus Crown Land

19. The Crown provided Waikato with a first right of refusal to purchase all Crown land that was not available for return to Waikato in the settlement, at the time it became surplus. This right acknowledged Waikato's raupatu claim and consequent 'land for land' principle, and that for policy or legal reasons the Crown could not offer certain land to Waikato as part of the settlement.
20. Ngai Tahu has indicated it would also like a pre-emptive right to purchase surplus Crown land. Ngai Tahu's claim is not based on raupatu, although it argues that the dispossession that occurred by the failure of the Crown to provide adequate reserves is analogous. Whilst the provision of this right does not have a fiscal cost to the Crown, it does impose transaction costs upon Crown agencies selling land. It also provides a tangible benefit to Ngai Tahu.
21. Ngai Tahu may seek additional non-Envelope fiscal redress of which officials are not aware of at this time. The Crown will need to carefully assess the costs of providing

such redress, particularly in light of the Waikato relativity clause which contains a definition of what constitutes 'redress', and from which the calculation is made as to whether additional redress is payable.

Non-Envelope non fiscal redress

22. Under this category of redress the Crown might provide an apology for the breaches of the Treaty that underpin the Ngai Tahu claim, mana recognition (such as renaming mountain tops), and assets of a non-fiscal nature.

Next steps

23. Cabinet needs to establish the Government's:

- quantum range within which it would be willing to comprehensively settle all Ngai Tahu's claims, that is consistent with relativities within the Envelope and takes into account the factors set out in Annex 1;
- priorities on the mix of non-Envelope fiscal and non-fiscal redress which the Crown is willing to provide as part of an overall settlement.

24. The Crown could trade off non-Envelope redress (especially fiscal redress) within its preferred quantum range. Should the Government wish to offer a relativity clause to Ngai Tahu this should be traded off at the lower end of the range, because of the increased risk of a high quantum and a relativity clause. Other elements of non-Envelope redress could be traded off at higher levels. To give effect to this approach, Ministers should agree a number of scenarios whereby the Crown offers certain non-Envelope redress within segments of its quantum redress.

25. The Prime Minister would then indicate to Sir Tipene, at their meeting, the Government's willingness to reach a comprehensive settlement that is consistent with the agreed alternate redress scenarios. The Prime Minister would also be invited to report back to Cabinet on Sir Tipene's response and whether there is sufficient closeness in the position of the parties to recommence negotiations. Negotiations should only be recommenced if there is a high degree of confidence that a total redress package can be agreed within parameters acceptable to both parties.

26. If Ministers agree that there is a sufficient degree of closeness, then subject to other preconditions referred to in the Overview paper, the parties should negotiate a formal exchange of letters to record an in-principle agreement on (among other things) comprehensiveness and redress by 31 May 1996.

Consultation

27. This submission has been prepared in consultation with the Crown Law Office, Department of the Prime Minister and Cabinet and Treasury.

Recommendations

28. It is recommended that the Cabinet Strategy Committee:

- a. note that the Prime Minister and Sir Tipene intend to meet after Easter to discuss a number of elements critical to determining whether to recommence negotiations with a view to seeking an overall settlement of Ngai Tahu's claims in 1996;

Comprehensiveness

- b. agree that the Crown's objective is a full and final settlement all Ngai Tahu's claims within a total redress package;
- c. note that Ngai Tahu may propose that mahinga kai and the many ancillary claims be settled separately;
- d. agree that the negotiation of some site specific redress could be put on a longer timeframe, provided that it is agreed before recommencing that the Deed of Settlement will clearly record: that all grievances have been settled within the total redress quantum; the portion of total redress quantum set aside as redress for site specific settlements; the process to address the provision of site specific redress; and agreement about the legal and policy parameters within which the Crown is able to work to deliver site specific redress to Ngai Tahu;

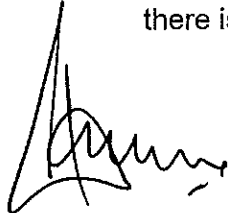
Redress

- e. note that a total redress package could include a mixture of:
 - i. **Envelope redress:** This would include cash and assets to be offset against the Envelope;
 - ii. **non-Envelope fiscal redress:** This would include a relativity clause, a first right of refusal on the purchase of surplus Crown lands, and the payment of interest on the outstanding balance of redress quantum;
 - iii. **non-Envelope non-fiscal redress:** This would include an apology, mana recognition (e.g. re-naming mountain tops), certain assets which the Crown may wish to gift to Ngai Tahu and the return of pounamu;
- f. agree to seek Ngai Tahu's agreement to a significant cash component of the total redress quantum;
- g. note that Ngai Tahu does not accept the Envelope and will not distinguish assets to be charged to it; however, it should be possible to make progress by focusing on the composition of a redress package rather than on labels used by the Crown;
- h. note that from a preliminary scoping there do not appear to be significant policy barriers to the use of many Crown commercial assets within the Ngai Tahu rohe as settlement redress, however there are likely to be a range of detailed and complex implementation issues which would need to be addressed;

Next steps

- i. note that there are different scenarios for the composition of a total redress package;
- j. invite the Prime Minister to indicate to Sir Tipene at their next meeting the Government's willingness to reach a comprehensive settlement based on the redress packages agreed in recommendation (i);
- k. agree that the Government should only recommence negotiations with Ngai Tahu if there is a high degree of confidence that:
 - i. both parties are aiming to achieve a comprehensive settlement of all Ngai Tahu's claims within the proposed timeframe; and
 - ii. if a total redress package can be agreed within parameters acceptable to both parties; and

- I. invite the Prime Minister to report back to Cabinet Strategy Committee on whether there is sufficient closeness in the parties' positions to recommence negotiations.



Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

Released under the Official Information Act 1982

Annex 1: Ngai Tahu: Quantum

1. This annex provides advice on the factors Ministers may wish to take into account when coming to a position on a total settlement quantum for the Ngai Tahu claim.
2. In 1992 Ngai Tahu rejected outright an "informal suggestion" by the Crown of a settlement of \$100 million. In response Ngai Tahu undertook an exercise which estimated the present value of reserves not awarded to be between \$1.1 billion and \$1.6 billion and quantified its total loss at between \$10.8-\$16.2 billion. The Crown negotiating team raised questions about the methodology of this quantification and did not concede its findings. Then in 1993 Ngai Tahu proposed a settlement package of \$650 million.
3. Any quantum must attempt to be:
 - affordable (within the parameters set by the Settlement Envelope);
 - equitable (vis a vis other claimants); and
 - durable.
4. There is no formula with which a quantum may be calculated and the decision on an appropriate settlement quantum is a political one which Ministers must make. There are a range of factors to be taken into account including:
 - nature, magnitude and impact of the breach;
 - strategic considerations;
 - the Settlement Envelope; and
 - claimant expectations;

Nature, magnitude and impact of the breach

5. Between 1844 and 1864 the Crown acquired 34.5 million acres from Ngai Tahu in eight separate transactions. The Waitangi Tribunal reported that the Crown purchased this land for £14,750 and left Ngai Tahu with reserves of 37,492 acres. Subsequent reserve allocations appear to have increased the total reserves base to around 200,000 acres. However, the Tribunal found that many of the reserves were unsuitable for settlement and individual holdings were inadequate as economic units. Consequently, the Tribunal upheld that Ngai Tahu should have been left with a more sizeable reserves base, without specifying an amount. In reference to the "Tenths policy" employed in other parts of the country Ngai Tahu has maintained that an appropriate reserves base would have been 3.4 million acres. This is historically questionable.
6. Other proven grievances include inadequate purchase prices and failure to: fulfil undertakings to provide schools and hospitals; protect taonga (e.g. pounamu); protect mahinga kai sites and preserve access to traditional food sources; and pay Ngai Tahu for 30,000 acres at Banks Peninsula. In a recent separate report the Waitangi Tribunal upheld 42 of 100 ancillary claims which relate primarily to discrete parcels of land.
7. In terms of redress the Tribunal concluded that *"Ngai Tahu is plainly entitled to very substantial compensation... to be able significantly to enhance the social, educational and economic well-being of its people"*. The Tribunal endorsed the views of both claimants and Crown that settlement should emerge through the course of direct negotiations *"on the basis of the Tribunal's findings of fact and its consequential findings"*

of breach of Treaty principles". The Tribunal also gave consideration to the effects of the breaches commenting that:

By 1864 Ngai Tahu were in a parlous, some might say pitiable condition. They were now an impoverished people largely confined on uneconomic patches of land, almost entirely isolated from mainstream European economic development, neglected by government at both central and provincial level, marginalised and struggling to survive both individually and as a people. Their rangatiratanga greatly diminished, their communal way of life and the cultural and spiritual values associated with it seriously undermined.¹

Strategic Considerations

8. It is in the Governments interests to settle the Ngai Tahu claim as the:

- Crown has a stated commitment to settle all major claims by the year 2000. The Ngai Tahu claim is regarded by modern historical scholars as significant. It has a high public profile and is more advanced than most as research has been completed and representation and mandate are not significant problems.
- legal proceedings taken by Ngai Tahu against the Crown hinder the Government's ability to manage its assets; achieve policy objectives; and increase the likelihood of other claimants proceeding with litigation.

Settlement Envelope and relevant fiscal considerations

9. The Crown's policy for settling historical claims requires that the costs of settling the claims be contained within an overall cap of \$1 billion. Within that quantum the following significant settlements have been accounted for to date:

- \$170 million - Maori fisheries claims;
- \$170 million Waikato raupatu claims; and

There is also a contingency within the Envelope of \$100 million.

10. A settlement quantum for the Ngai Tahu claim should also be informed by the following relevant fiscal considerations:

- the effect of the quantum on the Settlement Envelope and the ability of the Crown to provide durable quantum for other claims;
- the use of relativities clauses means that there is substantial fiscal risk from any settlement which may compromise the integrity of the Settlement Envelope quantum; and
- any order by the Tribunal for the compulsory resumption of memorialised assets in the Ngai Tahu rohe could have significant fiscal impact.

Claimant Expectations

11. Ngai Tahu has acknowledged in negotiations that it does not expect the Crown to compensate it fully for its loss. However, Ngai Tahu has focused on the following comment by the Tribunal:

¹ Ngai Tahu Report, page 821.

