CABINET

CAB (97) 247

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24 April 1997

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NGAI TAHU: COMMERCIAL ASPECTS: KEY ISSUES

The Cabinet Committee on Strategy and Priorities recommends that Cabinet:

a note that the commercial aspects of the Ngai Tahu claims settlement involve:

i the provision of $170 million cash by the Crown;

ii a Deferred Selection Process (DSP), providing an option for Ngai Tahu to purchase up to $200 million of property from a pool comprising Landcorp farms, licensed Crown forest land, Aoraki forests, commercial properties, landbank properties, and "agreed parts" of Timberlands West Coast;

iii a Right of First Refusal (RFR) to purchase, at the time of disposal, land currently owned by the Crown, departments, CRIs, CHEs, Tertiary Education Institutes (TEIs), and Landcorp, and assets in the DSP pool that are not taken by Ngai Tahu under the DSP, and infrequently traded assets (Crown's shares in Dunedin, Invercargill and Christchurch airports, the Milford airport, Landcorp financial instruments, and Highbank power station);

b note that several key and lower order commercial issues remain outstanding between the Crown and Ngai Tahu;

c note that subject to the outstanding issues being resolved, commercial aspects of the settlement could be drafted within 2-3 weeks;

d note that Ngai Tahu is seeking an enhanced RFR that exceeds the Crown negotiators' mandate based on the content of the Heads of Agreement in four areas:

i restricting the Crown's capacity to set sale terms and conditions in the market before offering property to Ngai Tahu;

ii extending a "good faith" undertaking to apply throughout the process for setting a price rather than just one meeting;

iii reducing the "window" for sales to third parties after Ngai Tahu has rejected a property on certain terms, from 2 years to 4 months;

iv a veto right for Ngai Tahu over lifting RFR memorials on properties after sale;

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e note that without prejudice discussions have yielded a potential compromise:

i both parties undertaking to act in good faith in the RPR process;

ii an early warning approach by vendor agencies to Ngai Tahu when properties are declared surplus;

iii a right to take a property to market where its price cannot be accurately determined by a valuer within a price range. Ngai Tahu have the right to refer this to binding independent arbitration;

iv during the month Ngai Tahu has to consider terms and conditions proposed by the Crown, the parties would agree to "negotiate", either to reach agreement or to not agree;

v the counter-offer made by Ngai Tahu during negotiations would be the floor above which a sale could be concluded with third parties;

vi a nine month window for sales to third parties before the RFR is recommended;

vii the RFR memorial would be lifted by the CE of LINZ, but Ngai Tahu would be informed, by template, of the content of the sale contract and have the capacity to refer the matter to non-binding independent third party arbitration;

f agree:

i to support the proposals in paragraphs (e) (i), (ii), (iv) and (v) above:

ii not to support the proposal in paragraph (e) (iii) above;

iii to amend, for the Crown's position, the proposal in paragraph (e) (vi) above to provide for a twelve month, rather than a nine month, window for sales to third parties before the RFR is recommended;

iv to amend, for the Crown's position, the proposal in paragraph (e) (vii) above to read "the RFR memorial would be lifted by the CE of LINZ";

g agree to mandate Crown negotiators to continue negotiation on the final form of an RFR on the basis of the compromise in paragraph (e) above, as amended in paragraph (f) above, and also amended to include:

i the Crown having a wider, and less fettered right to test or set prices in the market for unique, unusual or infrequently traded assets before taking them to Ngai Tahu;

ii the undertaking for both parties to act in good faith being accompanied by an agreement that the RFR process is strictly commercial, and the standard of good faith should be commercial and not reflective of the wider Treaty relationship between the parties;

h note that it has not been possible to agree what are "the agreed parts of Timberlands West Coast" to be included in the DSP and RFR, and there is potential to significantly reduce the value of Timberlands West Coast (TWC) by including a large percentage of the asset;

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i note that negotiators have sought to explore alternate options to overcome the lack of agreement on "agreed parts" that will provide Ngai Tahu with equivalent value in their settlement package;

j agree to provide the mandate for officials to negotiate an alternative to agreeing parts of TWC, that involves:

i TWC removed from the DSP, but subject to the RFR, potentially to be triggered by the Crown after settlement legislation is enacted;

ii the DSP cap being lifted by $50 million (from $200 million to $250 million) conditional on Ngai Tahu purchasing all of Aoraki forest land and trees;

iii Aoraki forest land and trees not being subject to the RFR should Ngai Tahu not take it under the DSP;

k agree to reject Ngai Tahu's suggestion that there should be a portfolio discount applied in valuing similar classes of DSP assets;

l note that Telecom is seeking book value for its Christchurch and Queenstown properties to be included in the settlement and that there is a material difference between that value and market value;

m note that officials will continue to negotiate with Telecom on a purchase price, and will keep Ministers informed of progress including potentially reporting on the resumption of the properties under the Public Works Act;

n agree that accumulated rentals should not be available to Ngai Tahu if they reject licensed Crown forestry land under the DSP;

o direct officials to report to Ministers collectively, or to any smaller group of Ministers that may be established by Cabinet, on further outstanding commercial settlement issues.

(Signed) Sue Sharp
for Secretary of the Cabinet

NOTE FOR MINISTERS: On 23 April 1997 CSP referred the attached paper to Cabinet because of the significance of the issues. The recommendations above are those of the Committee.

CSP (97) 61 and CSP (97) M 12/8 refer.

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CABINET COMMITTEE ON STRATEGY AND PRIORITIES

CSP (97) 61

21 April 1997

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NGAI TAHU : COMMERCIAL ASPECTS : KEY ISSUES

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

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

a note that the commercial aspects of the Ngai Tahu claims settlement involve:

i the provision of $170 million cash by the Crown;

ii a Deferred Selection Process (DSP), providing an option for Ngai Tahu to purchase up to $200 million of property from a pool comprising Landcorp farms, licensed Crown forest land, Aoraki forests, commercial properties, landbank properties, and "agreed parts" of Timberlands West Coast;

iii a Right of First Refusal (RFR) to purchase, at the time of disposal, land currently owned by the Crown, departments, CRIs, CHEs, Tertiary Education Institutes (TEIs), and Landcorp, and assets in the DSP pool that are not taken by Ngai Tahu under the DSP, and infrequently traded assets (Crown's shares in Dunedin, Invercargill and Christchurch airports, the Milford airport, Landcorp financial instruments, and Highbank power station);

b note that several key and lower order commercial issues, remain outstanding between the Crown and Ngai Tahu;

c note that subject to the outstanding issues being resolved, commercial aspects of the settlement could be drafted within 2-3 weeks;

d note that Ngai Tahu is seeking an enhanced RFR that exceeds the Crown negotiators' mandate based on the content of the Heads of Agreement in four areas:

i restricting the Crown's capacity to set sale terms and conditions in the market before offering property to Ngai Tahu;

ii extending a "good faith" undertaking to apply throughout the process for setting a price rather than just one meeting;

iii reducing the "window" for sales to third parties after Ngai Tahu has rejected a property on certain terms, from 2 years to 4 months;

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iv a veto right for Ngai Tahu over lifting RFR memorials on properties after sale;

e note that without prejudice discussions have yielded a potential compromise:

i both parties undertaking to act in good faith in the RPR process;

ii an early warning approach by vendor agencies to Ngai Tahu when properties are declared surplus;

iii a right to take a property to market where its price cannot be accurately determined by a valuer within a price range. Ngai Tahu have the right to refer this to binding independent arbitration;

iv during the month Ngai Tahu has to consider terms and conditions proposed by the Crown, the parties would agree to "negotiate", either to reach agreement or to not agree;

v the counter-offer made by Ngai Tahu during negotiations would be the floor above which a sale could be concluded with third parties;

vi a nine month window for sales to third parties before the RPR is recommended;

vii the RFR memorial would be lifted by the CE of LINZ, but Ngai Tahu would be informed, by template, of the content of the sale contract and have the capacity to refer the matter to non-binding independent third party arbitration;

f agree to mandate Crown negotiators to continue negotiation on the final form of an RFR on the basis of the compromise in paragraph (e) above, amended to include:

i the Crown having a wider, and less fettered right to test or set prices in the market for unique, unusual or infrequently traded assets before taking them to Ngai Tahu;

ii the undertaking for both parties to act in good faith being accompanied by an agreement that the RFR process is strictly commercial, and the standard of good faith should be commercial and not reflective of the wider Treaty relationship between the parties;

g note that it has not been possible to agree what are "the agreed parts of Timberlands West Coast" to be included in the DSP and RFR, and there is potential to significantly reduce the value of Timberlands West Coast (TWC) by including a large percentage of the asset;

h note that negotiators have sought to explore alternate options to overcome the lack of agreement on "agreed parts" that will provide Ngai Tahu with equivalent value in their settlement package;

i agree to provide the mandate for officials to negotiate an alternative to agreeing parts of TWC, that involves:

i TWC removed from the DSP, but subject to the RFR, potentially to be triggered by the Crown after settlement legislation is enacted;

ii the DSP cap being lifted by $50 million (from $200 million to $250 million) conditional on Ngai Tahu purchasing all of Aoraki forest land and trees;

iii Aoraki forest land and trees not being subject to the RFR should Ngai Tahu not take it under the DSP;

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j agree to reject Ngai Tahu's suggestion that there should be a portfolio discount applied in valuing similar classes of DSP assets;

k note that Telecom is seeking book value for its Christchurch and Queenstown properties to be included in the settlement and that there is a material difference between that value and market value;

l note that officials will continue to negotiate with Telecom on a purchase price, and will keep Ministers informed of progress including potentially reporting on the resumption of the properties under the Public Works Act;

m agree that accumulated rentals should not be available to Ngai Tahu if they reject licensed Crown forestry land under the DSP;

n direct officials to report to Ministers collectively, or to any smaller group of Ministers that may be established by Cabinet, on further outstanding commercial settlement issues.

(Signed) Sue Sharp

COPIES TO:

Cabinet Committee on Strategy and Priorities
Chief Executive, PM&C
Secretary to the Treasury
State Services Commissioner
Secretary for Justice
Director, OTS
Solicitor-General

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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

18 APR 1997

Sue Sharp
Cabinet Office
PARLIAMENT BUILDINGS

Dear Ms Sharp

Please accept the attached late paper on "Ngai Tahu settlement: Commercial assets - key issues" for consideration by the Cabinet Strategy and Priorities Committee on 23 April 1997.

The submission sets out the key outstanding issues in the commercial part of the Ngai Tahu settlement and asks Ministers for directions. The submission follows on from discussions at the Cabinet Strategy and Priorities Committee on 16 April and has been prepared at very late notice. It is important that these issues be placed in front of Ministers as soon as possible to allow negotiations with Ngai Tahu to proceed smoothly.

Yours sincerely

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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Parliament Buildings, Wellington, New Zealand
Whare Pāremata, Te Whanga-nui-a-Tara, Aotearoa.

Telephone: 64 4 471 9950
Waea: 64 4 471 9950

Facsimile: 64 4 471 2922
Waea whakaahua: 64 4 471 2922

COMMERCIAL-IN-CONFIDENCE

18 April 1997

Chair
CABINET STRATEGY AND PRIORITES COMMITTEE

NGAI TAHU SETTLEMENT: COMMERCIAL ASPECTS - KEY ISSUES

Executive Summary

1. The commercial aspects of the Ngai Tahu claims settlement are proceeding broadly in line with the Heads of Agreement. There are a number of outstanding issues of a significant nature which require some input from Ministers.

2. The key outstanding issues are the content of the right of first refusal; the definition of the 'agreed parts' of Timberlands West Coast, Ngai Tahu's request for a portfolio discount on properties, Ngai Tahu's request to take accumulated rentals for licensed Crown forest land that is acquired under the right of first refusal, and the process for the Crown acquiring settlement properties currently owned by Telecom. Ministers' views on suggested solutions to these outstanding issues are sought.

3. Officials consider that agreement on outstanding issues is likely at the level of negotiating teams and the commercial aspects of the settlement could be drafted within two-three weeks.

Background of Commercial Aspects of the Settlement

4. On 5 October 1996 the Crown and Ngai Tahu signed a Heads of Agreement demonstrating a willingness to comprehensively settle Ngai Tahu's Treaty claims, and the structure such a settlement should take. The redress to be delivered by the Crown in settlement of Ngai Tahu's claims is:

- An apology;

- $170 million of cash. To be delivered after legislation giving effect to the settlement is enacted, and interest on the outstanding amount of this fiscal redress from the date of the Heads;

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- The option to select and purchase $200 million of selected Crown properties. The option is called the Deferred Selection Process (DSP) and extends to Landcorp farms (approx $120m), licensed Crown forest land (approx $100m), Aoraki forest land and trees (approx $80m), certain commercial properties (approx $50-65m), landbank properties (approx $20m), and 'agreed parts' of Timberlands West Coast (total TWC valued at approx $130m). The option period is one year from the time of the enactment of settlement legislation with transfer taking place a further 3 months later;

- The right of first refusal over certain Crown properties at the time they are surplus. The right of first refusal (RFR) exists over land owned at the time of the Deed by the core Crown, departments, CHEs, CRIs, TEIs, Landcorp and the DSP assets which are not taken by Ngai Tahu, and less frequently traded assets (Crown shares in Christchurch, Dunedin and Invercargill Airports, the Highbank power station, Milford airport, and Landcorp financial instruments);

- Mahinga Kai redress. A wide ranging package including statutory and non-statutory instruments to recognise Ngai Tahu's special relationship with the environment and a number of sites in particular, and to provide for an enhanced relationship with those areas;

- Ancillary claims redress. A significant number of discrete sites being returned to Ngai Tahu with low fiscal or economic value to the Crown. The claims relate to hapu or family specific claims, particularly arising from takings under the Public Works Act.