...it is clear that the land which remains in the possession of Crown, whether high country pastoral leasehold land, national parks, or other land still vested in the Crown or Landcorp, would not provide Ngai Tahu with an economic base.

Released under the Official Information Act 1982

Annex 2: Ngai Tahu: Categories of assets

1. Outlined below are redress components which may be sought by Ngai Tahu and the broad policy issues associated with them. However, there are likely to be a range of detailed and complex implementation issues which would need to be addressed.

Cash

2. *Issue* If a settlement could be agreed with a substantial cash component, it is likely to be achieved more quickly than one involving substantial non-cash assets. The transfer of cash is quick, provides minimal transaction costs and is least distortionary. A 1992 Ngai Tahu proposal of \$650 million contained a \$325 million or 50% cash component. However, it is unclear what proportion Ngai Tahu would request as cash.
3. *Comment* It would be in the Crown's interests to encourage as large a cash component to the settlement as possible.

Landbank assets

4. *Issue* Properties which have been purchased and landbanked for potential use in a settlement with Ngai Tahu.
5. *Comment* There do not appear to be significant policy barriers to the return of these properties in a settlement with the exception of the Otago high country stations (discussed in accompanying paper on specific assets).

Non-surplus Crown land

6. *Issue* The return of non-surplus Crown lands and subsequent lease back to vendor agencies has proven difficult in some cases in the Waikato settlement, involving high transaction costs and third party issues.
7. *Comment* The Crown should be aware of the difficulties experienced in some cases in the Waikato raupatu claims settlement.

Landcorp farms

8. *Issue* Ngai Tahu has indicated that it would seek the inclusion of Landcorp farms in any overall settlement.
9. *Comment* There do not appear to be any significant policy barriers to the inclusion of these assets in any overall settlement. However, the Crown would need to be aware of any impact on Landcorp's viability.

Coalcorp

10. *Issue* There are Coalcorp assets in Westland and Southland in the Ngai Tahu rohe.
11. *Comment* There do not appear to be any significant policy barriers to the inclusion of these assets in any overall settlement.

Forestry assets

12. *Issue* Ngai Tahu has expressed strong interest in including Crown forestry assets within its rohe in any overall settlement. The West Coast Forestry Accord may be an issue for the Crown to take into account.

13. *Comment* There do not appear to be any significant policy barriers to the inclusion of exotic forestry assets in any overall settlement.

Government Property Services

14. *Issue* There are Government Property Services assets in the Ngai Tahu rohe.
15. *Comment* There are do not appear to be any significant policy barriers to the inclusion of these assets in any overall settlement.

Shares in State-Owned Enterprises

16. *Issue* It is not clear that Ngai Tahu would seek to include SOE shares in any overall settlement. Officials consider that SOE shares should not be included in Treaty claim settlements. There would have to be legislative amendment to allow the transfer of SOE shares to claimants.
17. *Comment* Before recommending negotiations the Crown should advise Ngai Tahu that it would not intend to include SOE shares in any overall settlement.

Dams

18. *Issue* ECNZ is proposing to sell two hydro-stations in the Ngai Tahu rohe (Highbank, Coleridge). Ngai Tahu may be interested in obtaining these, but not necessarily as part of any settlement.
19. *Comment* Subject to water rights issues, there do not appear to be any significant policy barriers to the inclusion of these hydro-station facilities in any overall settlement.

Water

20. *Issue* Some assets which could be returned as part of an overall settlement, for instance hydro-stations, may raise wider policy questions concerning water.
21. *Comment* Policy issues relating to water are significant and have broader (non-Treaty) implications. It is likely that any attempt to settle Ngai Tahu's claims this year would fail if Ngai Tahu were to pursue property rights in relation to water. The Government should not offer Ngai Tahu any property rights for water.

Airports

22. *Issue* The Crown has significant shareholdings in Christchurch (25%), Dunedin (50%) and Invercargill airports (50%). It also has interests in joint venture arrangements in airports in Hokitika, Westport, Oamaru and Timaru. Ngai Tahu has signalled a desire to acquire Milford Airport.
23. *Comment* The Crown's current policy is that its should offer its shareholding interests in Christchurch, Dunedin and Invercargill airports to its shareholding partners, the local authorities. If the local authorities exercise the option to purchase this would prevent the Crown from offering its shareholding interests to Ngai Tahu. The joint venture interest the Crown has in the smaller interest are of minor significance and the return from any sale would be unlikely to cover the costs of corporatisation necessary to effect a sale. The Crown would need to carefully consider the inclusion of Milford Airport in negotiations.

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:

CROWN LAW OFFICE, DEPARTMENT OF PRIME
MINISTER AND CABINET, TREASURY

Signature	Name and Title	Date
M. A. Thompson	MARY ANNE THOMPSON GROUP MANAGER POLICY AND NEGOTIATIONS	1 / 4 / 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 [CO (95) 8 refers].

I certify that consultation on the issues raised in this paper with:

	Has taken place	Will be needed	Is not required
the government 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]	Treasury	1 / 4 / 96



CABINET STRATEGY
COMMITTEE

CSC (96) 52

1 April 1996

Copy No: 26

This paper is the property of the New Zealand Government. As it includes material for Cabinet or Cabinet Committee purposes it must be handled with particular care, and in accordance with any security classification or other endorsement assigned to it. The information in it may be released only by persons having proper authority to do so, and strictly in terms of that authority.

Title

NGAI TAHU : SPECIFIC ASSETS WITH CONSERVATION
IMPLICATIONS

LATE PAPER : This paper was received after the Cabinet deadline.

Purpose

This submission is one of a series of three papers which examine whether the Crown should recommence negotiations with Ngai Tahu, with a view to achieving an overall settlement of its claims this year.

This paper considers seven specific assets which have been the subject of negotiations between the Crown and Ngai Tahu. Resolution of these issues will be important in achieving an overall settlement of Ngai Tahu's claims.

An Executive Summary is set out on page 1 of the paper.



The Minister in Charge of Treaty of Waitangi Negotiations recommends that the Committee:

- a note that the Prime Minister has undertaken to write to Sir Tipene O'Regan to confirm the Crown's understanding of the outstanding issues and the effective options available on pounamu, Tutaepatu, Rarotoka, Whenua Hou, Crown Titi Islands, the Otago high country stations and the Arahura valley;

Pounamu

- b i note that on 25 October 1994, Cabinet agreed to:

"the introduction of special legislation to vest in Ngai Tahu the current Crown rights to bowenite and nephrite in the Ngai Tahu rohe, and to serpentine in the three specific zones (identified in the maps attached to the submission under CAB (94) 965). Note "current Crown rights" do not include privately owned pounamu in land held under Victorian title;"

[decision (i)(ii) of CAB (94) M 40/10 refers]

- ii rescind the decision referred to in paragraph (b)(i) above;
- c i agree to vest in Ngai Tahu the current Crown rights to pounamu in the Ngai Tahu rohe out to the 12 mile limit;

S Macaskill
M Thompson

- ii note that access to conservation land for the purpose of extracting pounamu is dealt with in a separate report from the Minister of Energy which will be submitted to the Cabinet Strategy Committee on 10 April 1996;

Tutaepatu

- d
 - i agree that the Crown should provide a further \$150,000 (GST inclusive) for the restoration of Tutaepatu;
 - ii agree that this money be:

EITHER

A offset against any settlement of the Ngai Tahu claim;

OR

B a new appropriation;

- e **if recommendation (d) (ii) (B) above is agreed to**, then direct officials to report to the Cabinet Committee on Expenditure Control and Revenue by 3 May 1996 with the details of the new appropriation;
- f agree, **subject to a decision by Cabinet to recommence negotiations with Ngai Tahu** (to be considered following the Prime Minister's report back from his next meeting with Sir Tipene O'Regan):

Rarotoka

- i to vest in Ngai Tahu the title in fee simple to Rarotoka exempt from the marginal strip requirements, but subject to an easement to protect the lighthouse and secure access to it;
- ii that the Crown should work with Ngai Tahu (at the local level if acceptable to Ngai Tahu) to develop a management regime which meets Ngai Tahu objectives in relation to the control and harvest of paua in the foreshore;

Whenua Hou

- iii that an annual visitation programme be established between Ngai Tahu and the Regional Conservator;
- iv that:
 - A the Crown is willing to develop with Ngai Tahu (at the local level, if acceptable to Ngai Tahu), a legislative mechanism which provides Ngai Tahu with a meaningful advisory role in managing Whenua Hou as part of the conservation estate;
 - B the Crown considers that there is a range of options by which this could be achieved including a reserve board, a body with a role similar to that of a conservation board, or an equivalent to the Takapourewa model, and that any of these options would be acceptable to the Crown;
 - C Ngai Tahu should be invited to inform the Crown of its preference;

Crown Titi Islands

- v to vest in Ngai Tahu the freehold title to the Crown Titi Islands, exempt from the marginal strip requirements and subject to the islands being managed as a nature reserve;
- vi that the Crown should manage the Crown Titi Islands with Ngai Tahu having a meaningful statutory advisory role and that the Government and Ngai Tahu should explore how to give effect to this (at the local level, if acceptable to Ngai Tahu);

Arahura Valley

- vii that this is a difficult issue which should be addressed later in negotiations in light of the outcomes of other matters;

Greenstone/Elfin Bay/Routeburn Stations

- viii that this is a difficult issue which requires further consideration by the Crown and should be dealt with later in the negotiations in the context of other outcomes;

FINANCIAL IMPLICATIONS

- g agree that if the freehold to pounamu, Tutaepatu, Rarotoka and Crown Titi Islands is transferred to Ngai Tahu then:

EITHER

- i the interests should be gifted to Ngai Tahu at no cost;

OR

- ii the interests being vested with Ngai Tahu should be valued;

LEGISLATIVE IMPLICATIONS

- h note that vesting with Ngai Tahu the freehold to pounamu, Tutaepatu, Rarotoka and Crown Titi Islands will require special legislation, and that it is intended that this be included with legislation enacted to implement any overall settlement of Ngai Tahu's claims;
- i invite the Prime Minister, in consultation with the Minister in Charge of Treaty of Waitangi Negotiations, Minister of Conservation and Minister of Energy, to write to Ngai Tahu setting out the decisions made in paragraphs (a) - (h) above.