5. The commercial redress consists of the provision of the cash, the operation of the DSP and the operation of the RFR.

Progress in Drafting Commercial Redress Provisions of the Deed

6. There are different sections of the Deed for the different classes of assets available under the DSP. These sections are based on categories of assets; forests (Aoraki, TWC and Crown forest licensed land), farms (all 52 Landcorp farms), and commercial properties. The Deed will define the assets available for selection by Ngai Tahu, a valuation methodology to ensure transfer at market value as at the date of the Deed, and commercially based terms of transfer. Several key, and lower order, issues remain extant. Once these issues are resolved, drafting could be completed probably within a week.

7. Leases are well advanced for DSP properties that will be leased back to the vendor Crown agencies (Police stations in Christchurch, Dunedin and Queenstown, Courts in Queenstown and Christchurch, and NZ Post buildings in Queenstown and Christchurch). Fundamental lease terms should be included in the draft Deed and final leases completed in time for the signing of the Deed.

8. The RFR drafting has not been advanced due to the current impasse between the parties on the content of the right. The outstanding issues are identified in this paper as a key issue for Ministers to focus on. Once the shape of the RFR is agreed it is expected that drafting would take a week to 10 days to finalise.

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Key Outstanding Issues

9. Key outstanding issues between the Crown and Ngai Tahu are:

- Right of First Refusal: The Heads of Agreement stated that the Ngai Tahu RFR *'would be the same as the Waikato RFR'*. In addition some enhancements to the Waikato RFR were agreed, including

  'a requirement that the Crown will, if requested by Te Runanga, convene a meeting of representatives of the Crown and Te Runanga during the one month period after the Crown has given notice to Te Runanga of the proposed price and sale terms for a property, to negotiate in good faith to agree the price, terms and conditions on which the property is to be transferred to Te Runanga. If no such agreement is reached the Crown can then sell the property on no more favourable terms within a defined period. Nothing in this requirement will limit the Crown's ability to determine the method by which the Crown sets the price the Crown offers to Ngai Tahu or the Crown's freedom to negotiate with other parties."

  The two parties have different interpretations of the Heads. Because of the wide and enduring nature of the right, and the potential for fiscal and economic loss to the Crown, officials have sought a strict but purposeful manner. Ngai Tahu have sought a wider interpretation, and also additional assurances to protect their interests. These have manifest themselves in Ngai Tahu seeking to go further than Crown negotiators consider to be their mandate in four areas:

  - Right to set price in market. Ngai Tahu considers that in disposing of a RFR property the Crown should first go to Ngai Tahu with terms and conditions, rather than setting them in the market before going to Ngai Tahu. Officials consider the Crown's right to choose how it sets terms and conditions was protected in the Heads, where its capacity to price set is unrestricted. The right to go to the market is also a feature of the Tainui RFR. Ngai Tahu considers taking the property to market is inconsistent with the Crown's good faith undertakings in the Heads;

  - Two year sales window. Under the Tainui RFR, after Tainui has rejected a property on certain terms and condition, the Crown has two years to sell the property to a third party on no better terms. If the property is not sold in that period the Crown must recommence the RFR process before selling it to any third party. Ngai Tahu seeks a shorter timeframe (four months) for sales to third parties before recommencing the RFR. The wording of the Heads does not support Ngai Tahu's position;

  - Good faith negotiations: Ngai Tahu interprets the undertaking to negotiate in good faith to apply throughout the process for setting a price, rather than being confined to one meeting. Officials seek to limit the obligation to one meeting to be held in good faith, with the capacity for further meetings if the parties agree it is in their interests. Ngai Tahu argues that the good faith obligation is inconsistent with a one meeting timeframe;

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- Right to veto lifting of RFR memorials. Ngai Tahu seeks the right to certify, and thereby veto, lifting the memorials on land titles that note the presence of an RFR to Ngai Tahu. They undertake to provide certification if they consider good faith obligations have been met, and if the terms and conditions of sale to a third party are not better than those offered to Ngai Tahu. Officials have resisted Ngai Tahu's arguments on the basis that memorials will be lifted by the CE of LINZ, a statutory officer upon satisfaction that the terms and conditions of sale to a third party are no better than offered to Ngai Tahu, and that Ngai Tahu can injunct the sale to contest breach of the process by the Crown.

Negotiations have taken place informally on a possible compromise option that could be workable to both sides. It was made clear that these negotiations were without prejudice to consideration by principals. Although the detail of the compromise is being developed it would be likely to include:

- Both parties undertaking to act in good faith with each other through the RFR process;
- An initial 'early warning' approach by the vendor to Ngai Tahu to indicate the intention to surplus a property. At this point Ngai Tahu is able to declare no interest in the property;
- A limited right to take the property to market, where its price cannot be accurately determined by a valuer within a price range. This is likely to arise for infrequently traded assets where the capacity to take the property to market is important to the Crown. Ngai Tahu has the right to take the Crown's decision to a third party for a binding determination on the Crown's right to go the market;
- During the month Ngai Tahu has to consider the terms and conditions proposed by the Crown, the parties would agree to 'negotiate', either to reach agreement or to not agree;
- Any counter-offer made by Ngai Tahu during negotiations would be the floor above which a sale could be made to third parties, rather than the Crown's initial offer being the floor;
- A nine month window for sales to third parties before the RFR is recommenced;
- The RFR memorial would be lifted by the CE of LINZ. Prior to the lifting but after a contract to sell to a third party, Ngai Tahu would be informed by template of the content of the sale contract. If Ngai Tahu wished, the question of whether the sale terms were better than offered to them could be referred to an independent third party arbiter. The CE of LINZ would take the findings of the arbitrator into account. A parallel process would be developed for non-land assets.

The compromise meets some concerns of both Ngai Tahu and the Crown, especially as it more clearly prescribes the process to be followed. Although it

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will impose financial and economic costs on vendor agencies, the presence of any RFR will do so, and the suggested process has been streamlined to reduce those costs. We are also mindful that any RFR agreed with Ngai Tahu is likely to be the starting point for RFRs sought by other claimant groups. Ngai Tahu have indicated that the compromise is likely to be acceptable to them.

The key concerns are the capacity for the Crown to test and set prices in the market, and the standard required by a court of the parties to act 'in good faith'. Officials consider these concerns could be met by:

- a wider, and less fettered right to test or set prices in the market for unique, unusual or infrequently traded assets;

- the undertaking for both parties to act in good faith being accompanied by an agreement that the RFR process is strictly commercial, and the standard of good faith should not reflect the wider Treaty relationship between the parties.

It is not clear whether Ngai Tahu would agree to the changes set out above. Officials recommend that Ministers provide officials with the mandate to continue negotiation on the final form of a RFR on the basis of the compromise, and suggested amendments, as set out above.

- Timberlands West Coast: The Heads stated that *'the agreed parts'* of TWC would be included in the DSP, and the portion of the agreed parts not taken by Ngai Tahu under the DSP would be subject to the RFR. This papered over the lack of agreement between the parties at the time of the Heads. The parts of TWC to be included have not been agreed. Because of the economies of scale needed to run a forestry business on the West Coast, either all of the company as a single unit, or only a small portion of the company, should be subject to the DSP. Ngai Tahu seek for all of TWC to be subject to the DSP in small units allowing them to take certain discrete units and to 'pepper-pot' the company, picking up the balance of the TWC under the RFR relatively cheaply.

  In addition the West Coast Accord will make it difficult for the Crown to transfer indigenous cutting rights to Ngai Tahu, especially to clear fell forests. Ngai Tahu also consider the protests against indigenous cutting rights make the assets less attractive than at the time of the Heads.

  Ngai Tahu have sought to develop lateral options to solve the impasse over the definition of 'agreed parts'. These have focused on Ngai Tahu removing TWC from the DSP and seeking offsetting value from the settlement by another means. Based on discussions with Ngai Tahu, options for resolution could be:

  - Agree parts of TWC. The likely outcome could be a significant portion of TWC's assets, potentially in the range of 40-60%. This could involve significant value loss to the Crown, especially if the unit of specification of the asset was small, eg forest stand, and Ngai Tahu could 'pepper-pot' the company. The balance of the 'agreed parts' would be included in the RFR, and any sale of that, and the remaining balance of TWC, would be detrimentally affected by its reduced size;

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- Remove TWC from the DSP but include it all in the RFR. This enables the asset to remain together in a single unit. Because of this and because a sale under RFR would probably involve pricing the asset in the market, the value of the company would be protected should any sale occur. Ngai Tahu have also suggested the option of a 'special' RFR, whereby the Crown would agree to trigger the RFR straight after the Deed.

  Ngai Tahu will probably seek some additional commercial benefit from the removal of TWC from the DSP, above the extension of the RFR to the whole company. However, Ngai Tahu has indicated their desire for all of TWC and this option would enable them to secure that (especially if the Crown agreed to trigger the option quickly);

- Increase the DSP cap to enable purchase of more DSP assets. Ngai Tahu seeks to lift the DSP cap to provide the option to purchase all DSP assets. This could mean the transfer of over $500 million of redress rather than $200 as currently envisaged, although the Crown would still only provide $170 million in cash as settlement redress. This would be a significant change to the structure of the settlement. There is a risk that a process that involves valuation advice to price an asset, and no contestability, could underprice an asset. The valuation of the asset as at Deed date, but with transfer taking place up to 18 months later may also lead to a perception of underpricing it on transfer. This perception may be increased should Ngai Tahu immediately on-sell settlement assets.

  However, officials consider there is some merit in extending Ngai Tahu's ability to purchase some DSP assets in excess of the current cap as a trade-off to get TWC out of the DSP. In particular, the cap could be extended by, say, $50 million if Ngai Tahu were to purchase all of the Aoraki forests, rather than just a portion of either the land or trees as is currently the option under the DSP. This reduces the risk of Ngai Tahu 'pepper-potting' the asset through the DSP as it has the capacity to do. This option could also be used to remove Aoraki forests from the RFR should Ngai Tahu not take it under the DSP. Lifting the cap for other assets, in particular the Crown Forest licensed land and Landcorp farms is more problematic.

Officials favour the removal of TWC from the DSP and the extension of the RFR to all of the company's assets. It may be necessary to make a further concession to secure Ngai Tahu's agreement to this option, and in that context we support the extension of the DSP cap by $50 million provided Ngai Tahu take all of Aoraki forests.

- Portfolio Discounts: Ngai Tahu seek to receive a discount for the bulk purchase of similar Crown assets under the DSP in the same way as a bulk discount would be applied for a similar transaction in the market. The amount of the bulk discount could be 5-10%. Officials consider it is inappropriate to offer a bulk discount. Transaction costs are not saved as all properties are valued independently. Similarly there is no surety of purchase as part of a pre-defined portfolio (as was the case for Tainui where bulk purchase discounts were

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negotiated). In addition many of the properties are not actually surplus to the Crown, and it would be further inappropriate for such discounts to be negotiated.

We recommend that no bulk discounts be offered to Ngai Tahu under the DSP.

- Telecom: The Heads state the Crown will transfer parts of Christchurch and Queenstown properties currently owned by Telecom memorialised under section 27B of the Treaty of Waitangi (State Enterprises) Act 1988. The properties are not core to Telecom's business and, in the case of Christchurch, appear to be surplus. Telecom has agreed to transfer the properties to the Crown, subject to an agreement on price.

  Officials have sought to agree a process for determining market value for the properties. That would provide a fair return to Telecom, and prevent the Crown from incurring a loss on acquisition and transfer to Ngai Tahu at market value. However, Telecom seeks book value for the assets, and indicates it is not willing to move from this stance. The book value for the Christchurch property is $6 million, whereas a comprehensive independent valuation provided by Darrochs for the Office of Treaty Settlements sets the market value at $3.1 million. The magnitude of the difference in valuations for the Queenstown property is smaller.

  Officials continue to seek Telecom's agreement to a market value framework. However, if this is not possible then an option is to resume the settlement properties using the Public Works Act, consistent with the process for resuming Section 27B memorials. A provision of this nature was included in the Tainui settlement legislation. Officials will report to Ministers further should agreement not be reached with Telecom.

- Accrued Licensed Crown Forest Rentals. Under the Crown Forest Assets Act 1989, claimants to whom licensed Crown forest land is transferred receive accumulated rentals currently paid into the Crown Forestry Rental Trust. Ngai Tahu have the option under the DSP to acquire significant licensed Crown forest land, or take it under the RFR. Ngai Tahu seek the ability to take accumulated rentals should land be taken under the RFR.

  Officials do not agree with Ngai Tahu's proposal. The RFR is a different mechanism to the DSP. At the time of rejection of the forest land under the DSP, the land reverts to Crown ownership and the Crown gets the accumulated rentals and the ongoing rental stream under the lease. If the Ngai Tahu proposal was agreed, Ngai Tahu would get the benefits of owning the forest land, regardless of having rejected it under the DSP, at the time they acquired it under the RFR.

Other Outstanding Issues

10. There are a range of other issues which are outstanding between the Crown and Ngai Tahu in the commercial aspects of the Deed. These are lower order issues and officials consider we can resolve them in negotiations with Ngai Tahu. These include:

- the basis on which Ngai Tahu can seek to employ Landcorp staff for farms that are transferred under the DSP;

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- Ngai Tahu seeking an interest in Molesworth Station;
- exclusion of two Landcorp permatron properties from the DSP on the basis that they relate to pastoral leases which are being retired; and
- the form of third party access arrangements to Aoraki forests.

Process From Here

11. Officials continue to negotiate with Ngai Tahu on outstanding issues, and to complete drafting on agreed matters. We are reasonably confident that agreement will be reached with Ngai Tahu at the level of negotiating teams. Officials will liaise closely with Ministers over the next weeks as final agreement on the form of the draft Deed is determined. It may be necessary to have access to a smaller group of Ministers on short notice should authority to depart from the negotiating mandate be necessary.

12. There is a chance that it will not be possible to secure agreement with Ngai Tahu on all outstanding issues. In that case some issues may be referred to principals for discussion and agreement. Should that happen, we will brief Ministers thoroughly on the issues in advance of the meeting.

Recommendations

13. I recommend that the Cabinet Strategy and Priorities Committee:

a **note** that the commercial aspects of the settlement involve:

- the provision of $170 million cash by the Crown;
- a Deferred Selection Process (DSP), providing an option for Ngai Tahu to purchase up to $200 million of property from a pool comprised of Landcorp farms, licensed Crown forest land, Aoraki forests, commercial properties, landbank properties, and 'agreed parts' of Timberlands West Coast;
- a Right of First Refusal (RFR) to purchase, at the time of disposal, land currently owned by the Crown, departments, CRIs, CHEs, TEIs, Landcorp and assets in the DSP pool that are not taken by Ngai Tahu under the DSP, and infrequently traded assets (Crown's shares in Dunedin, Invercargill and Christchurch airports, the Milford airport, Landcorp financial instruments, and Highbank power station);

b **note** that several key and lower order commercial issues, remain outstanding between the Crown and Ngai Tahu;

c **note** that subject to the outstanding issues being resolved, commercial aspects of the settlement could be drafted within 2-3 weeks;

d **note** that Ngai Tahu is seeking an enhanced Right of First Refusal that exceeds the Crown negotiators' mandate based on the content of the Heads in four areas:

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- restricting the Crown's capacity to set sale terms and conditions in the market before offering property to Ngai Tahu;

- extending a 'good faith' undertaking to apply throughout the process for setting a price rather than just one meeting;

- reducing the 'window' for sales to third parties after Ngai Tahu has rejected a property on certain terms, from 2 years to 4 months;

- a veto right for Ngai Tahu over lifting RFR memorials on properties after sale;

e **note** that without prejudice discussions have yielded a potential compromise:

- both parties undertaking to act in good faith in the RFR process;

- an early warning approach by vendor agencies to Ngai Tahu when properties are declared surplus;

- a right to take a property to market where its price cannot be accurately determined by a valuer within a price range. Ngai Tahu have the right to refer this to binding independent arbitration;

- during the month Ngai Tahu has to consider terms and conditions proposed by the Crown, the parties would agree to 'negotiate', either to reach agreement or to not agree;

- the counter-offer made by Ngai Tahu during negotiations would be the floor above which a sale could be concluded with third parties;

- a nine month window for sales to third parties before the RFR is recommenced;

- the RFR memorial would be lifted by the CE of LINZ, but Ngai Tahu would be informed, by template, of the content of the sale contract and have the capacity to refer the matter to non-binding independent third party arbitration;

f **agree** to mandate Crown negotiators to continue negotiation on the final form of an RFR on the basis of the compromise in e above, amended to include:

- the Crown having a wider, and less fettered right to test or set prices in the market for unique, unusual or infrequently traded assets before taking them to Ngai Tahu;

- the undertaking for both parties to act in good faith being accompanied by an agreement that the RFR process is strictly commercial, and the standard of good faith should be commercial and not reflective of the wider Treaty relationship between the parties;

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g **note** that it has not been possible to agree what are 'the agreed parts of Timberlands West Coast' to be included in the DSP and RFR, and there is potential to significantly reduce the value of Timberlands West Coast (TWC) by including a large percentage of the asset;

h **note** that negotiators have sought to explore alternate options to overcome the lack of agreement on 'agreed parts' that will provide Ngai Tahu with equivalent value in their settlement package;

i **agree** to provide the mandate for officials to negotiate an alternative to agreeing parts of TWC, that involves:

- TWC removed from the DSP, but subject to the RFR, potentially to be triggered by the Crown after settlement legislation is enacted;
- the DSP cap being lifted by $50 million (from $200m to $250m) conditional on Ngai Tahu purchasing all of Aoraki forest land and trees;
- Aoraki forest land and trees not being subject to the RFR should Ngai Tahu not take it under the DSP;

j **agree** to reject Ngai Tahu's suggestion that there should be a portfolio discount applied in valuing similar classes of DSP assets;

k **note** that Telecom is seeking book value for its Christchurch and Queenstown properties to be included in the settlement and that there is a material difference between that value and market value;

l **note** that officials will continue to negotiate with Telecom on a purchase price, and will keep officials informed of progress including potentially reporting on the resumption of the properties under the Public Works Act;

m **agree** that accumulated rentals should not be available to Ngai Tahu if they reject licensed Crown forestry land under the DSP;

n **instruct** officials to report to Ministers collectively, or to any smaller group of Ministers that may be established by Cabinet, on further outstanding commercial settlement issues.

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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CONSULTATION ON CABINET AND CABINET COMMITTEE SUBMISSIONS/ RELATIONSHIP TO COALITION AGREEMENT

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: [tick appropriate box]

- ☐ relates to policy developed in accordance with the National-New Zealand First Coalition Agreement
- ☑ relates to matters not covered by the policies of the Coalition Agreement

and has implications for the following departments, whose views have been sought and are accurately reflected in the submission:

TREASURY

Signature	Name and Title	Date
S Clark	S Clark, Director OTS	15 A 197

Certification by Minister:

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

I certify that the attached submission: [tick appropriate box]

- ☐ relates to policy developed in accordance with the National-New Zealand First Coalition Agreement
- ☑ relates to matters not covered by the policies of the Coalition Agreement

and that consultation on the issues raised in this paper with:

	Has taken place	Will be needed	Is not required
the National party caucus		✓	
the New Zealand First party caucus			✓
other parliamentary parties[1]			✓
other interested groups[2]			✓

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

(2) List main interested groups:

Signature	Name and Portfolio	Date
		18.11.97

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377/5

IN CONFIDENCE

Document 12

5

CABINET

CAB (97) 246

24 April 1997

Copy No: 24

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NGAI TAHU NEGOTIATIONS: DRAFT DEED OF SETTLEMENT:FURTHER INFORMATION

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

a note that on 18 December 1996 Cabinet endorsed the Heads of Agreement signed by the Crown and Te Runanga o Ngai Tahu on 5 October 1996 [CAB (96) M 49/11 refers];

SETTLEMENT PACKAGE

b note that it is expected that the draft Deed of Settlement will be largely consistent with the Heads of Agreement;

c note that the settlement will be a full and final settlement of all Ngai Tahu's historical claims relating to land, water, minerals and other resources;

d note that a question has arisen over whether Wai 158 concerning Southland indigenous forests should be covered by the settlement of Ngai Tahu's historical claims, or by the Ministry of Forestry as a contemporary issue;

e note that the Crown acknowledgments are unchanged from those agreed to in the Heads and that the apology is of a form similar to that used in previous settlements with Waikato and Whakatohea;

f note that at this stage the details of the following redress have been agreed largely in accordance with the Heads:

i Deferred Selection Process (DSP);

ii Greenstone, Elfin bay and Routeburn high country stations;

iii SILNA claims (Southland Island Landless Natives Act);

iv relativity clause;

COMMERCIAL ASSETS

g note that Ngai Tahu and the Crown are yet to agree on the "agreed parts of Timberlands West Coast" which will be included in the settlement;

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h note that Ngai Tahu has raised issues in respect of the Right of First Refusal (RFR) which contradict the principles of the Heads of Agreement, but that officials are continuing discussions with Ngai Tahu to establish the process of RFR without moving substantially beyond the principles established by the Heads;

Secretary's Note: *CSP has made specific recommendations in relation to commercial assets which are set out in an accompanying paper [CAB (97) 247 refers]*

Ancillary Claims

i note that for the ancillary claims there will be some variation from the Heads of Agreement as far as specific sites are concerned, but that the revised redress does not raise any new policy or financial issues for the Crown;

SPECIFIC SITES

j note that redress proposals for Rarotoka, Whenua Hou, Crown Titi Islands and the Arahura Valley have been agreed consistent with the Heads of Agreement but that drafting has been contentious in respect of the purposes of the reserves covering the Crown Titi Islands and the Arahura Valley;

NGAI TAHU ACKNOWLEDGEMENTS

k note that the majority of the acknowledgements to be made by Ngai Tahu have been agreed consistent with the Heads of Agreement, but that Ngai Tahu has reservations about acknowledging the settlement as fair;

SETTLEMENT LEGISLATION

l note that the Deed of Settlement will be conditional on legislation being passed by a majority of the House satisfactory to the Crown and that a similar provision was contained in the Waikato settlement;

m note that the settlement legislation will not come into force unless Ngai Tahu have provided a statement in writing to the Crown that the legislation is acceptable as enacted. The Crown will request prior to introduction of the Bill that Ngai Tahu confirm in writing that if the Bill is enacted in the form introduced, then the legislation is acceptable and Ngai Tahu may not withhold their consent;

n note that as negotiations accelerate officials will need to seek regular direction from Ministers and ministerial involvement in the negotiations;

MAHINGA KAI

o note that the mahinga kai section of the Heads provides redress for Ngai Tahu's claims to traditional food sources and sites of spiritual, cultural or historical significance and includes:

i ownership rights and title up to 13 specific sites;

ii recognition of mana through a variety of instruments like the Statutory Acknowledgement and Deed of Recognition, and a consultative/advisory role over a number of specific sites and specified plant and animal species;

iii seasonal occupation rights adjacent to certain water bodies for access to customary fishing (nohoanga entitlements);

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iv the right to purchase 10% of specified areas of coastal space that are subject to tendering in future (see paragraph q below);

v increased participation in the management of customary fisheries and a right of first refusal to buy a portion of Crown quota in certain shellfish should they be entered into the Quota Management System;

vi 78 places to be given joint English/Maori names;

vii one dedicated seat on each of the New Zealand Geographic Board, the New Zealand Conservation Authority, the Nelson-Marlborough Conservation Board and Guardians of Southern Lakes, and two dedicated seats on the four other Conservation Boards within the Ngai Tahu claim area (this reflects existing representation);

viii Ngai Tahu input into monitoring of the Resource Management Act and review of heritage protection by the Historic Places Trust;

ix development of protocols with the Minister of Conservation;

p note that there is a fundamental difference between the Crown and Ngai Tahu over whether the Minister of Conservation should retain the discretion for triggering the tendering process which will result in Ngai Tahu receiving 10% of tendered coastal space;

q note that the key departures from the Heads are in mahinga kai redress (see Annex 1) and were agreed to by the Minister in Charge of Treaty of Waitangi Negotiations in consultation with the Ministers of Conservation, Environment and Lands, subject to Cabinet approval;

r approve the proposed changes to the mahinga kai redress set out in Annex 1 on page 11 of the submission under CAB (97) 246 with the exception of the proposed changes to the Statutory Acknowledgement instrument which are dealt with in the accompanying paper under CAB (97) 255;

s note that there is a substantial amount of work left to identify the specific mahinga kai sites, but that the complete Deed of Settlement will contain all this information and will need to be ratified by Cabinet;

TIMETABLE

t note that the timetable for completion of the settlement will be affected by a number of factors but in particular by Cabinet's decisions on the Statutory Acknowledgement instrument [CAB (97) 255 refers];

AUTHORITY TO ACT

u confirm Cabinet's previous authorisation of the Minister in Charge of Treaty of Waitangi Negotiations to determine, in consultation with the Prime Minister and Minister of Finance, matters within the parameters agreed by Cabinet which may arise in the context of negotiations [CAB (96) M 19/22 refers];

v agree that the Minister of Maori Affairs be added to the group of Ministers in recommendation (u) above;

w agree that other Ministers also be consulted by the Minister in Charge of Treaty of Waitangi Negotiations as required;

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LAND INFORMATION NEW ZEALAND RECOMMENDATIONS

x note that extending the scope of the Deed of Settlement beyond what has been provided in the Heads of Agreement has exposed the Crown to additional risk especially in terms of the tight timeframes for negotiation and completion of documentation of Statutory Acknowledgements and Deeds of Recognition; and

y agree that the Minister of Lands be added to the group of Ministers in paragraph (u) above;

DEPARTMENT OF CONSERVATION RECOMMENDATION

z agree that the Minister of Conservation be added to the group of Ministers in recommendation (u) above.

(Signed) Sue Sharp
for Secretary of the Cabinet

NOTE FOR MINISTERS

On 23 April 1997 CSP referred the submission under CAB (97) 246 to Cabinet for consideration because of the importance of the issues. The Minister in Charge of Treaty of Waitangi Negotiations was invited to revise and clarify as needed the recommendations considered by CSP, which were contained in the submission under CSP (97) 62 and in an additional paper tabled by the Minister at the meeting. The Committee made no recommendations. The recommendations above are those of the Minister, revised in accordance with CSP's request. They replace the recommendations in the submission under CSP (97) 62. The cover sheet to CSP (97) 62 has been removed to avoid confusion.

Two companion papers are also before Cabinet, one referred by CSP under CAB (97) 247 on "Ngai Tahu: Commercial Aspects: Key Issues", and the second a new paper on "Ngai Tahu: Statutory Acknowledgements" under CAB (97) 255 submitted by the Minister in response to a request from CSP to provide a further paper for the Cabinet meeting on 28 April 1997 containing:

i advice on the substantive issues of concern discussed at the meeting and proposed measures for resolving them, in particular the issue of the clause on proprietary interests, the nature of Ngai Tahu's involvement in resource consent applications, and the request to Ngai Tahu to provide advice on the specific values to be recognised for each site;

ii with draft clearly worded instructions for the negotiating team to follow in putting the Crown's position to Ngai Tahu on the various issues involved in the settlement.