(Signed) Judith Wigglesworth

COPIES TO: (See over)

COPIES TO:

Cabinet Strategy Committee
Chief Executive, PM&C
Secretary to the Treasury
State Services Commissioner
Solicitor-General
Chief Executive, Ministry of Fisheries
Secretary for Justice
Director, Office of Treaty Settlements
Minister of Conservation
Director-General of Conservation
Minister of Maori Affairs
Chief Executive, Te Puni Kokiri
Secretary of Commerce

Released under the Official Information Act 1982



Office of the
**Minister in Charge of Treaty of Waitangi
Negotiations**

Te Tari o Te
**Minita Nōna te Mana Whakarite Take e pā ana ki
Te Tiriti o Waitangi**

- 1 APR 1996

Ms Sue Sharp
Cabinet Office
Parliament Buildings
WELLINGTON

Dear Ms Sharp

Please find attached a submission to the Cabinet Strategy Committee entitled "Ngai Tahu: Specific assets with conservation implications". This is one of a suite of three papers on Ngai Tahu. I would appreciate it if the submission could be considered by the Committee as a late paper at its meeting on 3 April 1996.

The paper has been prepared in some haste following a meeting between the Prime Minister and Sir Tipene O'Regan and must be considered by Ministers prior to a further meeting between these two intended to be held shortly after Easter.

Yours sincerely

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

Chair
Cabinet Strategy Committee

Ngai Tahu: Specific assets with conservation implications

Executive Summary

1. This is one of three papers which examine whether the Crown should recommence negotiations with Ngai Tahu with a view to achieving an overall settlement of its claims this year. It considers seven specific assets which have been the subject of negotiations between the Crown and Ngai Tahu. A number of these assets have been identified as being of significant spiritual and cultural importance to Ngai Tahu. Some of the assets have been subject to firm proposals and public consultation. Resolution of these issues will be important in achieving an overall settlement of Ngai Tahu's claims and they should be considered of strategic importance.
2. The paper recommends that Ministers agree:
 - Pounamu*
 - to vest in Ngai Tahu ownership of pounamu out to the 12 mile limit;
 - Tutaepatu*
 - to provide a further \$150,000 to Ngai Tahu for the restoration of Tutaepatu, either as a charge against its settlement or as a new appropriation;
 - Rarotoka*
 - to vest in Ngai Tahu fee simple to Rarotoka, exempt from the marginal strip requirements, but subject to an easement to protect the lighthouse and secure access to it; and work with Ngai Tahu to develop a statutory management regime which meets its objectives in relation to the control and harvest of paua;
 - Whenua Hou*
 - to give Ngai Tahu visitation rights to Whenua Hou and a meaningful advisory role in management of the island through a statutory body such as a reserve board or a body similar to a conservation board or the Takapourewa model;
 - Crown Titi Islands*
 - to vest in Ngai Tahu freehold title to the Crown Titi Islands, exempt from the marginal strip requirements but subject to the islands being managed as a nature reserve by the Crown, with Ngai Tahu having a meaningful advisory role;
 - Arahura Valley and Otago high country stations*
 - that the Arahura Valley and Otago high country stations are difficult issues which should be addressed later in negotiations in light of the outcomes of other matters; and
 - Next steps*
 - the Prime Minister, in consultation with the Minister in Charge of Treaty of Waitangi Negotiations, Minister of Conservation and Minister of Energy, write to Ngai Tahu outlining the Government's intended approach on the above assets.

Introduction

3. This paper considers the following assets sought by Ngai Tahu which have conservation implications:

- pounamu;
- Tutaepatu;
- Rarotoka;
- Whenua Hou;
- Crown Titi Islands;
- Otago high country stations; and
- Arahura valley.

4. The Prime Minister has given an undertaking to write to Sir Tipene O'Regan before their next meeting (intended to be held shortly after Easter) to confirm the Crown's understanding of the outstanding issues and the effective options available. This paper outlines a set of proposals for the Government to put to Ngai Tahu in this letter, on the assets referred to above.

Pounamu (greenstone)

Ngai Tahu objectives

5. Ngai Tahu wants ownership and control of pounamu within its rohe.
6. The Crown has previously offered ownership of pounamu to Ngai Tahu [CAB (94) M40/10 refers]. Ngai Tahu rejected this offer on the grounds that it did not include ownership out to the 12 mile limit (coastal and intra-tidal pounamu). A further issue which has arisen is access to pounamu which is on conservation land.

Ownership out to the 12 mile limit

7. Previously Cabinet agreed to vest in Ngai Tahu the current Crown rights to bowenite and nephrite in the Ngai Tahu rohe, and to serpentine in three specific zones [CAB (94) M40/10 recommendation i (ii) refers]. Ministers declined to agree to include ownership out to the 12 mile limit. At that time officials advised that this would require the Crown to issue a minerals programme to manage pounamu from only the foreshore to the 12 mile limit which would be costly and difficult to administer. On the basis of this previous advice, officials recommend that Ministers consider rescinding their earlier decision and agree to transferring ownership of pounamu to Ngai Tahu within its rohe out to the 12 mile limit.

Access to pounamu on conservation land

8. It is proposed that access to land to extract pounamu be by the consent of the land owner/occupier (as per the Crown Minerals Act 1991). Ngai Tahu has indicated that it wishes to work within an existing legislative regime for access to the conservation estate, but would like the legislative regime under which decisions are made to be as transparent as possible. In addition, Ministers have agreed in principle to close certain areas of the conservation estate to most mining activities. This wider access issue is not peculiar to Ngai Tahu and is dealt with in detail in a separate paper from the

Minister of Energy "Access to Private Minerals in Crown Land" which will be considered by the Cabinet Strategy Committee on 10 April 1996.

9. It is recommended that Ministers agree to return to Ngai Tahu ownership of pounamu within its rohe out to the 12 mile limit. The paper to be submitted by the Minister of Energy will recommend that access to conservation land to extract pounamu (and other private minerals) be managed through the Crown Minerals Act 1991. This will require legislative amendment. It is expected that it will meet Ngai Tahu's concerns.

Tutaepatu (Woodend Lagoon)

Ngai Tahu objectives

10. Tutaepatu is of significance to Ngai Tahu for mahinga kai and urupa in the area. The primary Ngai Tahu claimant, Rakihiia Tau, has a specific affinity with Tutaepatu. Ngai Tahu wants ownership and control of Tutaepatu and wishes to restore it, particularly as an eel resource.
11. In 1992 Ngai Tahu cleared an area of land from inclusion in their landbank to allow the freeholding of a number of private baches on the Waikuku Beach reserve administered by the Waimakariri District Council (WDC). In return the Crown agreed to grant freehold title of Tutaepatu to Ngai Tahu and vest an additional area of reserve with a joint Ngai Tahu/WDC trust. These actions will require special legislation and have yet to be implemented. The Minister of Conservation agreed to contribute \$50,000 as a grant to the trust towards the cost of preparing a management plan for the new reserve [CAB (94) M 40/10 refers]. Ngai Tahu is requesting additional funding or resources to restore the lagoon and habitat.

Funding restoration of the lagoon

12. Ngai Tahu considers that its work on the wetlands will further Crown conservation objectives and should be supported by effective Crown resourcing. Ngai Tahu is aware that freeholding the baches raised the Crown \$492,000 for the Reserves Trust Account. Ngai Tahu wants an increased Crown commitment of not necessarily finance, but possibly technical advice or labour under some form of government scheme. The three options open to the Crown are to provide:
 - increased one off finance;
 - labour, for instance Taskforce Green; or
 - technical advice.
13. It would be simpler for the Crown to provide one-off finance rather than brokering technical advice or labour. The key issue is whether or not the funding should be offset against Ngai Tahu's settlement. Ngai Tahu believes that it did the Crown a favour in freeholding the baches and will be meeting Crown conservation objectives in restoring the lagoon. Ngai Tahu is unlikely to accept any increased funding being charged to its settlement. This is an issue of principle for Ngai Tahu and an area of high risk over a relatively small sum of money. It is recommended that Ministers agree to the provision of a further \$150,000 to Ngai Tahu and that this be either:
 - i. offset against its claim settlement; or
 - ii. a new appropriation.

Rarotoka (Centre Island)

Ngai Tahu objectives

14. Rarotoka is of spiritual significance to Ngai Tahu and of particular importance to George Te Au, a paramount Chief of Ngai Tahu. Ngai Tahu wants ownership of the island and the surrounding foreshore to ensure exclusive control over kaimoana (seafood). Ngai Tahu has indicated that it wants to protect and enhance natural fisheries and that it may also have plans for marine farming (paua) operations in this area.

Key facts

15. Rarotoka is in Foveaux Strait and is currently Crown land used as a lighthouse base. Most of it is surplus to the Maritime Safety Authority's needs, but the Authority wishes to retain an interest in a 2.5 hectare site on which the lighthouse and ancillary buildings are located. The lighthouse is required to illuminate the approaches to the Riverton and Bluff Harbour entrances. There are some areas of interesting indigenous coastal vegetation and some valuable seabed nesting areas (e.g. sooty shearwater, prions, yellow-eyed penguin). The island is significant in being free of introduced predators and rodents other than kiore and has a high potential for restoration.
16. When considering Rarotoka there are three distinct areas of land to be addressed:
 - the bulk of the island;
 - the marginal strip (20 metres above mean high water mark); and
 - the foreshore (between mean high water mark and mean low water mark) and seabed (beyond the mean low water mark, potentially out to the 12 mile limit).

Bulk of island

17. In 1994 Ministers agreed that Rarotoka be vested in Ngai Tahu as Maori freehold land subject to an easement to protect and secure access to the lighthouse which will be retained by the Crown [CAB (94) M 40/10 refers].

Marginal strip

18. In 1994 Cabinet agreed to the area which would normally be covered by a marginal strip being held by Ngai Tahu as a Maori reservation (under section 340 of Te Ture Whenua Maori Act 1993) for the common use and benefit of all New Zealanders. Ngai Tahu rejected this proposal reiterating its preference for a low water title.
19. The Department of Conservation has met with local Ngai Tahu hapu to discuss the conservation values of the island and the potential for restoration. They have responded positively and are ready to scope future conservation and restoration initiatives with a view to working with the Department of Conservation. Given this response, the need to manage the island as an integrated whole and the problems that could arise from public access onto a marginal strip area which contains seabird burrows, officials recommend waiving of the marginal strip. The Minister of Conservation may reduce or extend a marginal strip (in accordance with criteria in the Conservation Act 1987) but cannot simply waive this provision so special legislation would be required.