CSP (97) 62, 61 and CSP (97) M 12/7 and 12/8 refer.

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CABINET

CAB (97) 228

18 April 1997

Copy No: 22

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NGAI TAHU NEGOTIATIONS: DRAFT DEED OF SETTLEMENT: FURTHER INFORMATION

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

a note that on 18 December 1996 Cabinet endorsed the Heads of Agreement signed by the Crown and Te Runanga o Ngai Tahu on 5 October 1996 [CAB (96) M 49/11 refers];

TIMETABLE AND PROCESS

b note that it is proposed to follow the key steps and timetable outlined below to conclude the Ngai Tahu settlement:

Date	Task
29 April 1997	draft Deed of Settlement complete
5 May 1997	draft Deed of Settlement agreed to by Crown and Ngai Tahu principals
10 May -13 July 1997	Ngai Tahu ratification of settlement
18 July 1997	Deed executed
22 July 1997	settlement legislation introduced to the House
23 October 1997	legislation passed
10 November 1997	Crown and Ngai Tahu to confirm legislation
31 January 1999	settlement implementation complete

SETTLEMENT PACKAGE

c note that it is expected that the draft Deed of Settlement will be largely consistent with the Heads of Agreement;

d note that the settlement will be a full and final settlement of all Ngai Tahu's historical claims relating to land, water, minerals and other resources;

e note that a question has arisen over whether Wai 158 concerning Southland indigenous forests should be covered by the settlement of Ngai Tahu's historical claims, or by the Ministry of Forestry as a contemporary issue;

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f note that the Crown acknowledgments are unchanged from those agreed to in the Heads and that the apology is of a form similar to that used in previous settlements with Waikato and Whakatohea;

g note that at this stage the details of the following redress have been agreed largely in accordance with the Heads:

i Deferred Selection Process (DSP);

ii Greenstone, Elfin bay and Routeburn high country stations;

iii SILNA claims (Southland Island Landless Natives Act);

iv relativity clause;

COMMERCIAL ASSETS

h note that Ngai Tahu and the Crown are yet to agree on the "agreed parts of Timberlands West Coast" which will be included in the settlement;

i note that Ngai Tahu has raised issues in respect of the Right of First Refusal (RFR) which contradict the principles of the Heads, but that officials are continuing discussions with Ngai Tahu to establish the process of RFR without moving substantially beyond the principles established by the Heads;

ANCILLARY CLAIMS

j note that for the ancillary claims there will be some variation from the Heads of Agreement as far as specific sites are concerned, but that the revised redress does not raise any new policy or financial issues for the Crown;

SPECIFIC SITES

k note that redress proposals for Rarotoka, Whenua Hou, Crown Titi Islands and the Arahura Valley have been agreed consistent with the Heads of Agreement but that drafting has been contentious in respect of the purposes of the reserves covering the Crown Titi Islands and the Arahura Valley;

NGAI TAHU ACKNOWLEDGEMENTS

l note that the majority of the acknowledgements to be made by Ngai Tahu have been agreed consistent with the Heads of Agreement, but that Ngai Tahu has reservations about acknowledging the settlement as fair;

SETTLEMENT LEGISLATION

m note that the Deed of Settlement will be conditional on legislation being passed by a majority of the House satisfactory to the Crown and that a similar provision was contained in the Waikato settlement;

n note that the settlement legislation will not come into force unless Ngai Tahu have provided a statement in writing to the Crown that the legislation is acceptable as enacted. The Crown will request prior to introduction of the Bill that Ngai Tahu confirm in writing that if the Bill is enacted in the form introduced, then the legislation is acceptable and Ngai Tahu may not withhold their consent;

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o note that as negotiations accelerate officials will need to seek regular direction from Ministers and ministerial involvement in the negotiations;

MAHINGA KAI

p note that the mahinga kai section of the Heads provides redress for Ngai Tahu's claims to traditional food sources and sites of spiritual, cultural or historical significance and includes:

i ownership rights and title up to 13 specific sites;

ii recognition of standing through a variety of instruments like the Statutory Acknowledgement and Deed of Recognition, and a consultative/advisory role over a number of specific sites and specified plant and animal species;

iii seasonal occupation rights adjacent to certain water bodies for access to customary fishing (nohoanga entitlements);

iv the right to purchase 10% of specified areas of coastal space that are subject to tendering in future;

v increased participation in the management of customary fisheries and a right of first refusal to buy a portion of Crown quota in certain shellfish should they be entered into the Quota Management System;

vi 78 place names to be given joint English/Maori names;

vii dedicated seats on the New Zealand Geographic Board and the New Zealand Conservation Authority, and dedicated membership on Conservation Boards within the Ngai Tahu claim areas and membership on Guardians of Southern Lakes;

viii Ngai Tahu input into monitoring of the Resource Management Act and review of heritage protection by the Historic Places Trust;

ix development of protocols with the Department of Conservation;

q note that there is a fundamental difference between the Crown and Ngai Tahu over whether the Minister of Conservation should retain the discretion for triggering the tendering process which will result in Ngai Tahu receiving 10% of tendered coastal space;

r note that the key departures from the Heads are in mahinga kai redress (see Annex 1) and were agreed to by the Minister in Charge of Treaty of Waitangi Negotiations in consultation with the Ministers of Conservation, Environment and Lands, subject to Cabinet approval;

s note the proposed changes to the mahinga kai redress set out in Annex 1 on page 11 of the submission under CAB (97) 228;

t note that there is a substantial amount of work left to identify the specific mahinga kai sites, but that the complete Deed of Settlement will contain all this information and will need to be ratified by Cabinet;

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AUTHORITY TO ACT

u refer the paper under CAB (97) 228 to:

EITHER

i a committee of Ministers comprising the Prime Minister, Minister of Finance, Minister in Charge of Treaty of Waitangi Negotiations, Minister of Conservation, Minister for the Environment, Minister of Lands and Minister of Maori Affairs;

OR

ii the Cabinet Committee on Strategy and Priorities;

v authorise the committee to which the paper is referred to make final decisions on the changes to the mahinga kai redress set out in Annex 1 on page 11 of the submission under CAB (97) 228;

w confirm Cabinet's previous authorisation of the Minister in Charge of Treaty of Waitangi Negotiations to determine, in consultation with the Prime Minister and Minister of Finance, matters within the parameters agreed by Cabinet which may arise in the context of negotiations [CAB (96) M 19/22 refers];

x agree that the Minister of Maori Affairs be added to the group of Ministers in recommendation (w) above;

y agree that other Ministers also be consulted by the Minister in Charge of Treaty of Waitangi Negotiations as required;

LAND INFORMATION NEW ZEALAND RECOMMENDATIONS

z note that extending the scope of the Deed of Settlement beyond what has been provided in the Heads of Agreement has exposed the Crown to additional risk especially in terms of the tight timeframes for negotiation and completion of documentation of Statutory Acknowledgements and Deeds of Recognition; and

aa agree that the Minister of Lands be added to the group of Ministers in paragraph (w) above.

DEPARTMENT OF CONSERVATION RECOMMENDATION

ab agree that the Minister of Conservation be added to the group of Ministers in recommendation (w) above.

(Signed) Sue Sharp
for Secretary of the Cabinet

NOTE FOR MINISTERS: On 16 April 1997 CSP referred the paper attached at pages 16-37 to Cabinet for consideration. CSP invited the Minister in Charge of Treaty of Waitangi Negotiations to review the recommendations in the light of the discussion at the meeting, including the timetable and proposed amendments to recommendations (d) and (l) of the submission under CSP (97) 54 and to submit an amended set of recommendations to Cabinet. The Minister has submitted

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a new paper attached at pages 1-15. The recommendations above supersede those in the paper considered by CSP.

CSP (97) 54 and CSP (97) M 10 refer.

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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

18 April 1997

Marie Schroff
Secretary for the Cabinet
PARLIAMENT BUILDINGS

Dear Ms Schroff

Please accept the attached submission "Ngai Tahu Claim: Report Back on Draft Deed of Settlement and Management of Risks Associated with Statutory Acknowledgement Instrument" for consideration by Cabinet on Monday 21 April.

The submission responds to the invitation from the Cabinet Committee on Strategy and Priorities for me to review recommendations in the submission under CSP (97) 54, and to submit an amended set of recommendations [CSP (97) M10].

Due to the complexity and significance of the issues involved in the Ngai Tahu settlement it has not been possible to complete the paper by the normal deadline for Cabinet, or within the 10 page limit. Many agencies and departments are affected by the paper and have been consulted in so far as possible within the limited timeframe.

I ask that the 10 page limit be waived in this case.

Yours sincerely

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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Parliament Buildings, Wellington, New Zealand
Whare Pāremata, Te Whanga-nui-a-Tara, Aotearoa.
Telephone: 64 4 471 9950
Waea: 64 4 471 9950
Facsimile: 64 4 471 2922
Waea whakaahua: 64 4 471 2922

Chair
Cabinet

Ngai Tahu Claim: Report Back on Draft Deed of Settlement and Management of Risks Associated with Statutory Acknowledgement Instrument

Executive Summary

1 The Cabinet Committee on Strategy and Priorities considered the paper *"Ngai Tahu Negotiations: Draft Deed of Settlement"* [CSP (97) 54] on Wednesday 16 April. That paper outlined progress in the Ngai Tahu settlement negotiations and sought approval for changes to the Heads of Agreement in the mahinga kai package.

2 The Committee invited the Minister in Charge of Treaty of Waitangi Negotiations to review the recommendations in light of the discussion at the meeting, including the timetable and proposed amendments to recommendations (d) and (l) of CSP (97) 54, and to submit an amended set of recommendations to Cabinet [CSP (97) M 10].

3 The Cabinet Committee on Strategy and Priorities expressed concerns about the risks associated with the proposed Statutory Acknowledgement instrument, which is part of the mahinga kai package. This paper:

a sets out the intended effect of the Statutory Acknowledgement instrument (SA) and the sites to which it applies;

b explains how the risks arising from the SA are managed in the existing draft Deed;

c outlines and assesses further options for managing risks;

d sets out a revised timetable for concluding the Ngai Tahu settlement.

4 This paper recommends that Cabinet:

a note the recommendations in this paper, including the proposed changes to the mahinga kai package set out in Annex 1;

b refer [CSP (97) 54], this paper and its recommendations to:

EITHER

i a committee of Ministers comprising the Prime Minister, Minister of Finance, Minister in Charge of Treaty of Waitangi Negotiations, Minister of Conservation, Minister for the Environment, Minister of Lands and Minister of Maori Affairs;

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OR

ii the Cabinet Committee on Strategy and Priorities;

c authorise the committee to which the paper is referred under recommendation (b) to make final decisions on the changes to the mahinga kai redress set out in Annex 1;

d confirm Cabinet's previous authorisation of the Minister in Charge of Treaty of Waitangi Negotiations to determine, in consultation with the Prime Minister and Minister of Finance, matters within the parameters agreed by Cabinet which may arise in the context of negotiations [CAB (96) M 19/21 refers];

e agree that the Minister of Maori Affairs be added to the group of Ministers in recommendation (d) above;

f agree that other Ministers also be consulted by the Minister in Charge of Treaty of Waitangi Negotiations as required.

The Statutory Acknowledgement Instrument (SA)

Background

5 The Waitangi Tribunal criticised the Crown for not adequately protecting the condition of sites (such as lakes, rivers and wetlands) which were culturally or spiritually significant to Ngai Tahu or important traditional food sources (mahinga kai).

6 In the mahinga kai negotiations Ngai Tahu sought recognition by the Crown of its mana and special relationship with certain areas. Ngai Tahu expressed concern that it does not have a guaranteed right to appear before the Environment Court (under s274 of the Resource Management Act (RMA)) on consent appeals affecting sites (including lakes and rivers) which are of spiritual or historical importance or were sources of customary food. Ngai Tahu also stated that it believes:

a local authorities are not notifying it of resource consent applications and are using the non-notification provisions of the RMA (s94) too often. As a result Ngai Tahu states it is not aware of consent applications, and is unable to make submissions at the early stage of the resource consent application process;

b it is not being notified about hearings in relation to Maori archaeological sites before the Historic Places Trust and the Environment Court.

Existing Mechanisms to Meet these Concerns

7 The problems identified by Ngai Tahu do not arise from any defect with the RMA but rather from the way it is applied.

8 The following avenues are already available to Ngai Tahu to address its concerns:

a Ngai Tahu could advise local authorities of its interest in particular sites and of its desire to be notified of any applications for resource consents that might affect those sites;

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b Ngai Tahu could seek, as part of the consultation and submission process in the preparation of regional and district plans, that appropriate provision is made to ensure it is notified of relevant resource consent applications. In other cases it could apply for appropriate plan changes;

c The Environment Court could be asked to make a declaration that would in effect recognise that Ngai Tahu has an interest in particular sites that requires consent authorities to notify it in respect of any application that might affect those sites. Where necessary, an enforcement order could be obtained from the Court to ensure compliance with the declaration;

d Ngai Tahu could apply for a declaratory judgement in the High Court or to seek judicial review of any decision by a consent authority relating to notification that does not recognise its special interests in the identified sites.

9 Although officials are not aware of any evidence that Ngai Tahu has taken these steps, they would not provide Ngai Tahu with certainty as to notification/standing. Ngai Tahu has sought to achieve certainty in respect of significant areas in the Treaty settlement context.

Intent of the Statutory Acknowledgement

10 The intended effect of the proposed SA is to provide Ngai Tahu with greater assurance that, in relation to certain areas which include a number of specific lakes, rivers and wetlands, it will be:

a heard in proceedings before the Environment Court in any consent application appeals (s274 of the RMA);

b notified of consent applications (s93 of the RMA) or consulted where consent applications are to be non-notified (s94 of the RMA);

c heard by the Historic Places Trust and before the Environment Court in relation to the protection of archaeological sites (ss 14 and 20(1) of the Historic Places Act 1993).

11 The SA is not intended to:

a provide Ngai Tahu's views or concerns with additional weighting in respect of actual decisions on consent applications or appeals;

b give Ngai Tahu any commercial advantage in respect of either its own consent applications or those lodged by third parties;

c create or confirm property rights or any other rights (including aboriginal rights) for Ngai Tahu with regard to the Statutory Area, or for any other purpose;

d override the lawful rights of third parties from time to time;

e affect the exercise of any power, duty or function of the Crown or of any local authority under statute or regulations, except as outlined in paragraph 9 above;

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f amend the Resource Management Act.

12 The Settlement legislation will state that the relevant decision making bodies must have particular regard to the SA when forming an opinion about whether Ngai Tahu should be notified, consulted or heard on consent applications/appeals. The Settlement legislation will also require local authorities to note the SAs on regional plans. However, the Settlement legislation will deliberately not instruct decision making bodies to consult, notify or hear Ngai Tahu because to do so would fetter their discretion and require a consequential amendment to the RMA.

Application

13 It is proposed that the SA will apply to 18 rivers, 18 lakes, 18 wetlands, 9 specific sites and five coastal areas.[1] The specific sites, lakes, rivers and wetlands have been selected by Ngai Tahu on the basis of their special significance and represent input from each of Ngai Tahu's 18 runanga.

14 Ngai Tahu provided the Crown with a draft list of rivers, lakes and wetlands to be covered by a SA (Annex 2). Ngai Tahu will confirm the list by 5 May.

Concerns Expressed by Ministers and Comment

15 At the meeting of the Cabinet Committee on Strategy and Priorities on Wednesday 16 April, Ministers expressed the following concerns about the SA.

16 **Weighting:** *That the SA could give Ngai Tahu unintended weighting in decision making (both in terms of its own applications for consents and those made by other parties) under the RMA, and other legislation. In particular Ministers were concerned the SA could give Ngai Tahu a commercial advantage over any areas covered.*

17 The settlement legislation will contain disclaimers to provide, insofar as possible, that the SA does not give Ngai Tahu any other rights (including commercial rights) beyond a right to be notified, heard and consulted. The disclaimers can not completely eliminate the risk that SAs will be read up by the courts in future, but they clearly signal to courts that the Crown does not intend for SAs to be read up. Officials are working on the disclaimers to ensure that they are as comprehensive as possible (see paragraphs 29-31).

18 **Commercial Leverage** - *That Ngai Tahu may seek payment from applicants for resource consents affecting the sites in return for co-operation over consent applications.*

19 There is a risk that Ngai Tahu may use the SA to seek monetary compensation from developers in return for co-operation over consent applications. However, the SA does not necessarily provide Ngai Tahu with a greater ability to extract payments than any other person who is affected by the consent application. The RMA does not preclude interested parties from obtaining payments in this way.

20 The key way to ensure that the SA does not provide Ngai Tahu with additional leverage of this sort is to ensure that it does not give Ngai Tahu's views greater

[1] Ngai Tahu's special relationship with certain plant, animal and fish species will also be recognised in statute but the form of statutory recognition will be different to SA's over sites.

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weighting in decision-making relating to consent applications. As discussed above, these risks can be reduced through use of disclaimers.

21 If the Crown tried to further restrict Ngai Tahu's ability to seek payment, it could well end up denying Ngai Tahu rights that are available to other New Zealanders with an interest in the sites.

22 Scope: *That*:

i *by acknowledging that Ngai Tahu has a special relationship with certain lakes, rivers and wetlands the Crown may be acknowledging the existence of aboriginal rights. This in turn may affect the Crown's future ability to manage its assets;*

ii *the application to sections 93,94 and 274 of the RMA will increase transaction costs for decision making bodies under the RMA.*

23 Aboriginal rights arguably exist already. While it is not possible to eliminate the risk that the courts may interpret the SAs as a Crown recognition of aboriginal rights, there will be no settlement without a comprehensive mahinga kai package.

24 It is likely that the application to sections 93,94 and 274 of the RMA will increase transaction costs for relevant decision making bodies, as it will be difficult for them to ignore Ngai Tahu's interests in sites covered by SAs. However, by defining Ngai Tahu's interests in specific sites and recording them on plans so that they are identified early in the consent process, some transaction costs may actually be reduced. Moreover, it is appropriate that decision making authorities bear the costs involved with recognising a valid interest.

25 Geographical coverage: *That the size, number and particular location of sites expands any leverage for Ngai Tahu.*

26 The greater and larger the sites with an SA, the greater the risk to the Crown. However, risks will be limited by clearly defining sites in the Deed. Precise definition will be more difficult to achieve for rivers, lakes and wetlands than for land areas.

27 Privileged treatment: *That the SA provides Ngai Tahu with rights that other New Zealanders do not enjoy.*

28 The Ngai Tahu settlement is intended to address the fact that under the Treaty of Waitangi Ngai Tahu has a relationship with the Crown, and with lands and resources in the Ngai Tahu claim area, that is distinct from that of other New Zealanders. The SA is consistent with this approach. It is only intended to provide Ngai Tahu with special treatment with respect to certain procedural matters under the RMA and HPA, rather than give Ngai Tahu greater influence over decision-making under those Acts.

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Options

29 There are three options for further managing risks.

Further tighten the scope and potential impact of the SA.

30 Crown Law has advised on how further safeguards might minimise the chance of the courts reading more into the instruments than is intended. It is not possible, however, to completely rule out the possibility of an activist court taking an expansive interpretation.

31 As part of the current drafting process, it is proposed to include a "tight" definition of "Statutory Acknowledgement" which further defines the scope of the instrument. In addition, there are two further changes which could be included to address concerns:

a the clause which generically disclaims any other effect on the functions of local authorities could expressly state that it does not affect the exercise of their discretion when hearing applications;

b the clause which generically disclaims the granting or removing of any other kinds of rights could expressly state that the SA creates no special rights to undertake commercial activities.

32 Some care needs to be exercised when making specific references of this kind. There is a risk that such specific references will be taken to "read down" the general application of the clauses.

Limit Geographic Application

33 Options for limiting geographic application include excluding large lakes and rivers, or parts of them. This would mean that the effect of the acknowledgement would be limited to actions affecting more discrete sites. However in the view of the negotiating team, rivers and lakes are of such importance to Ngai Tahu from a traditional and spiritual perspective that a failure to recognise the association in some way would create a significant risk of not successfully concluding negotiations.

34 It is difficult to assert that Ngai Tahu's spiritual or cultural links to a river, lake or wetland extend to only part of that resource, or to that part which is Crown owned.

Abandon the SA and offer Ngai Tahu alternative redress

35 This would involve a retreat from the position the Crown agreed in the Heads of Agreement.

36 Trade-offs may be possible, although Ngai Tahu is still likely to seek some redress over lakes, rivers and wetlands. It would be difficult to design a risk-free alternative redress mechanism which would address its interests in the areas.

37 It is not realistic to trade off this redress against more in the commercial side of the settlement because the Ngai Tahu negotiators require both the commercial package and the mahinga kai package to obtain support for the settlement from two separate constituencies.

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Importance of the Mahinga Kai Package to the Ngai Tahu Settlement

38 Ngai Tahu regards the various redress instruments as essential to the settlement of mahinga kai grievances, and mahinga kai as a crucial part of the Ngai Tahu settlement. In the event that the Crown cannot deliver reasonable redress in the mahinga kai package, it is highly likely that the settlement will not proceed.

Consultation

39 The Department of Prime Minister and Cabinet, Treasury, Department of Conservation, Ministry for the Environment, Land Information New Zealand and the Crown Law Office were consulted in the preparation of this paper.

Recommendations

40 It is recommended that you:

a note that on 18 December Cabinet endorsed the Heads of Agreement signed by the Crown and Te Runanga o Ngai Tahu on 5 October 1996 [CAB(96) M 49/11 refers];

Timetable and process

b note that it is proposed to follow the key steps and timetable outlined below to conclude the Ngai Tahu settlement:

Date	Task
29 April 1997	Draft Deed of Settlement complete
5 May 1997	Draft Deed of Settlement agreed to by Crown and Ngai Tahu principals
10 May - 13 July 1997	Ngai Tahu ratification of settlement
18 July 1997	Deed executed
22 July 1997	Settlement legislation introduced to the House
23 October 1997	Legislation passed
10 November 1997	Crown and Ngai Tahu to confirm legislation
31 January 1999	Settlement implementation complete

Settlement package

c note that we expect the draft Deed of Settlement will be largely consistent with the Heads of Agreement;

d note that the settlement will be a full and final settlement of all Ngai Tahu's historical claims relating to land, water, minerals and other resources;

e note that a question has arisen over whether Wai 158 concerning Southland indigenous forests should be covered by the settlement of Ngai Tahu's historical claims, or by the Ministry of Forestry as a contemporary issue;

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f note that the Crown acknowledgements are unchanged from that agreed to in the Heads and that the apology is of a form similar to that used in previous settlements with Waikato and Whakatohea;

g note that at this stage the details of the following redress have been agreed largely in accordance with the Heads:

i Deferred Selection Process (DSP);

ii Greenstone, Elfin bay and Routeburn high country stations;

iii SILNA claims (South Island Landless Natives Act)

iv relativity clause;

Commercial assets

h note that Ngai Tahu and the Crown are yet to agree on the "agreed parts of Timberlands West Coast" which will be included in the settlement;

i note that Ngai Tahu has raised issues in respect of the Right of First Refusal (RFR) which contradict the principles of the Heads, but that officials are continuing discussions with Ngai Tahu to establish the process of the RFR without moving substantially beyond the principles established by the Heads;

Ancillary claims

j note that for the ancillary claims there will be some variation from the Heads of Agreement as far as specific sites are concerned, but that the revised redress does not raise any new policy or financial issues for the Crown;

Specific sites

k note that redress proposals for Rarotoka, Whenua Hou, Crown Titi Islands and the Arahura Valley have been agreed consistent with the Heads of Agreement but that drafting has been contentious in respect of the purposes of the reserves covering the Crown Titi Islands and the Arahura Valley;

Ngai Tahu acknowledgements

l note that the majority of the acknowledgements to be made by Ngai Tahu have been agreed consistent with the Heads of Agreement, but that Ngai Tahu has reservations about acknowledging the settlement as fair;

Settlement legislation

m note that the Deed of Settlement will be conditional on legislation being passed by a majority of the House satisfactory to the Crown and that a similar provision was contained in the Waikato settlement;

n note that the settlement legislation will not come into force unless Ngai Tahu have provided a statement in writing to the Crown that the legislation is acceptable as enacted. The Crown will request prior to introduction of the Bill that Ngai Tahu confirm in writing that if the Bill is enacted in the form introduced, then the legislation is acceptable and Ngai Tahu may not withhold their consent;

o note that as negotiations accelerate officials will need to seek regular direction from Ministers and ministerial involvement in the negotiations;

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Mahinga kai

p note that the mahinga kai section of the Heads provides redress for Ngai Tahu's claims to traditional food sources and sites of spiritual, cultural or historical significance and includes:

i ownership rights and title to up to 13 specific sites;

ii recognition of standing through a variety of instruments like the Statutory Acknowledgement and Deed of Recognition, and a consultative/advisory role over a number of specific sites and specified plant and animal species;

iii seasonal occupation rights adjacent to certain water bodies for access to customary fishing (nohoanga entitlements);

iv the right to purchase 10% of specified areas of coastal space that are subject to tendering in future;

v increased participation in the management of customary fisheries and a right of first refusal to buy a portion of Crown quota in certain shellfish should they be entered into the Quota Management System;

vi 78 place names to be given joint English/Maori names;

vii dedicated seats on New Zealand Geographic Board and New Zealand Conservation Authority, and dedicated membership on Conservation Boards within the Ngai Tahu claim areas, membership on guardians of southern lakes;

viii Ngai Tahu input into monitoring of the Resource Management Act and review of heritage protection by the Historic Places Trust;

ix development of protocols with the Department of Conservation;

q note that there is a fundamental difference between the Crown and Ngai Tahu over whether the Minister of Conservation should retain the discretion for triggering the tendering process which will result in Ngai Tahu receiving 10% of tendered coastal space;

r note that the key departures from the Heads are in mahinga kai redress (see Annex 1) and were agreed to by the Minister in Charge of Treaty of Waitangi Negotiations in consultation with the Ministers of Conservation, Environment and Lands, subject to Cabinet approval;

s note the proposed changes to the mahinga kai redress set out in Annex 1;

t note that there is a substantial amount of work left to identify the specific mahinga kai sites, but that the complete Deed of Settlement will contain all this information and will need to be ratified by Cabinet;

Authority to act

u refer [CSP 97 54], this paper and its recommendations to:

EITHER

i a committee of Ministers comprising the Prime Minister, Minister of Finance, Minister in Charge of Treaty of Waitangi Negotiations, Minister of Conservation, Minister for the Environment, Minister of Lands and Minister of Maori Affairs;

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OR

ii the Cabinet Committee on Strategy and Priorities;

v authorise the committee to which the paper is referred under recommendation (u) to make final decisions on the changes to the mahinga kai redress set out in Annex 1;

w confirm Cabinet's previous authorisation of the Minister in Charge of Treaty of Waitangi Negotiations to determine, in consultation with the Prime Minister and Minister of Finance, matters within the parameters agreed by Cabinet which may arise in the context of negotiations [CAB (96) M 19/21 refers];

x agree that the Minister of Maori Affairs be added to the group of Ministers in recommendation (w) above;

y agree that other Ministers also be consulted by the Minister in Charge of Treaty of Waitangi Negotiations as required.