Foreshore and seabed

20. Currently, the general legal position is that all foreshore and seabed (below mean high water mark) is in Crown ownership, held in perpetuity and managed for public purposes. However, it may be possible, either using existing legislation such the Resource Management Act and the Fisheries Act or developing a new regime under special legislation, to allow Ngai Tahu to manage and control the paua resource on Rarotoka without ownership of the foreshore and seabed.
21. Rarotoka is a minor fisheries resource contributing around 0.5% of the total paua take within the relevant management area. In this area Ngai Tahu controls approximately 40% of the paua quota. Thus extending management control of Rarotoka to Ngai Tahu would have negligible impact on commercial paua interests.

Recommendations

22. It is recommended that Ministers agree to the transfer to Ngai Tahu of fee simple to Rarotoka, exempt from the marginal strip requirements, but subject to an easement to protect the lighthouse and secure access to it. It is also recommended that the Government agree to work with Ngai Tahu (at the local level if accepted by Ngai Tahu) to develop a statutory management regime which meets Ngai Tahu objectives in relation to control and harvest of paua. The mandated Ngai Tahu negotiating team will need to agree to the level of local participation.

Whenua Hou (Codfish Island)

Ngai Tahu objectives

23. Ngai Tahu does not claim ownership of this island and recognises its conservation significance. Ngai Tahu wants to be able to visit Whenua Hou as of right, albeit under appropriate controls, and have a meaningful advisory role in management of the island.
24. Whenua Hou is a 1396 ha forested island located 3km from Stewart Island. It is a nature reserve with internationally significant ecological values. Rare and endangered plants include *Stilbocarpa*, Cook's scurvy grass and pingao. Rare and endangered animals include yellow eyed penguins, Fiordland crested penguins, Cook's petrel, South Georgina diving petrels, the endernic Codfish Island fernbird and South Island Kaka. In addition, approximately half of the remaining population of kakapo have been translocated to Whenua Hou. The only introduced predator on the island is kiore and an eradication programme is planned.
25. An agreement in principle was reached between Ngai Tahu and the Crown on Whenua Hou and was approved by the Minister of Conservation in June 1992. In 1994 it was subject to a public consultation process by the Southland Conservation Board which generated significant opposition to the proposal although the Board endorsed it by a narrow majority. The proposal set out that Ngai Tahu would advise the Regional Conservator on the issue of entry permits and have mutually agreed conditions for an annual visitation programme. It was also proposed that management of the island be vested in a new reserve board, with a majority Ngai Tahu membership, but with the Minister of Conservation retaining decision making authority over certain matters.

Management body and Ngai Tahu role

26. Ministers are asked to agree that an annual visitation programme be established between Ngai Tahu and the Regional Conservator. There are a number of management options which all require special legislation to implement. It is recommended that in relation to the management options for Whenua Hou Ministers convey to Ngai Tahu that:
- i. the Crown is willing to develop a legislative mechanism which provides Ngai Tahu with a meaningful role in managing Whenua Hou;
 - ii. the Crown considers that there are a range of options by which this could be achieved including a reserve board, a body with a role similar to that of a conservation board, or an equivalent to the Takapourewa model and that any of these options would be acceptable to the Crown; and
 - iii. Ngai Tahu should inform the Crown of its preference.

Crown Titi Islands

Ngai Tahu objectives

27. Ngai Tahu has not expressed clear objectives concerning the Crown Titi Islands but has indicated that it wants title of the islands, subject to them being managed under conservation objectives. This has also been expressed as being able to clearly manage and exploit Ngai Tahu mahinga kai as of right, but that Ngai Tahu would accept having this right constrained by management of the islands as a nature reserve.
28. There are 18 named Crown Titi Islands varying in size from 2 to 141 ha. They have varying natural values, largely dependent on the types of introduced predators. Significant species present are South Island saddleback, red crowned parakeet, Stewart Island fernbird, an undescribed gecko species, Fiordland crested penguin, yellow eyed penguin and Cook's scurvy grass. The islands also have significant seabird populations. Active conservation work has been undertaken on some islands, particularly relating to South Island saddleback management.
29. In 1992 an agreement in principle was reached between Ngai Tahu and the Crown on the Crown Titi Islands and a draft deed of agreement drawn up. In 1994 it was subject to a public consultation process by the Southland Conservation Board which generated significant opposition to the proposal, although the Board endorsed it by a narrow majority. The proposal was for the vesting in Ngai Tahu of the Crown Titi Islands free of any existing trust and exempt from the marginal strip requirements. Under the proposal the islands would be administered and managed as a nature reserve by three Ngai Tahu trustees pursuant to s38 of the Reserves Act 1977.

Management body and Ngai Tahu role

30. Officials support transfer of freehold title to the islands, exempt from the marginal strip requirements and subject to the islands being managed as a nature reserve. The outstanding issue is the respective roles of the Crown and Ngai Tahu in management of the islands. The 1992 proposal was for Ngai Tahu to have management control. However, this proposal raised significant public opposition due to the conservation values of the islands and officials consider that the Crown and Ngai Tahu should continue negotiations over the management of the islands.

Recommendations

31. It is recommended that Ministers agree to the transfer of freehold title to the islands, exempt from the marginal strip requirements and subject to the islands being managed as a nature reserve. Ministers are asked to note that the outstanding issue is the management structure and the respective roles of Ngai Tahu and the Crown. It is also recommended that the Crown manage the islands, with a meaningful advisory role for Ngai Tahu. The details of Ngai Tahu's role should be developed in discussions with Ngai Tahu at the local level, if acceptable to Ngai Tahu.

Arahura Valley

Ngai Tahu objectives

32. Currently, Ngai Tahu owns 30 kilometres of the Arahura riverbed. Ngai Tahu has indicated an acceptance that the Waitangi Tribunal recommendation to return title to a reasonable amount of land along the river and its tributaries would be expensive and complex to implement and is thus not feasible. Ngai Tahu has also indicated that it accepts that this is a very difficult issue to resolve.
33. The valley contains lowland forest, dominated by hardwood species (the valley is in the "beech gap"). Passing through this forest is a major walking track providing access to the southern alps. The Crown earlier proposed to convert stewardship land administered by the Department of Conservation to a scenic reserve (approximately 13,000 ha) and conditionally vest this with Ngai Tahu under s26 of the Reserves Act 1977. Ngai Tahu then proposed the transfer of freehold title to this area of the conservation estate subject to a covenant requiring compliance with the existing conservation regime. There has been a further suggestion that the Crown stop unformed legal roads abutting the Arahura river, acquire these lands from the District Council and vest them directly in Ngai Tahu.

Recommendations

34. It is recommended that Ministers note that this is a difficult issue to resolve which should be addressed later in negotiations in light of the outcomes of other issues. The significance of this issue may diminish once the return of pounamu and access to conservation lands are subject to firm agreement.

Routeburn/Elfin Bay/Greenstone stations

Ngai Tahu objectives

35. When these stations were landbanked in 1992/93 Ngai Tahu agreed to several conditions (imposition of a cap on the landbank; release of certain properties; no more private property to be landbanked). A further condition was that they be the first assets used in any settlement. Ngai Tahu considers that there is a contractual agreement to return these stations and the issue has become a touchstone of good faith.
36. The issue faced by the Crown is whether parts of the properties be retired to the conservation estate or included in the landbank for settlement. A report by the Commissioner for Crown Lands recommends that 90% of the stations be retired to the conservation estate. However, even under this scenario the stations would remain economically viable unit as a farming unit.

37. It is recommended that Ministers note that this is a difficult issue which requires further detailed consideration by the Crown. It may be easier to deal with this issue later in the negotiations in the context of other outcomes. Any final decision on the future of the stations should be made in light of the Commissioner's report.

Financial Implications

38. This paper recommends that Ngai Tahu be vested with the freehold title to pounamu, Rarotoka, Tutaepatu and the Crown Titi Islands. Ministers need to consider the financial implications of this. In 1994 Ministers noted the following valuations [CAB (94) M 40/10 refers]:

i. pounamu rights	0.0	(\$million)
ii. Rarotoka	0.050	(\$million)
iii. Tutaepatu	0.046	(\$million)

It is not possible to quantify the size or quality of the pounamu resource. However, in 1994/95 the Crown received royalties from pounamu (2% of sales value) of \$1120 and to date in 1995/96 \$617. There is no valuation available for the Crown Titi Islands. However, the freehold will be significantly encumbered as the islands must be managed as a nature reserve

39. The Treasury and the Office of Treaty Settlement recommend that these assets be gifted to Ngai Tahu at nil fiscal consideration. There would be difficulties in obtaining accurate current market valuations which Ngai Tahu would agree to. In addition the assets have low values and are not commercial properties. However, they are of spiritual importance to Ngai Tahu, and will be of strategic importance in any settlement of Ngai Tahu's claims.
40. The Department of Conservation believes that the Crown should undertake valuations of all interests being vested with Ngai Tahu. The Crown may then choose to return them at nil consideration.

Legislative Implications

41. All of the issues will require special legislation to be implemented. It is intended that they be included with legislation enacted to implement any overall settlement of Ngai Tahu's claims.

Consultation

42. The following departments have been consulted in the development of this paper: Crown Law Office; Department of Conservation; Department of the Prime Minister and the Cabinet; Ministry of Commerce; Ministry of Fisheries; Te Puni Kokiri; and Treasury.

Recommendations

43. It is recommended that the Cabinet Strategy Committee:
- note that the Prime Minister has undertaken to write to Sir Tipene O'Regan to confirm the Crown's understanding of the outstanding issues and the effective

options available on pounamu, Tutaepatu, Rarotoka, Whenua Hou, Crown Titi Islands, the Otago high country stations and the Arahura valley;

Pounamu

- b. agree to rescind recommendation i (ii) CAB(94) M 40/10 where Ministers agreed to:

the introduction of special legislation to vest in Ngai Tahu the current Crown rights to bowenite and nephrite in the Ngai Tahu rohe, and to serpentine in the three specific zones (identified in maps) attached to the submission under CAB(94) 965). Note "current Crown rights" do not include privately owned pounamu in land held under Victorian title.