Land Information New Zealand recommendations

z note that extending the scope of the Deed of Settlement beyond what has been provided in the Heads of Agreement has exposed the Crown to additional risk especially in terms of the tight timeframes for negotiation and completion of documentation of SAs and DoRs; and

aa agree that the Minister of Lands be added to the group of Ministers in recommendation (w) above;

Department of Conservation Recommendation

bb agree that the Minister of Conservation be added to the group of Ministers in recommendation (w) above.

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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Annex 1 : Changes to mahinga kai redress

	Heads of Agreement	Proposed change
1	Statutory Acknowledgements (SA) and Deeds of Recognition (DoR) offered over Crown-owned land only (in the case of water bodies, the beds only)	SAs and DoRs to cover entire lakes, rivers and wetlands with an explicit statement that they do not confer any property rights or commercial rights or interfere with existing third party rights (e.g. public access, existing concessions and easements, and rights to apply for renewal). Management input for Ngai Tahu under DoRs will be restricted to Crown-owned land only.
2	Ngai Tahu must choose between a SA or DoR for 10 wetlands, 13 lakebeds, and 10 specific sites. Ngai Tahu may have DoRs over 3 riverbeds.	• The SA will now authorise the DoR and both instruments will be offered together. • Ngai Tahu may choose the sites where it wishes to have a DoR as well as a SA. • "Basket approach" - SAs and DoRs will be available for up to 18 wetlands, 18 rivers and 18 lakes so that there may be one for each Runanga (in response to Ngai Tahu's wish to distribute redress across each of its Papatipu Runanga). Ngai Tahu may reallocate the sites amongst runanga provided they are relatively evenly distributed.
3	For sites covered by an SA, the Crown will acknowledge that Ngai Tahu has standing greater than the public generally under s274 of the Resource Management Act (RMA), and is a person directly affected under section 14 and 20(1) of the Historic Places Act.	The SA will also acknowledge that the Crown considers that, in respect of sites covered by an SA, Ngai Tahu is likely to be a person directly affected for the purposes of sections 93 and 94 of the RMA (relating to the notification of and consultation on consent applications). There is no need to amend the RMA.
4	No mention of registering SAs or DoRs on local authority plans.	Settlement legislation will direct local authorities to record SAs in their regions on plans (to ensure they are fully aware that sites are covered by SAs) and to have regard to the SAs in forming opinions under the relevant sections of the RMA.
5	For 10 wahi tapu sites Ngai Tahu may choose between either fee simple title with management solely by the Crown, or no ownership interest but with restricted management input.	There will be provision for Ngai Tahu values to be taken into account in the management of land to be vested in fee simple title in Ngai Tahu subject to protective mechanisms. Options include the vested land being declared protected private land in perpetuity (which provides for the Crown to consult Ngai Tahu on management), or through the development of the Department of Conservation protocols.
6	Ngai Tahu have a statutory advisor role over 15 of 36 wahi tapu sites.	Ngai Tahu have a Statutory Advisor role over all 36 sites.
7	Up to 64 nohoanga (campsite) entitlements over 13 lakes and 19 rivers.[2]	• Ngai Tahu will be offered up to four nohoanga entitlements per runanga (i.e. a total of 72 entitlements).

⇒ [2] nohoanga entitlements will be granted only on Crown owned land and not in respect of National Park land, esplanade reserves, marginal strips and scientific and nature reserves;

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	Nohoanga entitlements must be renewed every five years	Ngai Tahu may allocate the sites differently amongst runanga provided they are relatively evenly distributed. • The nohoanga entitlements may be situated on Crown owned land (with the same restrictions as before) beside any lakes or rivers Ngai Tahu may nominate within their rohe, and agreed to by the Crown. • 10 year renewal period
8	DOC protocols not enforceable	Under the settlement legislation the protocols will be enforceable by means of public law remedies only (i.e. not damages). A breach of the protocols would not constitute a breach of the Deed of Settlement.

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ANNEX 2 - Rivers, Lakes and Wetlands proposed for Statutory Acknowledgements

RIVERS

Kaikoura

Conway

West Coast

Totaranui
Makaawhio (Jacobs) River

Canterbury

Hurunui
Waipara
Kowai
Rangitata
Hakatere (Ashburton River including North and South branches)
Hinds River

Otago

Waitaki River
Hakataramea River
Kakaunui River
Pomahaka River
Matau (Clutha River)

Southland

Oreti
Waiau River
Mataura
Aparima

LAKES

Kaikoura

Rotorua

Canterbury

Lake Sumner
O-Whaka-matau (Lake Coleridge)
Tekapo
Ohau
Whaka-rukumoana (Lake McGregor)
Wairewa (Lake Forsyth)
Lake Pukaki
Lake Aviemore

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West Coast

Kotuku-whakaoho (Lake Brunner/Moana)
Lake Paringa
Kaniere

Otago

Lake Hawea
Lake Wanaka
Lake Wakatipu
Catlins (?)

Southland

Moturau/Manapouri
Hauroko
Te Anau

WETLANDS

Canterbury

Lake Pearson
Lake Grassmere
Ashburton Lakes
Orakipaoa Wetland
Punatarakao Wetland (drains into Waihao River)

West Coast

Okari Lagoon
Okarito
Saltwater Lagoon
Karangarua Lagoon

Otago

Tuakitoto
Merton Tidal Arm
Wahora/Waipori

Southland

Toi Tois Wetland, Rakiura
Waikawa Estuary
Waituna Wetland
Lake George
Mavora Lakes

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CONSULTATION ON CABINET AND CABINET COMMITTEE SUBMISSIONS/ RELATIONSHIP TO COALITION AGREEMENT

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: [tick appropriate box]

- ☑ relates to policy developed in accordance with the National-New Zealand First Coalition Agreement
- ☐ relates to matters not covered by the policies of the Coalition Agreement

and has implications for the following departments, whose views have been sought and are accurately reflected in the submission:

Department Prime Minister & Cabinet, Treasury, Department of Conservation, Ministry for Environment, Lands Information New Zealand, Crown Law Office.

Signature	Name and Title	Date
	Director, OTS	18/4/97

Certification by Minister:

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

I certify that the attached submission: [tick appropriate box]

- ☑ relates to policy developed in accordance with the National-New Zealand First Coalition Agreement
- ☐ relates to matters not covered by the policies of the Coalition Agreement

and that consultation on the issues raised in this paper with:

	Has taken place	Will be needed	Is not required
the National party caucus		✓	
the New Zealand First party caucus		✓	
other parliamentary parties[1]			✓
other interested groups[2]			✓

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

.....

(2) List main interested groups: .....

.....

Signature	Name and Portfolio	Date
		18/4/97

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15

CABINET COMMITTEE ON STRATEGY AND PRIORITIES

CSP (97) 54

4 April 1997

Copy No: 42

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 NEGOTIATIONS: DRAFT DEED OF SETTLEMENT

Purpose The paper proposes a process and a timetable for negotiating a Deed of Settlement with Ngai Tahu.

Previous Consideration The background to the negotiations to date is set out in paragraphs 7 to 11 of the submission. On 15 April 1996 Cabinet agreed that the Crown should recommence negotiations with Ngai Tahu for a comprehensive settlement of all of their historical Treaty claims within a total redress package [CAB (96) M 13/4A(2) refers].

On 18 December 1996 Cabinet endorsed the Heads of Agreement signed by the Crown and Ngai Tahu [CAB (96) M 49/11 refers].

Summary While the bulk of the settlement has been agreed between the Crown and Ngai Tahu, some issues are outstanding and further issues are likely to arise. This paper provides Ministers with an overview of what the Ngai Tahu settlement will look like. The final Deed will need to be approved by Cabinet before it is signed by the Crown. Similarly, the final form of the settlement legislation will need to be approved by Cabinet.

To move from the Heads of a Deed of Settlement the Crown and Ngai Tahu must agree details of all redress and how that redress will be provided.

The Deed of Settlement will have the following 11 sections setting out redress and the process for delivering this redress:

- ☐ Definitions and Interpretation
- ☐ Crown acknowledgements and apology
- ☐ Transfer of assets
- ☐ High Country stations
- ☐ Mahinga Kai
- ☐ Ancillary claims
- ☐ SILNA (South Island Landless Natives Act)
- ☐ Specific sites
- ☐ Relativity mechanism

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- ☐ Ngai Tahu's acknowledgements
- ☐ Conditions and legislation

The paper addresses each of the above topics separately.

An Executive Summary is provided on pages 1 and 2 of the paper.

Baseline Implications	No implications arising from this submission.
Legislative Implications	Settlement legislation is proposed to be introduced on 22 July and passed by 31 October 1997.
Timing Issues	A proposed timetable is set out in paragraphs 13 and 14.
Announcement	Not applicable.
Consultation	Treasury, Crown Law Office, Department of the Prime Minister and Cabinet, Department of Conservation, Land Information New Zealand, Ministry for the Environment.

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

a note that on 18 December 1996 Cabinet endorsed the Heads of Agreement signed by the Crown and Te Runanga o Ngai Tahu on 5 October 1996 [CAB (96) M 49/11 refers];

TIMETABLE AND PROCESS

b note that it is proposed to follow the key steps and timetable outlined below to conclude the Ngai Tahu settlement:

Date	Task
18 April 1997	draft Deed of Settlement complete
21 April	draft Deed of Settlement agreed to by Crown and Ngai Tahu principals
25 April - 5 July	Ngai Tahu ratification of settlement
18 June or 16 July	Deed signed
22 July	settlement legislation introduced to the House
31 October	legislation passed
10 November 1997	Crown and Ngai Tahu to confirm legislation
31 January 1999	settlement implementation complete

SETTLEMENT PACKAGE

c note that it is expected that the draft Deed of Settlement will be largely consistent with the Heads of Agreement;

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d note that the settlement will be a full and final settlement of all Ngai Tahu's historical claims relating to land, water, minerals and other resources;

e note that a question has arisen over whether Wai 158 concerning Southland indigenous forests should be covered by the settlement of Ngai Tahu's historical claims, or by the Ministry of Forestry as a contemporary issue;

f note that the Crown acknowledgments are unchanged from that agreed to in the Heads and that the apology is of a form similar to that used in previous settlements with Waikato and Whakatohea;

g note that at this stage the details of the following redress have been agreed largely in accordance with the Heads:

i Deferred Selection Process (DSP);

ii Greenstone, Elfin bay and Routeburn high country stations;

iii SILNA claims (Southland Island Landless Natives Act);

iv relativity clause;

COMMERCIAL ASSETS

h note that Ngai Tahu and the Crown are yet to agree on the "agreed parts of Timberlands West Coast" which will be included in the settlement;

i note that Ngai Tahu has raised issues in respect of the Right of First Refusal (RFR) which contradict the principles of the Heads, but that officials are continuing discussions with Ngai Tahu to establish the process of RFR without moving substantially beyond the principles established by the Heads;

MAHINGA KAI

j note that Ngai Tahu and the Crown are yet to agree on the "agreed parts of Timberlands West Coast" which will be included in the Deferred Selection process;

k note that the key departures from the Heads are in mahinga kai redress (see Annex 1) and were agreed to by the Minister in Charge of Treaty of Waitangi Negotiations in consultation with the Ministers of Conservation, Environment and Lands, subject to Cabinet approval;

l agree to the extended mahinga kai redress set out in Annex 1 to this paper;

m note that there is a substantial amount of work left to identify the specific mahinga kai sites, but that the complete Deed of Settlement will contain all this information and will need to be ratified by Cabinet;

n note that there is a fundamental difference between the Crown and Ngai Tahu over whether the Minister of Conservation should retain the discretion for triggering the tendering process which will result in Ngai Tahu receiving 10% of tendered coastal space;

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18

ANCILLARY CLAIMS

o note that for the ancillary claims there will be some variation from the Heads of Agreement as far as specific sites are concerned, but that the revised redress does not raise any new policy or financial issues for the Crown;

SPECIFIC SITES

p note that redress proposals for Rarotoka, Whenua Hou, Crown Titi Islands and the Arahura Valley have been agreed consistent with the Heads of Agreement but that drafting has been contentious in respect of the purposes of the reserves covering the Crown Titi Islands and the Arahura Valley;

NGAI TAHU ACKNOWLEDGEMENTS

q note that the majority of the acknowledgements to be made by Ngai Tahu have been agreed consistent with the Heads of Agreement, but that Ngai Tahu has reservations about acknowledging the settlement as fair;

SETTLEMENT LEGISLATION

r note that the Deed of Settlement will be conditional on legislation being passed by a majority of the House satisfactory to the Crown and that a similar provision was contained in the Waikato settlement;

s note that the settlement legislation will not come into force unless Ngai Tahu have provided a statement in writing to the Crown that the legislation is acceptable as enacted. The Crown will request prior to introduction of the Bill that Ngai Tahu confirm in writing that if the Bill is enacted in the form introduced, then the legislation is acceptable and Ngai Tahu may not withhold their consent;

t note that as negotiations accelerate officials will need to seek regular direction from Ministers and ministerial involvement in the negotiations;

AUTHORITY TO ACT

u confirm Cabinet's previous authorisation of the Minister in Charge of Treaty of Waitangi Negotiations to determine, in consultation with the Prime Minister and Minister of Finance, matters within the parameters agreed by Cabinet which may arise in the context of negotiations [CAB (96) M 19/22 refers];

v agree that other Ministers also be consulted by the Minister in Charge of Treaty of Waitangi Negotiations as required;

LAND INFORMATION NEW ZEALAND RECOMMENDATIONS

w note that extending the scope of the Deed of Settlement beyond what has been provided in the Heads of Agreement has exposed the Crown to additional risk especially in terms of the tight timeframes for negotiation and completion of documentation of Statutory Acknowledgements and Deeds of Recognition; and

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x agree that the Minister of Lands be added to the group of Ministers in paragraph (u) above.

(Signed) Martin A Bell

COPIES TO:

Cabinet Committee on Strategy and Priorities
Chief Executive, PM&C
  Miriama Evans [PM&C]
Secretary to the Treasury
  John Wilson [Treasury]
State Services Commissioner
Secretary for Justice
  Matthew Palmer [Minister of Justice]
Director, Office of Treaty Settlements
Chief Executive, Te Puni Kokiri
  John Tamahori [TPK]
Solicitor-General
Secretary for the Environment
Minister of Lands
  Chief Executive, LINZ
Minister of Conservation
  Director-General of Conservation

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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

- 3 APR 1997

Martin Bell
Cabinet Office
PARLIAMENT BUILDINGS

Dear Mr Bell

Please accept the attached submission "Ngai Tahu negotiations: Draft Deed of Setttlement" for consideration by the Cabinet Strategy and Priorities Committee on 8 April 1997.

The submission sets out the proposed Ngai Tahu settlement for Cabinet consideration. Due to the complexity and significance of the issues involved in the settlement it has not been possible to complete the paper within the 10 page limit. Many agencies and departments are affected by this critical paper and have expressly asked that their views be fully reported and that the full implications of the settlement be spelt out. I have agreed that the significance of the subject warrants such comprehensive treatment and accordingly ask that the 10 page limit be waived in this case.

Yours sincerely

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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Parliament Buildings, Wellington, New Zealand
Whare Pāremata, Te Whanga-nui-a-Tara, Aotearoa.
Telephone: 64 4 471 9950
Waea: 64 4 471 9950
Facsimile: 64 4 471 2922
Waea whakaahua: 64 4 471 2922

Chair
Cabinet Strategy and Priorities Committee

Ngai Tahu negotiations: Draft Deed of Settlement

Executive Summary

1. This paper:

   i. seeks approval from Ministers to the process and timetable for negotiating a Deed of Settlement with Ngai Tahu for the full and final settlement of Ngai Tahu's historical claims

   ii. sets out the redress contained in a draft Deed of Settlement and where that redress will vary materially from that agreed in the Heads of Agreement signed by the Crown and Ngai Tahu on 5 October 1996

   iii. enables Ministers to review the key issues which will need to be agreed to finalise a Deed of Settlement with Ngai Tahu

2. While the bulk of the settlement has been agreed between the Crown and Ngai Tahu, some issues are outstanding and further issues are likely to arise due to the dynamic and iterative nature of the negotiation process. This paper provides Ministers with an overview of what the Ngai Tahu settlement will look like. As negotiations accelerate over the final aspects of the settlement it is proposed that a small group of Ministers provide directions on agreeing a draft Deed of Settlement, within parameters decided by Cabinet. The final Deed will need to be approved by Cabinet before it is signed by the Crown. Similarly, the final form of the settlement legislation will need to be approved by Cabinet.

3. To move from the Heads to a Deed of Settlement the Crown and Ngai Tahu must agree details of all redress and how that redress will be provided. Officials have been working with Ngai Tahu since the signing of the Heads to complete a draft Deed of Settlement. Once a Deed has been drafted and agreed (18 April) Ngai Tahu will carry out a ratification process amongst their beneficiaries (completed by 5 July). Following execution of the Deed the settlement will be conditional on legislation (introduced 22 July, passed 31 October). This tight timetable is being driven by Ngai Tahu's desire to have the settlement concluded before their annual hui-a-tau set down for 21-23 November 1997. The process and timetable for concluding a settlement is discussed further below (see paragraphs 14-15 and 48-50).

4. The draft Deed of Settlement is being negotiated largely within the parameters of the Heads of Agreement. The significant departures from the Heads have been made in the nature and extent of the redress package covering claims to mahinga kai. The Minister in Charge of Treaty of Waitangi Negotiations, in consultation with the Ministers of Conservation, Environment and Lands has agreed to the revised redress (see Annex 1), subject to Cabinet approval. In addition the Crown has made some compromises in the commercial assets area, for instance "certain Landcorp farms" as described in the Heads has become all Landcorp farms. In addition Ngai Tahu will have the opportunity

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to purchase stock and plant from Landcorp. Other examples of movement from the Heads are changing the specific properties being used to settle the ancillary claims. These changes have not fundamentally changed the nature or extent of the ancillary claims redress.

5. There are some key outstanding issues still to be agreed between the Crown and Ngai Tahu. Specifically:

   - *Right of First Refusal* - the Crown and Ngai Tahu are still working to agree the process by which the RFR will be implemented
   - *Timberlands West Coast* - the Crown and Ngai Tahu are yet to agree the parts of Timberlands West Coast that will be included in the settlement
   - *Coastal Tendering* - there is a disagreement between the Crown and Ngai Tahu on what will trigger Ngai Tahu's allocation of 10% of tendered coastal space

Coalition Agreement

6. This submission and the proposed Ngai Tahu settlement is consistent with the Coalition Agreement, particularly in setting a further useful benchmark for the Treaty claims settlement process.

Background

7. *February 1991* The Waitangi Tribunal report on the Ngai Tahu claim (Wai 27) was released and negotiations with the Crown commenced in May 1991.

8. *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 their wider interests. Negotiations subsequently lapsed.

9. *July 1995* Ngai Tahu took a series of proceedings against the Crown seeking redress of their claim through the courts and the Waitangi Tribunal.

10. *Late 1995 to May 1996* there were five informal meetings between the Prime Minister and Sir Tipene O'Regan to explore the possibility of the Crown and Ngai Tahu recommencing formal negotiations

11. *June 1996* Cabinet:

    confirmed that the total redress quantum was to be $170 million (in 1996 dollars) and that the Crown should recommence negotiations with Ngai Tahu for a comprehensive settlement of all of their historical Treaty claims within the parameters agreed by Cabinet [CAB (96) M13/4A(2) refers]

    authorised the Minister in Charge of Treaty of Waitangi Negotiations to determine, in consultation with the Prime Minister and Minister of Finance, matters within the parameters agreed by Cabinet which may arise in the context of negotiations. [CAB (96) M 19/21 refers]*5 October 1996* the Minister in Charge of Treaty of Waitangi Negotiations signed, on behalf of the Crown, a Heads of Agreement with Ngai Tahu.

The Ngai Tahu Settlement

12. The Crown has a strategic interest in finalising the settlement proposed in the Ngai Tahu Heads of Agreement. The Ngai Tahu claim is one of the largest, most complex

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and significant Treaty claims and has a high political profile. It involves a number of publicly controversial issues particularly concerning the conservation estate and natural resources. The settlement will provide:

- further confirmation of the Crown's settlement framework, including establishing a robust benchmark for settlement quantums and an approach to aboriginal title
- evidence to both claimants and the wider public that the claims settlement process can continue to achieve settlements
- a significant comprehensive settlement, particularly in redressing grievances covering natural resources and the conservation estate
- certainty for the Crown in managing its assets in the Ngai Tahu claim area, particularly by ensuring discontinuance of the raft of proceedings brought by Ngai Tahu against the Crown

Process and Timetable

13. The Heads of Agreement sets out the terms of a proposed full and final settlement with Ngai Tahu of all its historical Treaty claims relating to land, water, minerals and other resources in its rohe. The Heads is an agreement-in-principle and is not legally binding, but contains commitments from both parties to negotiate and agree on a legally binding Deed of Settlement. The Heads has a finite life of six months. On 27 March 1997 the Crown and Ngai Tahu negotiating teams agreed to extend the lifetime of the Heads beyond 6 April 1997. The parties are currently working to conclude the settlement on the basis of the steps and timetable outlined below. Ministers should be aware that discussions between the Crown and Ngai Tahu are continuing on the timing of the Deed being signed and the settlement legislation being introduced. The timetable should therefore be viewed as indicative.

Date	Task
18 April 1997	draft Deed of Settlement complete
21 April	draft Deed of Settlement agreed to by Crown and Ngai Tahu principals
25 April - 5 July	Ngai Tahu ratification of settlement
18 June or 16 July	Deed signed
22 July	settlement legislation introduced to the House
31 October	legislation passed
10 November 1997	Crown and Ngai Tahu to confirm legislation
31 January 1999	settlement implementation complete

14. The timetable is very ambitious and there is a risk that it will not be met. The timetable is being driven by Ngai Tahu's desire to have the settlement concluded before their annual hui-a-tau set down for 21-23 November 1997. While it is in the Crown's interests to conclude a settlement as soon as possible, it is fair to say that the time pressures will weigh most heavily on Ngai Tahu. This should inform the Crown's judgement as final issues are being negotiated. It may be preferable from the Crown's point of view to let the timetable slip allowing a mutually agreeable solution to be reached, rather than making significant concessions in order to agree the Deed of Settlement.

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15. Ngai Tahu will ratify the draft Deed of Settlement through a series of regional hui, a postal ballot and a meeting of Te Runanga o Ngai Tahu. If accepted, the draft Deed will become the final Deed. Parliamentary Counsel is being kept informed of progress in drafting the Deed to minimise the time between the Deed being signed and the legislation being introduced. Ultimately whether the legislation is introduced by 22 July will depend on Parliamentary Counsel. The settlement is conditional on the legislation being passed by a majority of the House satisfactory to the Crown. There was a similar provision to this effect in the Waikato settlement. There will also be a provision requiring confirmation from Ngai Tahu that the legislation is acceptable (see paragraph 47). There will be an implementation period of 15 months after the legislation is passed to deliver the redress. The implementation period is as short as possible and assets will be managed to avoid value loss. The settlement will also establish ongoing Crown commitments, for example the Right of First Refusal and consultation and management rights/obligations arising out of mahinga kai redress.

Shape of the settlement

16. The Deed of Settlement will have the following 11 sections setting out redress and the process for delivering this redress:

    1 Definitions and Interpretation
    2 Crown acknowledgments and apology
    3 Transfer of assets
    4 High Country stations
    5 Mahinga Kai
    6 Ancillary Claims
    7 SILNA (South Island Landless Natives Act)
    8 Specific sites
    9 Relativity Mechanism
    10 Ngai Tahu's acknowledgements
    11 Conditions and legislation

17. Below is a broad description of the content of each section of the Deed and a brief commentary on where redress differs materially from that agreed to in the Heads or significant issues are still outstanding.

<u>Definitions and Interpretations</u>

18. The key element of this section is the "Meaning of Ngai Tahu claims" which defines the claims covered by the settlement.

19. *A question has arisen over the Ngai Tahu settlement covering Wai 158 a claim concerning Southland indigenous forests. Essentially the question is whether grievances occurring as a result of a 1990 Crown policy banning the export of indigenous forest woodchips should be covered by the settlement of Ngai Tahu's historical claims, or by the Ministry of Forestry as a contemporary issue. Officials are currently working to form a view on this issue.*

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Crown acknowledgments and apology

20. The Crown acknowledgments or preamble is a series of recitals setting out the events leading to breaches of the Treaty and Ngai Tahu's attempts to resolve its grievances. The function of the apology is for the Crown to apologise for its actions and the grievances which resulted. The preamble was included in the Heads and follows a whaikorero format, with a karakia to begin and a waiata to finish.

21. *The Crown acknowledgments/preamble is unchanged from that agreed to in the Heads. The apology is of a form similar to that used in previous settlements with Waikato and Whakatohea.*

Transfer of assets

22. Under the Deferred Selection Process (DSP) Ngai Tahu will be able to select up to $200 million of commercial assets from an agreed schedule ($170 transferred from the Crown and $30 of Ngai Tahu's own money). The DSP will cover three categories of assets:

    - commercial properties : the Ngai Tahu landbank, 19 specified properties and Landcorp Permatron properties
    - forestry assets : Aoraki forests, Crown forest licensed lands and "agreed parts" of Timberlands West Coast
    - Landcorp farms : all 53 Landcorp farms in the Ngai Tahu rohe

    There will be separate provisions in the Deed for the valuation, selection and transfer of each of these categories of assets.

23. *At this stage the details of the DSP have been agreed largely in accordance with the Heads. Concessions agreed to by the Crown include:*

    - *Ngai Tahu being able to select the Aoraki forest at a smaller base unit than individual forests (Crown Forest Licences may also have to be split into a smaller unit than individual licences)*
    - *a revaluation process to take account of value lost from or added to properties after values are agreed and before the properties are selected and transferred*

24. *A key outstanding issue is that Ngai Tahu and the Crown are yet to agree on the "agreed parts of Timberlands West Coast" which will be included in the settlement. The Crown's current offer is all freehold land purchased by Timberlands West Coast (TWC) since it was established (totalling 3510 ha); 2325 ha of exotic forest (trees only) and 2000 ha cutover indigenous forest. The Crown's offer is conditioned by the existence of the West Coast Accord and the overall viability of TWC. If a greater proportion of Timberland's assets were to be made available under the "agreed parts" the company's ongoing viability would be marginal. Ngai Tahu considers that all TWC assets should be considered available, that TWC's viability is of no concern to Ngai Tahu, and that the Crown could contract out of its obligations under the West Coast Accord.*

25. The settlement includes a Right of First Refusal (RFR) over land owned by a range of Crown agencies. The Heads stated that the RFR would be the same as the Waikato RFR, but with an additional requirement for the Crown to convene a meeting to negotiate sale terms in good faith, and will also include anti-avoidance provisions. There will also be a similar RFR over six less frequently traded assets, including Highbank power station and the Crown's shareholding in three airports.