- c. agree to vest in Ngai Tahu the current Crown rights to pounamu in the Ngai Tahu rohe out to the 12 mile limit; [Note that access to conservation land for the purpose of extracting pounamu is dealt with in a separate report from the Minister of Energy which will be submitted to Cabinet Strategy Committee on 10 April 1996];

Tutaepatu

- d. agree that the Crown should provide a further \$150,000 (GST inclusive) for the restoration of Tutaepatu and that this money be either:

- A. offset against any settlement of the Ngai Tahu claim; or
- B. a new appropriation.

- e. if Ministers agree to recommendation d. (B) then direct officials to report to the Cabinet Committee on Expenditure Control and Revenue with the details of the new appropriation by 3 May 1996;

- f. agree subject to a decision by Cabinet to recommence negotiations with Ngai Tahu (to be considered following the Prime Minister's report back from his next meeting with Sir Tipene O'Regan):

Rarotoka

- i. to vest in Ngai Tahu the title in fee simple to Rarotoka exempt from the marginal strip requirements, but subject to an easement to protect the lighthouse and secure access to it;
- ii. that the Crown should work with Ngai Tahu (at the local level if acceptable to Ngai Tahu) to develop a management regime which meets Ngai Tahu objectives in relation to the control and harvest of paua in the foreshore;

Whenua Hou

- iii. that an annual visitation programme be established between Ngai Tahu and the Regional Conservator;
- iv. that:
 - A. the Crown is willing to develop with Ngai Tahu (at the local level, if acceptable to Ngai Tahu), a legislative mechanism which provides Ngai Tahu with a meaningful advisory role in managing Whenua Hou as part of the conservation estate;
 - B. the Crown considers that there is a range of options by which this could be achieved including a reserve board, a body with a role similar to that

of a conservation board, or an equivalent to the Takapourewa model, and that any of these options would be acceptable to the Crown;

C. Ngai Tahu should be invited to inform the Crown of its preference;

Crown Titi Islands

- v. to vest in Ngai Tahu the freehold title to the Crown Titi Islands, exempt from the marginal strip requirements and subject to the islands being managed as a nature reserve;
- vi. that the Crown should manage the Crown Titi Islands with Ngai Tahu having a meaningful statutory advisory role and that the Government and Ngai Tahu should explore how to give effect to this (at the local level, if acceptable to Ngai Tahu);

Arahura Valley

- vii. that this is a difficult issue which should be addressed later in negotiations in light of the outcomes of other matters;

Greenstone/Elfin Bay/Routeburn stations

- viii. that this is a difficult issue which requires further consideration by the Crown and should be dealt with later in the negotiations in the context of other outcomes;

Financial implications

- g. agree that if the freehold to pounamu, Tutaepatu, Rarotoka and Crown Titi Islands is transferred to Ngai Tahu then either:
 - i. the interests should be gifted to Ngai Tahu at no cost; OR
 - ii. the interests being vested with Ngai Tahu should be valued

Legislative implications

- h. note that vesting with Ngai Tahu the freehold to pounamu, Tutaepatu, Rarotoka and Crown Titi Islands will require special legislation that it is intended that they be included with legislation enacted to implement any overall settlement of Ngai Tahu's claims; and
- i. invite the Prime Minister, in consultation with the Minister in Charge of Treaty of Waitangi Negotiations, Minister of Conservation and Minister of Energy, to write to Ngai Tahu setting out the decisions made in this paper.



Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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: CROWN LAW OFFICE, DEPARTMENT OF CONSERVATION, DEPARTMENT OF PRIME MINISTER AND CABINET, MINISTRY OF COMMERCE, MINISTRY OF FISHERIES, TE PUNI KOKIRI, TREASURY...		
Signature	Name and Title	Date
M.A. Thompson	MARY ANNE THOMPSON GROUP MANAGER, POLICY AND NEGOTIATIONS	1, 4, 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 [CO (95) 8 refers].			
I certify that consultation on the issues raised in this paper with:			
	Has taken place	Will be needed	Is not required
the government 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]	11/1/96	1, 14, 96	

**CABINET STRATEGY
COMMITTEE****CSC (96) 51**

1 April 1996

Copy No: 25

This paper is the property of the New Zealand Government. As it includes material for Cabinet or Cabinet Committee purposes it must be handled with particular care, and in accordance with any security classification or other endorsement assigned to it. The information in it may be released only by persons having proper authority to do so, and strictly in terms of that authority.

Title**NGAI TAHU : OVERVIEW****LATE PAPER :** This paper was received after the Cabinet deadline.**Purpose**

This submission is one of a series of three papers which examine whether the Crown should recommence negotiations with Ngai Tahu, with a view to achieving an overall settlement of its claims this year.

This paper [CSC (96) 51] provides an overview of critical success factors.

An Executive Summary is set out on page 1 of the paper.

The Prime Minister's letter to Sir Tipene O'Regan of 7 March 1996 is attached on pages 11-14 of the paper.

Paper 2 [CSC (96) 53] discusses comprehensiveness and redress including quantum and the range of assets which may be included in any settlement.

Paper 3 [CSC (96) 52] discusses specific assets which have conservation implications and on which the Prime Minister has undertaken to write to Ngai Tahu.

The Minister in Charge of Treaty of Waitangi Negotiations recommends that the Committee:

- a note that the Government needs to consider whether a full and final settlement of all Ngai Tahu's claims can be reached this year;
- b agree that:
 - i the Government should recommence negotiations only if it has a high level of confidence that there are no significant barriers to settlement which cannot be resolved within parameters acceptable to both sides;
 - ii the critical success factors on which a high level of confidence is required are as follows:
 - A Te Runanga O Ngai Tahu Bill;

- B suspension of litigation by Ngai Tahu;
 - C comprehensiveness;
 - D redress package;
 - E range of assets and other components to be included in any redress package;
 - F specific assets with conservation implications;
 - G timetable; and
 - H process of negotiations;
- c note that the issues referred to in paragraph (b)(ii)(C), (D), (E) and (F) above are addressed in accompanying papers, and that this paper considers paragraphs (b)(ii)(B), (G) and (H) above;

LITIGATION

- d note that Ngai Tahu is currently pursuing actions against the Crown in both the courts and the Waitangi Tribunal, and that it is Government policy that the Crown will not negotiate with any party which is actively pursuing redress through another forum;
- e agree that, as part of any agreement to recommence negotiations, Ngai Tahu needs to agree that:
- i the following proceedings be adjourned *sine die* and no further steps taken in the proceedings during negotiations:
 - A Wai 27 amended statements of claim dated 20 December 1994 and 6 July 1995;
 - B *Tau and Te Runanga o Ngai Tahu v Durie* (CP215/95); and
 - C *Tau v Minister of Finance and Minister for State Owned Enterprises* (CP81/95);
 - ii Landcorp properties to be withheld from sale during negotiations be identified and a consent memorandum filed with the court varying the interim order to allow Landcorp to dispose of those properties not being withheld from sale;
 - iii necessary consent memoranda be filed with the High Court to ensure that all three proceedings are adjourned *sine die*;
 - iv the status quo in relation to the Coalcorp proceedings (*Te Runanga o Ngai Tahu Limited v Attorney-General* CP115/95) be continued;
 - v the status quo in relation to the pounamu proceedings (*Ngai Tahu Maori Trust Board v Attorney-General* CP236/94) be continued;
 - vi the Katiwaewae proceedings (*Te Runaka o Katiwaewae v Chief Judge Durie and Maori Land Court* CP91/95) continue in the normal fashion;
- f invite the Prime Minister in conjunction with the Minister in Charge of Treaty of Waitangi Negotiations to write to Ngai Tahu setting out the Crown's expectations in relation to the suspension of litigation (as set out in paragraph (e) above);

AGREED TIMETABLE

- g agree that in place of a heads of agreement the Crown should seek agreement in principle with Ngai Tahu, through an exchange of letters, on the following matters by 31 May 1996:
- i Quantum;
 - ii Comprehensiveness;
 - iii Range of assets and other components to be included in any final settlement package;
 - iv Process for interim disposal of Crown assets; and
 - v Milestones for achieving a settlement;
- h agree that the Crown should seek Ngai Tahu's agreement to work within the following timeframe:

PROCESS AND TIMETABLE OF NEGOTIATIONS		
Stage 1 Scoping Now - 30 April	OBJECTIVE	ACTION
	Assess prospects of both sides agreeing on critical success factors: • Ngai Tahu Bill • suspension of litigation • comprehensiveness • redress principles • range of assets and other components to be included in any final settlement package • specific redress issues with conservation implications • timetable • process of negotiations	Prior to next meeting with Sir Tipene: Sir Tipene responds to PM's letter and outlines range of assets sought Cabinet authorises PM's discussions with Ngai Tahu Crown sends letters to Ngai Tahu on specific conservation related matters and litigation At next meeting with Sir Tipene (say 12 April) Assess prospects of agreement on critical success factors, in particular quantum and comprehensiveness Post next meeting with Sir Tipene PM to report back to CSC on discussions; Officials report to CSC on structure of negotiations if required.

Stage 1 output	EITHER A Proceed - Cabinet decides to recommence negotiations; - PM and Ministers send letter to Ngai Tahu; - Ngai Tahu responds and suspends litigation; and - Cabinet agrees Crown negotiating brief for agreement in principle; OR B Exit	
Stage 2 Negotiation of in-principle agreement 1-31 May	OBJECTIVE	ACTION
	Seek formal in-principle agreement on: • Quantum • Comprehensiveness • Range of assets • Process for disposal of Crown assets • Milestones for achieving settlement	Formal negotiations be undertaken by specialist negotiations teams: • prepare draft letters setting out agreement in-principle • submit letters to CSC for ratification • Ngai Tahu agree to agreement in-principle
Stage 2 output	EITHER A Exchange of letters setting out in-principle agreement on five critical factors OR B Exit	
Stage 3 Negotiate Deed of Settlement 1 June - 31 July	OBJECTIVE	ACTION
	Seek to agree detailed and legally binding Deed of Settlement	Formalise detail of Deed Papers submitted to CSC seeking mandate as required
Stage 3 Output	draft Deed of Settlement	
Stage 4 Ratify Deed of Settlement 1 August - Mid-September	OBJECTIVE	ACTION
	Seek to ratify Deed of Settlement	Ngai Tahu internal ratification Cabinet ratification of Deed and Ngai Tahu ratification Sign Deed of Settlement
Stage 4 output	Ratified and legally binding Deed of Settlement	

PROCESS OF NEGOTIATIONS

- i agree to follow the example of the Waikato raupatu claims settlement and have a small, dedicated team of officials negotiate settlement with Ngai Tahu of its claim;
- j note that the structure and processes of the negotiating teams will be crucial to successfully negotiating an overall settlement of Ngai Tahu's claims within this year;
- k direct officials to report back to the Cabinet Strategy Committee on 17 April 1996 on details of the Crown negotiating team.

(Signed) Judith Wigglesworth

COPIES TO:

Cabinet Strategy Committee
Chief Executive, PM&C
Secretary to the Treasury
State Services Commissioner
Solicitor-General
Secretary for Justice
Director, OTS
Minister of Maori Affairs
Chief Executive, Te Puni Kokiri

Released under the Official Information Act 1982



Office of the
**Minister in Charge of Treaty of Waitangi
Negotiations**

Te Tari o Te
**Minita Nōna te Mana Whakarite Take e pā ana ki
Te Tiriti o Waitangi**

- 1 APR 1996

Ms Sue Sharp
Cabinet Office
Parliament Buildings
WELLINGTON

Dear Ms Sharp

Please find attached a submission to the Cabinet Strategy Committee entitled "Ngai Tahu: Overview". This is one of a suite of three papers on Ngai Tahu. I would appreciate it if the submission could be considered by the Committee as a late paper at its meeting on 3 April 1996.

The paper has been prepared in some haste following a meeting between the Prime Minister and Sir Tipene O'Regan and must be considered by Ministers prior to a further meeting between these two intended to be held shortly after Easter.

Yours sincerely

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

Chair
Cabinet Strategy Committee

Ngai Tahu: Overview

Executive Summary

1. This is one of three papers which examine whether the Crown should recommence negotiations with Ngai Tahu, with a view to achieving an overall settlement of its claims this year. This paper provides an overview of critical success factors. An accompanying paper discusses comprehensiveness and redress including quantum and the range of assets which may be included in any settlement. A third paper discusses specific assets which have conservation implications and on which the Prime Minister has undertaken to write to Ngai Tahu.
2. Together these papers:
 - i. set out the background to recent discussions with Ngai Tahu;
 - ii. review the key issues to be addressed in an overall settlement of Ngai Tahu's claims and begin to consider how they may be addressed if a settlement was to be attempted this year;
 - iii. invite Ministers to begin to consider whether or not the Government should attempt an overall settlement of Ngai Tahu's claims this year; and
 - iv. outline the next steps to be followed by the Government.
3. The key decision for Ministers is whether or not the Crown should attempt an overall settlement of Ngai Tahu's claims this year. To proceed the Crown needs to be confident that there are no significant barriers to settlement which cannot be resolved within parameters acceptable to both sides. This paper provides an overview of critical factors which inform this decision. It then asks Ministers to agree to the measures which the Crown will require of Ngai Tahu in relation to the proceedings it has against the Crown, discusses key milestones which need to be achieved if a settlement is to be reached this year and considers the process of negotiations. It is proposed that the Prime Minister meet with Sir Tipene O'Regan in the week after Easter to scope the level of agreement between the parties on these and other critical factors.

Background to recent discussion with Ngai Tahu

4. In October 1994 the Crown agreed to make an on account settlement offer to Ngai Tahu as a gesture of good faith and a recognition of three years of negotiations which at times had been difficult and tense. Ngai Tahu rejected the offer as inadequate and disadvantageous to its wider interests. Subsequently Ngai Tahu has taken a number of proceedings against the Crown seeking redress of its claim through the courts and the Waitangi Tribunal.

5. In late 1995 two meetings were held between the Prime Minister and Sir Tipene O'Regan to gain an understanding of the concerns held by both sides and to explore the possibility of returning to formal negotiations. A further meeting between the Prime Minister and Sir Tipene O'Regan was held on 7 March 1996 specifically to assess the prospects of agreeing on a range of issues which would need to be resolved in order to achieve an overall settlement this year. Before the last meeting the Prime Minister delivered a letter to Sir Tipene which outlined what the Crown's view of the critical issues which would need to be agreed in order to recommence negotiations (see Attachment 1). These critical success factors are covered briefly below.

Overview of critical success factors

Te Runanga O Ngai Tahu Bill

6. The Ngai Tahu legal personality legislation was introduced in the House in July 1993 as a Private Members Bill by the Hon Doug Kidd. It is expected to have its third reading by the end of April 1996. Ngai Tahu has indicated that the passage of this Bill into law would be an extremely important factor in it agreeing to recommence negotiations.

Litigation

7. Before returning to substantive negotiations the Crown would need to obtain agreement from Ngai Tahu to suspend all proceedings which it has taken concerning redress of its claim. This is discussed further below. The Crown will also need to seek to agree a protocol for the disposal of surplus assets in the Ngai Tahu claim area to minimise the likelihood of new proceedings being brought by Ngai Tahu during negotiations.

Comprehensiveness

8. There is a wide range of assets and policy issues to be addressed in the context of the Ngai Tahu claim. The Government's aim is a full and final settlement of all Ngai Tahu's claims within an agreed quantum. If both parties considered that some parts of the claim should be addressed at a later stage, both sides would need to clearly understand the elements to be deferred and agree that their settlement fall within the overall settlement quantum. This is discussed in the accompanying paper on redress.

Redress package

9. It would be unwise to return to negotiations unless there is a high level of mutual confidence that the quantum range of both sides is sufficiently close. The Crown also needs to consider this in the context of non-envelope fiscal redress such as a relativities clause or a right of first refusal. These issues are covered in the accompanying paper on redress.

Range of assets and other components to be included in any redress package

10. Ngai Tahu is likely to seek a range of Crown assets in any settlement. The prospects of a successful outcome will be increased if there is a clear understanding at the outset of the range of assets (or scope of work) to be covered by the negotiations. The Prime Minister has invited Sir Tipene to provide a list of the asset categories which Ngai Tahu would propose to include in negotiations before their next meeting. This is covered in the accompanying paper on redress.

Specific assets with conservation implications

11. There are a number of specific redress issues which have been considered in previous negotiations between the Crown and Ngai Tahu. The Prime Minister has undertaken to write to Ngai Tahu to confirm the Crown's understanding of the outstanding issues and options on pounamu, Tutaepatu, Rarotoka, Whenua Hou, Crown Titi Islands, the Otago high country stations and the Arahura valley. This is covered in the accompanying paper on specific assets with conservation implications.

Agreed timetable

12. As the timetable to achieve a settlement of Ngai Tahu's claims this year is extremely tight, it would be important for the parties to agree on an order of business prior to recommencing negotiations. In his letter to Sir Tipene delivered on March 7 the Prime Minister raised the aim of having a Deed of Settlement agreed by August 1996. Timetabling issues are discussed further below.

Negotiating process

13. It is proposed to follow the example of the Waikato raupatu claims settlement and have a small dedicated team of officials and commercial expertise as required negotiating the details of the settlement. Chief to chief discussions would only be used to ratify proposed outcomes or circuit break significant problems. It would also need to be clear that there should be no discussion with the media by either side while in negotiations. This is discussed further below.

Litigation

14. Ngai Tahu has recently applied to the Waitangi Tribunal for a remedies hearing seeking resumption of all memorialised State-Owned Enterprise properties and Crown forest land in its claim area. The Tribunal decided to defer the remedies hearing at that time and Ngai Tahu is seeking a judicial review of this decision. Concurrently Ngai Tahu successfully sought an interim injunction restraining the sale of certain Landcorp property. That proceeding challenges the validity of the memorial system.
15. In further proceedings Ngai Tahu alleges that the Crown has breached the 1989 Crown Forests Accord by failing to adequately resource the Waitangi Tribunal to enable claims to be disposed of. In addition Ngai Tahu has sought judicial review of the decision by the Crown to permit Coalcorp to enter into the West Coast Coal Export Project. It has also sought judicial review of the decision of the Minister of Energy to grant pounamu licences to third parties.
16. It is the Crown's policy that it will not negotiate with any party who is actively pursuing redress through another forum such as the courts or Waitangi Tribunal. Before recommencing substantive negotiations with Ngai Tahu, the Crown would need to obtain agreement from Ngai Tahu to the following in respect of its various proceedings against the Crown.
17. The following proceedings should be adjourned sine die and both parties agree to take no further steps in the proceedings during negotiations:
 - i. Wai 27 amended statements of claim dated 20 December 1994 and 6 July 1995 in which Ngai Tahu seek resumption of lands under the Treaty of Waitangi (State Enterprises) Act 1988 and the Crown Forest Assets Act 1989;

- ii. *Tau and Te Runanga o Ngai Tahu v Durie* (CP215/95) proceedings seeking judicial review of a decision of Chairperson of the Waitangi Tribunal; and
 - iii. *Tau v Minister of Finance and Minister of State-Owned Enterprises* (CP81/95) proceedings in which Ngai Tahu allege that the Crown has breached the 1989 Crown Forest accord.
18. As to the Landcorp proceedings (*Te Runanga o Ngai Tahu v Ministers of Finance and State-Owned Enterprises* (CP119/95), Ngai Tahu and the Crown need to agree on those properties the subject of the interim order and other properties which are on Landcorp's sales programme (including those subject to the earlier undertakings by Landcorp) that are to be withheld from sale during the negotiations. The parties should then file a consent memorandum with the Court varying the interim order to allow Landcorp to dispose of those properties not being withheld from sale. The proceedings would then be suspended and neither party take any further steps in the proceedings during negotiations.
19. The parties will need to agree to file the necessary consent memoranda with the High Court to ensure that all three proceedings are adjourned sine die.
20. The status quo in relation to the Coalcorp proceedings (*Te Runanga o Ngai Tahu Limited v Attorney-General* CP115/95) should continue, that is, the proceedings stand adjourned sine die, subject to the Crown's undertaking.
21. The status quo in relation to the pounamu proceedings (*Ngai Tahu Maori Trust Board v Attorney-General* CP236/94) should continue, that is, the Crown undertakings remain in force. The Katiwaewae proceedings (*Te Runanga o Katiwaewae v Chief Judge Durie and Maori Land Court* CP91/95) in which Ngai Tahu seek judicial review of the decision of the Chief Judge of the Maori Land Court to determine representation issues under s30 of Te Ture Whenua Maori 1993 can proceed in the normal fashion.
22. It is proposed that the Prime Minister write to Ngai Tahu setting out the Crown's requirements in relation to suspension of litigation. If it is established that the parties are close enough on the critical success factors to recommence negotiations, Ngai Tahu will be expected to suspend the proceedings as outlined above as the first step in any recommencement of negotiations.
23. With respect to a final settlement, the Crown would require that all litigation and Waitangi Tribunal claims be discontinued and undertakings given by the plaintiffs not to recommence similar proceedings. This would mean that any interim orders and Crown undertakings would no longer remain in force and that the Crown and relevant SOEs would be free to dispose of properties that fall outside of the scope of the settlement. Settlement legislation would need to contain ouster clauses to prevent the courts and Waitangi Tribunal from reconsidering Ngai Tahu claims dealt with by the settlement and the terms of the settlement itself.

Agreed timetable

24. The two definitive stages in the Waikato raupatu claims settlement were a Heads of Agreement (December 1994) and a Deed of Settlement (May 1995). A heads of agreement is a non-legally binding document which records essential agreements in principle. It is often the critical document which makes a negotiated settlement become a reality. A deed of settlement is a legally binding document upon signature and

records in detail all the essential terms and conditions of the settlement. In this case, seeking a detailed heads of agreement would likely prevent a full and final settlement being achieved this year.

25. To achieve an overall settlement of Ngai Tahu's claims this year, the Crown and Ngai Tahu would need to agree in principle on following key matters by 31 May 1996:

- i. Quantum;
- ii. Comprehensiveness;
- iv. Categories of assets to be included in any redress package;
- v. Process for interim disposal of Crown assets; and
- vi. Milestones for achieving a settlement.

26. The specific process and timetable for achieving an agreement in-principle and overall settlement of Ngai Tahu's claims is set out in Table 1 (see page 6).

Negotiating process

27. The negotiating team comprises the group which meets face to face with Ngai Tahu. It is proposed to follow the example of the Waikato raupatu claims settlement and have a small co-ordinated team of dedicated officials and commercial expertise as required. It would:

- negotiate the details of a Deed of Settlement seeking Crown negotiating positions from Cabinet as required; and
- report to the Minister in Charge of Treaty of Waitangi Negotiations, who in turn would report to the Prime Minister, Minister of Finance and Minister of Conservation.

28. It is also proposed to have a strategy team of senior officials from key agencies. From time to time the negotiating team would brief the strategy team on progress, expected progress and the means for advancing outstanding issues. The strategy team would offer direction on these matters, particularly on how the negotiating team should advance matters to the endpoints agreed by Ministers.

29. It would be important that there is only one channel of communication at both officials and Ministerial level. Attempts by Ngai Tahu to bypass this process and make direct contact with Ministers should be discouraged. Chief to chief negotiations would only be used to ratify proposed outcomes or circuit break significant problems. It would also need to be clear that there should be no discussion with the media by either side while in negotiations.

30. The structure and process of the negotiating teams is an important issue to be addressed. It is proposed that officials report back to Cabinet Strategy Committee by 17 April on details of the Crown's negotiating team should it appear possible that Ministers may decide to recommence negotiations with Ngai Tahu.

Table 1: Process and timetable of negotiations

	Objective	Action
Stage 1 Scoping now - 30 April	Assess prospects of both sides agreeing on critical success factors: • Ngai Tahu Bill • suspension of litigation • comprehensiveness • redress principles • range of assets and other components to be included in any final settlement package • specific redress issues with conservation implications • timetable • process of negotiations.	<u>Prior to next meeting with Sir Tipene:</u> Sir Tipene responds to PM's letter and outlines range of assets sought; Cabinet authorises PM's discussions with Ngai Tahu Crown sends letters to Ngai Tahu on specific conservation related matters and litigation <u>At next meeting with Sir Tipene (say 12 April):</u> Assess prospects of agreement on critical success factors, in particular quantum and comprehensiveness. <u>Post next meeting with Sir Tipene:</u> PM to report back to CSC on discussions; Officials report to CSC on structure of negotiations if required.
Stage 1 output	EITHER A) Proceed - Cabinet decides to recommence negotiations; - PM and Ministers send letter to Ngai Tahu; - Ngai Tahu responds and suspends litigation; and - Cabinet agrees Crown negotiating brief for agreement in principle OR B) Exit	
Stage 2 Negotiation of in-principle agreement 1-31 May	Seek formal in-principle agreement on: • Quantum • Comprehensiveness • Range of assets • Process for disposal of Crown assets • Milestones for achieving settlement.	Formal negotiations be undertaken by specialist negotiations teams: • prepare draft letters setting out agreement in-principle • submit letters o CSC for ratification • Ngai Tahu agree to agreement in-principle
Stage 2 output	EITHER A) Exchange of letters setting out in-principle agreement on five critical factors OR B) Exit	
Stage 3 Negotiate Deed of Settlement 1 June - 31 July	Seek to agree detailed and legally binding Deed of Settlement	Formalise detail of Deed Papers submitted to CSC seeking mandate to negotiate on issues as required
Stage 3 output	draft Deed of Settlement.	
Stage 4 Ratify Deed of Settlement 1 Aug - Mid-Sept	Seek to ratify Deed of Settlement	Ngai Tahu internal ratification Cabinet ratification of Deed and Ngai Tahu ratification Sign Deed of Settlement
Stage 4 output	Ratified and legally binding Deed of Settlement	

Financial Implications

31. There are no financial implications arising from this submission. However, if negotiations recommence and a settlement is achieved there will be financial implications which officials will report on.

Legislative Implications

32. There are no immediate legislative implication arising from this submission. However, if a settlement is reached it will require legislation.

Consultation

33. This submission has been prepared in consultation with the Crown Law Office, Department of the Prime Minister and Cabinet, Te Puni Kokiri and Treasury.

Recommendations

34. It is recommended that the Cabinet Strategy Committee:

- a. note that the Government needs to consider whether a full and final settlement of all Ngai Tahu's claims can be reached this year;
- b. agree that
 - i. the Government should only recommence negotiations if it has a high level of confidence that there are no significant barriers to settlement which cannot be resolved within parameters acceptable to both sides;
 - ii. the critical success factors on which a high level of confidence is required on are as follows:
 - i. Te Runanga O Ngai Tahu Bill;
 - ii. suspension of litigation by Ngai Tahu;
 - iii. comprehensiveness;
 - iv. redress package;
 - v. range of assets and other components to be included in any redress package;
 - vi. specific assets with conservation implications;
 - vii. timetable; and
 - viii. process of negotiations.
- c. note that the issues referred to in b(iii, iv, v and vi) are addressed in accompanying papers and that this paper considers b(ii, vii and viii);

Litigation

- d. note that Ngai Tahu is currently pursuing actions against the Crown in both the courts and the Waitangi Tribunal, and that it is Government policy that the Crown will not negotiate with any party which is actively pursuing redress through another forum;
- e. agree that as part of any agreement to recommence negotiations, Ngai Tahu needs to agree that:

- i. the following proceedings be adjourned sine die and no further steps taken in the proceedings during negotiations:
 1. Wai 27 amended statements of claim dated 20 December 1994 and 6 July 1995;
 2. *Tau and Te Runanga o Ngai Tahu v Durie* (CP215/95); and
 3. *Tau v Minister of Finance and Minister of State-Owned Enterprises* (CP81/95);
- ii. Landcorp properties to be withheld from sale during negotiations be identified and a consent memorandum filed with the court varying the interim order to allow Landcorp to dispose of those properties not being withheld from sale;
- iii. necessary consent memoranda be filed with the High Court to ensure that all three proceedings are adjourned sine die;
- iv. the status quo in relation to the Coalcorp proceedings (*Te Runanga o Ngai Tahu Limited v Attorney-General* CP115/95) be continued;
- v. the status quo in relation to the pounamu proceedings (*Ngai Tahu Maori Trust Board v Attorney-General* CP236/94) be continued;
- vi. the Katiwaewae proceedings (*Te Runaka o Katiwaewae v Chief Judge Durie and Maori Land Court* CP91/95) continue in the normal fashion;
- f. invite the Prime Minister in conjunction with the Minister in Charge of Treaty of Waitangi Negotiations to write to Ngai Tahu setting out the Crown's expectations in relation to the suspension of litigation (as agreed in recommendation (e));

Agreed timetable

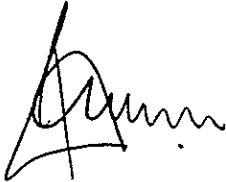
- g. agree that in place of a heads of agreement the Crown should seek agreement in-principle with Ngai Tahu, through an exchange of letters, on the following matters by 31 May 1996;
 - Quantum;
 - Comprehensiveness;
 - Range of assets and other components to be included in any final settlement package;
 - Process for interim disposal of Crown assets; and
 - Milestones for achieving a settlement.
- h. agree that the Crown should seek Ngai Tahu's agreement to work within the following timeframe;

Table 1: Process and timetable of negotiations

	Objective	Action
Stage 1 Scoping now - 30 April	Assess prospects of both sides agreeing on critical success factors: • Ngai Tahu Bill • suspension of litigation • comprehensiveness • redress principles • range of assets and other components to be included in any final settlement package • specific redress issues with conservation implications • timetable • process of negotiations.	<u>Prior to next meeting with Sir Tipene:</u> Sir Tipene responds to PM's letter and outlines range of assets sought; Cabinet authorises PM's discussions with Ngai Tahu Crown sends letters to Ngai Tahu on specific conservation related matters and litigation <u>At next meeting with Sir Tipene (say 12 April):</u> Assess prospects of agreement on critical success factors, in particular quantum and comprehensiveness. <u>Post next meeting with Sir Tipene:</u> PM to report back to CSC on discussions; Officials report to CSC on structure of negotiations if required.
<i>Stage 1 output</i>	EITHER A) Proceed - Cabinet decides to recommence negotiations; - PM and Ministers send letter to Ngai Tahu; - Ngai Tahu responds and suspends litigation; and - Cabinet agrees Crown negotiating brief for agreement in principle OR B) Exit	
Stage 2 Negotiation of in-principle agreement 1-31 May	Seek formal in-principle agreement on: • Quantum • Comprehensiveness • Range of assets • Process for disposal of Crown assets • Milestones for achieving settlement	Formal negotiations be undertaken by specialist negotiations teams: • prepare draft letters setting out agreement in-principle • submit letters to CSC for ratification • Ngai Tahu agree to agreement in-principle
<i>Stage 2 output</i>	EITHER A) Exchange of letters setting out in-principle agreement on five critical factors OR B) Exit	
Stage 3 Negotiate Deed of Settlement 1 June - 31 July	Seek to agree detailed and legally binding Deed of Settlement	Formalise detail of Deed Papers submitted to CSC seeking mandate as required
<i>Stage 3 output</i>	draft Deed of Settlement.	
Stage 4 Ratify Deed of Settlement 1 Aug - Mid-Sept	Seek to ratify Deed of Settlement	Ngai Tahu internal ratification Cabinet ratification of Deed and Ngai Tahu ratification Sign Deed of Settlement
<i>Stage 4 output</i>	Ratified and legally binding Deed of Settlement	

Process of negotiations

- i. agree to follow the example of the Waikato raupatu claims settlement and have a small, dedicated team of officials negotiate settlement with Ngai Tahu of its claim;
- j. note that the structure and processes of the negotiating teams will be crucial to successfully negotiating an overall settlement of Ngai Tahu's claims within this year; and
- k. direct officials to report back to Cabinet Strategy Committee on 17 April 1996 on details of the Crown negotiating team.



Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

Released under the Official Information Act 1982



PRIME MINISTER

7 March 1996

Sir Tipene O'Regan
Chairman
Ngai Tahu Maori Trust Board
Chairman
Ngai Tahu Negotiating Group
53 Bidwill Street
Mt Cook
WELLINGTON

Tena koe Sir Tipene

This evening at 5pm, we are to have our third informal meeting to better understand the issues which seem to be impairing the quality of the relationship between Ngai Tahu and the Crown. Our particular focus is to assess the prospects of both sides agreeing the range of specific claims-related issues with a view to achieving an overall settlement this year.

You will recall that these informal discussions commenced following a call I made to you in late June last year. You were in Indonesia at the time. It had become a matter of some concern to me that the relationship between Ngai Tahu and the Crown seemed to have become characterised by litigation and mistrust, with both sides meeting more in the courts than around the negotiating table.

As a prelude to our first meeting on 2 August 1995, you sent me a lengthy letter of 4 July in which you set out Ngai Tahu's view of the history of its negotiations with the Crown. You also outlined Ngai Tahu's general perspective on the Coalcorp West Coast Project, the sale of various Landcorp properties and issues relating to the operation of the Ngai Tahu land bank. You remark in that letter that relations between the Crown and Ngai Tahu had "chilled...as never before".

During our discussions on 2 August and 30 November you enlarged on this view, seeking to present an overall picture that the Crown alone had caused the deterioration, and that Ngai Tahu had no choice but to put in place a concentrated programme of legal proceedings against the Crown.

12

I have reflected carefully on your critique of events and the mix of signals you have conveyed to me in relation to Ngai Tahu's intentions. From my perspective, I sense that the problems which have arisen in progressing an overall settlement of Ngai Tahu's claim are likely to have been caused by both sides. In many cases, inadvertence, incomplete information or poor communication (or all of these elements) are likely to have been strong contributing factors to the apparent problems. Negotiations relating to the resolution of historical Treaty claims are, by their nature, challenging for both sides. I would surmise that there are other events and interpretations which should be included in any balanced overview of the recent history of negotiations and litigation between the Crown and Ngai Tahu. In the end, however, you and I have been more concerned about the future than the past.

The Government's aim is to reach a comprehensive settlement of Ngai Tahu's claim. This naturally requires commitment and compromise on both sides. During our discussions on 30 November, we started to consider the prospects of achieving a settlement of Ngai Tahu's claim this year. We began to focus, in particular, on the issues which may pose, for either side, a significant barrier to a broad resolution. It is useful to distil some of those key issues:

- *Quantum:* We have both noted that it may be unwise to raise expectations by a return to formal negotiations unless there is a high level of mutual confidence that the quantum range of both sides is sufficiently close. (Of course, neither of us have discussed any indicative ranges at this stage).
- *Legal entity legislation:* Following our discussions, I have actively encouraged the members of my Caucus to assist in the passage in of the Te Runanga O Ngai Tahu Bill. This is now expected to be enacted by the end of March.
- *Specific assets:* You have outlined Ngai Tahu's perspective on the outstanding issues relating to various specific assets: pounamu, Tutaepatu, Rarotoka, Whenua Hou, Crown Titi, the Otago high country stations and the Arahura Valley. Our aim, if negotiations were to resume, would be to work through those outstanding issues in a manner which provides confidence to both sides that we can achieve fair and sensitive settlement outcomes. ~~Before our next meeting (which I suggest should be within three weeks), I will write to you, in conjunction with the Ministers of Treaty Negotiations and Conservation, confirming my understanding of the outstanding issues in relation to each of the specific assets and the effective options available to us to move forward.~~
- *Litigation:* I have noted that the Government is not willing to negotiate while it faces on-going court or Waitangi Tribunal proceedings. Clearly, we need to establish a more constructive environment within which meaningful negotiations can take place. This will involve the proper suspension of all proceedings relating to the claims. We can discuss the details of how to implement this at our next meeting.

13

- *Process:* We have also discussed briefly the need to develop a more efficient and structured process to any further negotiations. We have noted, in particular, that "chief to chief" discussions should only be used to ratify proposed outcomes or circuit-break significant problems properly referred to them by the dedicated teams on both sides. Clearly, we should not recommence unless we have agreed on a formal process for renewed negotiations.

The other issues on which both sides would need to have a clear understanding before making a decision on whether to set out to achieve an overall settlement this year include:

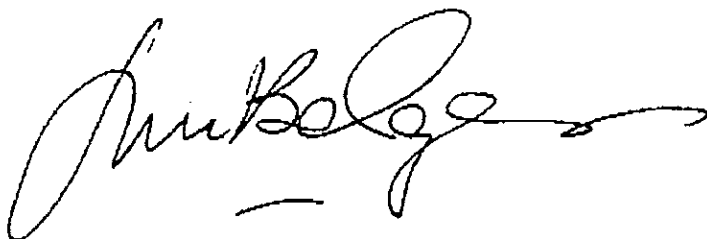
- *Comprehensiveness:* As you are aware, the Government's aim is a full and final settlement with Ngai Tahu, which includes an agreed total quantum that covers all parts of the claim. If both parties were to take the view that some parts of its claim should be addressed separately at a later stage, both sides would need to understand clearly the particular elements of the relevant part of the claim to be deferred, and agree that the later settlement of that part would fall within the agreed settlement quantum for the total claim.
- *Range of assets:* From my understanding of Ngai Tahu's earlier negotiating positions, the range of assets which could be the subject of renewed negotiations is potentially quite wide. It seems to me that the prospects of achieving a successful outcome are likely to be significantly increased if there is a clear understanding at the outset of the range of assets (or the scope of work) to be covered by the negotiations. I would invite you to provide me with a list of the assets categories which you would propose to include the negotiations. It would be helpful if we could discuss that at our next meeting.
- *Sequence:* The timetable for achieving a settlement of Ngai Tahu's claims this year is likely to be extremely tight, yet the range of issues is wide and potentially complex. It therefore makes sense for us to agree on a certain order of business before re-entering a formal process. In my view, we should set out to agree on the total settlement quantum as the first item of business any renewed formal negotiations, and we should set ourselves a target date for achieving agreement on that issue. I would suggest the end of April.
- *Timetable:* There are, of course, other milestones for which we should target dates. Certainly, in my view, we should aim to have a Deed of Settlement agreed by early August. Both sides should agree an overall timetable before any recommencement of substantive negotiations.

With commitment, compromise and goodwill on both sides, I believe it should be possible for Ngai Tahu and the Crown to pave the way toward an historic settlement agreement. My Government is willing to work in this spirit to achieve that objective. Frustration and disappointment have become strong emotions for all who have been involved in earlier rounds. It seems to me that this is a time to rekindle our relationship, to move forward with a renewed sense of determination, tempered by our past experiences, but focused on the importance of resolving with completeness and finality a large and significant set of historical Treaty claims.

14

I realise that your response to the matters outlined above may involve some significant internal considerations for Ngai Tahu. However, I sincerely believe that the Government and Ngai Tahu should work to establish as soon as possible whether we are close enough on these issues of framework and process to contemplate a return to substantive negotiations. Do you think you could give me a response within two weeks. We should then meet before the end of March.

Heoi ano. E noho ora mai



Rt Hon J B Bolger
Prime Minister

Released under the Official Information Act 1982

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:

CROWN LAW OFFICE, DEPARTMENT OF THE PRIME MINISTER AND
CABINET, TE PUNI KOKIRI, TREASURY

Signature	Name and Title	Date
M.A. Thompson	MARY ANNE THOMPSON GROUP MANAGER, POLICY AND NEGOTIATIONS	1/4/96

Certification by Minister:

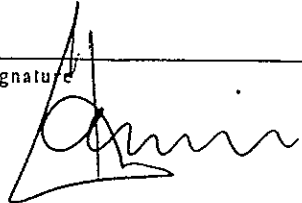
Consultation with other parties represented in Parliament on proposed legislation is coordinated by the Leader of the House. Consultation with other parties on matters other than legislation is coordinated by the Prime Minister. The relevant office should be contacted before any such consultation is undertaken [CO (95) 8 refers].

I certify that consultation on the issues raised in this paper with:

	Has taken place	Will be needed	Is not required
the government 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
	Veasey	1, 4, 96