26. *This is one area in the Transfer of assets section that Ngai Tahu is looking to extend beyond the Heads. Specifically Ngai Tahu is seeking that the:*

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- *Crown cannot set a price in the market place before offering a property to Ngai Tahu under the RFR*
- *2 year window during which a vendor agency can sell properties to third parties after Ngai Tahu has declined to purchase a property under the RFR be reduced to 4 months*
- *requirement to hold a meeting to negotiate in good faith be redefined. Ngai Tahu want the requirement to negotiate in good faith to apply to the month period they have to consider a Crown offer under the RFR*
- *RFR notation on property titles should be lifted only once Ngai Tahu notifies the Director-General LINZ that the Crown has fulfilled its obligations*

27. *In the Crown's view the issues raised by Ngai Tahu contradict the principles of the Heads. Discussions are continuing with Ngai Tahu to establish the process by which the RFR is to be implemented. It is envisaged that a process can be agreed that will address Ngai Tahu's concerns without requiring the significant policy changes initially sought by Ngai Tahu (above bullet points).These discussions have included LINZ (the agency with statutory responsibility for the RFR). Good progress has been made and officials consider that agreement can be reached on the detail of the process without moving substantially beyond the principles established by the Heads. There may be a need to involve Ministers if agreement cannot be reached. The RFR is a significant aspect of the settlement to both parties. Careful consideration will need to be given to any agreements reached on this issue because of the potential for financial value transfer from the Crown to Ngai Tahu and for economic costs to be imposed on the process for selling Crown assets if Ngai Tahu's proposals are adopted.*

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High Country stations (Greenstone, Routeburn, Elfin Bay)

28. The majority of the three high country stations will be transferred to Ngai Tahu with an immediate leaseback in perpetuity at a peppercorn rental to the Minister of Conservation. Ngai Tahu will receive freehold title to the floors of the valleys (about 10% of the total property) subject to covenants to safeguard public and conservation interests. Ngai Tahu will also have a grazing licence over the Mararoa Valley flats and Home Hill in the Caples Valley for a maximum of 9 years subject to 3-yearly tenure review of ecological sustainability by the Minister of Conservation. High altitude retirement areas will be vested in Ngai Tahu and immediately gifted back to the Crown.

29. *There is no change from the proposal agreed to in the Heads.*

Mahinga kai / natural resources

30. The Heads includes redress for Ngai Tahu's claims to mahinga kai (traditional food sources) and a number of sites of spiritual, historical and cultural significance. The redress covers Ngai Tahu's claims to certain Crown-owned land, rivers, lakebeds wetlands, customary fisheries, and other natural resources. A range of instruments have been developed to address Ngai Tahu's interests. Some are designed to recognise Ngai Tahu's special relationship with sites through either statutory or non statutory means. Others provide Ngai Tahu with certain use rights, greater management input and in a small number of cases title to sites of particular significance. The cost of this redress (including any land transferred to Ngai Tahu) will not be offset against the settlement quantum. Specific redress for mahinga kai includes:
    - ownership rights and title to up to 13 specific sites (including three lakebeds)

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- mana recognition (through a variety of instruments like Statutory Acknowledgements and Deeds of Recognition) and a consultative/advisory role over a number of specific sites and specified plant and animal species
- seasonal occupation rights adjacent to certain water bodies for the purposes of customary fishing (nohoanga entitlements)
- right to purchase 10% of certain specified areas of coastal space that are subject to tendering in future
- increased participation in the management of customary fisheries and a right of first refusal to buy a portion of Crown quota in certain shellfish should they be entered into the Quota Management System
- 78 place names to be given joint English/Maori names
- dedicated seat on New Zealand Geographic Board and New Zealand Conservation Authority, and dedicated membership on Conservation Boards within the Ngai Tahu claim areas, membership on guardians of southern lakes
- Ngai Tahu input into monitoring of the Resource Management Act and review of heritage protection by the Historic Places Trust
- development of protocols with the Department of Conservation

31. *Following feedback from their 18 papatipu runanga Ngai Tahu recently sought a number of changes to the mahinga kai redress set out in the Heads. The changes related to the nature of the generic redress instruments (e.g. Statutory Acknowledgements, Deeds of Recognition, the Statutory Advisor role and Nohoanga entitlements) and application of these instruments to additional sites. The Minister in Charge of Treaty of Waitangi Negotiations, in consultation with the Ministers of Conservation, Environment and Lands, has agreed to some changes sought by Ngai Tahu, subject to Cabinet approval. The agreed changes to mahinga kai redress are set out in the attached table (Annex 1). Other aspects of mahinga kai redress are unchanged from the Heads. Ngai Tahu have indicated that the changes meet most of their concerns, and will assist them with the settlement ratification process.*

32. *The main risk areas to the Crown from the changes are in the amendments to the nature and application of the Statutory Acknowledgements (SAs) and Deeds of Recognition (DoRs).[1] The instruments, as drafted in the Heads, already pose some risks to the Crown; there is considerable uncertainty about their precise legal effect. Applying the instruments to cover entire lakes rivers and wetlands and increasing the number of sites increases this uncertainty. Crown Law Office has advised, however, that the risks are manageable provided that the scope of the instruments is circumscribed and clearly defined, that they do not confer any property rights or commercial rights or interfere with existing third party rights, and are expressly limited to*

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[1] SAs and DoRs acknowledge the special spiritual, cultural, historical and/or traditional association of Ngai Tahu to specified sites. The SA may be used by the iwi as leverage and in legal terms may require decision-makers exercising powers under conservation or resource management legislation to give greater weight to Ngai Tahu interests when making decisions in respect of the site to which the instrument relates. The SA is given expression through settlement legislation and is therefore a public acknowledgement by the Crown of Ngai Tahu's association to certain sites. It also authorises DoRs over specific sites.

The DoR is a contract between the administering Crown body (either the Minister of Conservation or Minister of Lands) and Ngai Tahu which recognises Ngai Tahu's special association with a site and specifies Ngai Tahu's input into management of that site. This input will be restricted to Crown-owned land and certain lakes and rivers.

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specified sections in the Resource Management Act and Historic Places Act. Current drafting reflects these limits. The Crown and Ngai Tahu are working to identify all sites subject to the instruments. Additional certainty will be gained by finalising the Deeds of Recognition before the Deed of Settlement is signed.

33. *It is envisaged that most mahinga kai Deed drafting will be completed by the end of April 1997. Generic instruments (e.g. Statutory Acknowledgements, Deeds of Recognition and Topuni reserves), Department of Conservation protocols and a number of site definitions will not be completed within this timeframe, but will be finalised for inclusion in the Deed when it is signed.*

34. *The Department of Conservation and Land Information New Zealand are devoting considerable time and resources to the mahinga kai aspect of the settlement. It may be difficult to complete all work on mahinga kai redress within the timeframe outlined above. The focus of the work will involve site identification, establishing the legal definition of sites and setting out the nature of Ngai Tahu's relationship with the site. Until all sites are identified by Ngai Tahu, officials will be unable to provide any specifics about the location of the sites.*

35. *Issues of coastal tendering have proved to be difficult, particularly as the Crown is yet to consider generically how the coastal tendering policy is to be implemented. The Crown and Ngai Tahu are continuing discussions on coastal tendering but it is unlikely that agreement will be reached. The fundamental difference between the Crown and Ngai Tahu is what triggers the Order-in-Council, which in the Heads of Agreement is the trigger for Ngai Tahu receiving 10% of the tendered coastal space. The Crown considers that the trigger should be retained at the discretion of the Minister of Conservation, Ngai Tahu consider the trigger should be a more automatic process relating to some other event. To give Ngai Tahu control over the trigger would be a fundamental change to the coastal tendering provisions of the RMA and would require amendment to that Act.*

Ancillary Claims

36. All Ngai Tahu ancillary claims will be included in the overall settlement. Most of them relate to the loss of property by individuals or families, rather than Ngai Tahu as a whole, but a few are claims on behalf of tribal interests. The Crown has agreed to gift the ancillary claims redress which will go to individual beneficiaries - up to a limit of $1 million. Ancillary claims redress which will go to tribal interests will be offset against the settlement quantum. The settlement will establish a trust structure to receive properties being transferred to individual beneficiaries and a process to identify the beneficiaries as quickly as possible. A summary of the ancillary claims redress by region is:

- in *Kaikoura* some reserves will be transferred to Ngai Tahu and others will be transferred in fee simple to beneficiaries
- in *Canterbury* land will be returned at Waihora (Lake Ellesmere) and five fishing reserves will be established
- in *Arahura* (West Coast) a number of properties will be transferred in fee simple to beneficiaries and to Mawhera Incorporation; Mawhera will also receive approx. 58 acres of indigenous forest
- in *Otago* a number of sites, including land at Hawea and Wanaka will be transferred to beneficiaries
- in *Murihiku* (Southland) three areas of land will be transferred to beneficiaries and Matariki Island will be vested in Ngai Tahu

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37. *There will be some variation from the Heads as far as specific sites are concerned, for example where on the ground site inspections have shown a site to be inappropriate. The revised redress does not pose any new policy or financial issues for the Crown.*

SILNA (South Island Landless Natives Act)

38. The settlement will cover three claims (Hawea/Wanaka; Whakapoai; Port Adventure/Toi Toi) relating to land allocated under the South Island Landless Natives Act (SILNA). The Crown will vest land in the descendants of the beneficial owners of land that was allocated under the South Island Landless Natives Act 1906 but never transferred. A number of the beneficial owners are not Ngai Tahu beneficiaries. As the effective value of the Crown's interest in land allocated but never transferred is zero, land vested in the beneficial owners will not be offset against the Ngai Tahu quantum.

39. *Redress for SILNA claims is essentially unchanged from that agreed in the Heads.*

Specific sites

40. Redress will be provided for four sites of special significance to Ngai Tahu:

- Rarotoka (Centre Island) - freehold title gifted to Ngai Tahu, subject to a lease to the Maritime Safety Authority covering a lighthouse. Fisheries management regime established approximately 450-500 metres offshore
- Whenua Hou (Codfish island) - Ngai Tahu to have a management advisory role through a committee of the Southland Conservation Board with mutually agreed access conditions for Ngai Tahu
- Crown Titi Islands - freehold title gifted to Ngai Tahu, Islands managed as a nature reserve subject to the traditional rights of Rakiura Maori to take titi.
- Arahura Valley - legal but unformed roads along the river gifted to Ngai Tahu, reserve covering catchment of the top third of the valley vested in Ngai Tahu

41. *These redress proposals have been developed with no substantive deviation from the Heads. However, discussions with Ngai Tahu on drafting have been difficult, particularly in respect of the purposes of the reserves covering the Crown Titi Islands and the Arahura Valley.*

Relativity Mechanism

42. The settlement includes a relativity clause on the basis that any top-up payments to Ngai Tahu are the same as those provided under the Waikato relativity clause.

43. *At this stage it is likely that this provision will be agreed consistent with the Heads.*

Ngai Tahu's acknowledgements

44. A number of steps are essential to ensure that a feeling of completion and resolution exist in the minds of claimants and the wider public. The following steps will be agreed between the Crown and Ngai Tahu to ensure this sense of finality:

i. public acknowledgment (in both the Deed of Settlement and in settlement legislation) that the settlement is fair, final and durable and that both parties have acted honourably and reasonably in achieving the settlement.

ii. an ouster clause in settlement legislation preventing any court or tribunal from inquiring into the claims settled, the validity of the settlement, or the adequacy of the benefits provided under the settlement;

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iii. the removal of all resumptive memorials from the titles of land within the claim boundaries;

iv. dismantling of all other protective mechanisms which operate for Ngai Tahu within its claim area including its landbank and the Crown Forests Assets Act 1989;

v. ceasing payment of the annuity to Ngai Tahu ($20,000 per year) as provided under the Maori Trust Boards Act 1955 ; and

vi. agreement to discontinue all proceedings before the courts and the Waitangi Tribunal.

45. *There is no change from the Heads on the majority of these issues. Ngai Tahu made a commitment in the Heads that the settlement would be acknowledged as fair but are now expressing a reluctance to repeat this acknowledgment in the Deed of Settlement. Ngai Tahu claim that there will be serious problems selling the settlement to their constituency if the Crown insists on an acknowledgment that the settlement is "fair". Ngai Tahu's view is that the judgement of whether or not the settlement is fair is best left to history. Ngai Tahu has indicated that they would be prepared to consider alternative wording.*

Conditions and legislation

46. The Deed of Settlement will be conditional on legislation being passed by a majority of the House satisfactory to the Crown. A similar provision was contained in the Waikato settlement.

47. *The settlement legislation will also provide that no Order in Council will be made bringing the settlement legislation into force unless Ngai Tahu have provided a statement in writing to the Crown that the legislation is acceptable as enacted. The Crown will request prior to introduction of the Bill that Ngai Tahu confirm in writing that if the Bill is enacted in the form introduced, then the legislation is acceptable and Ngai Tahu may not withhold their consent.*

Process from here

Concluding negotiations on the Deed

48. Treaty negotiations are dynamic and iterative processes as parties crystallise their views on what constitutes an acceptable settlement. There is likely to be significant time pressures as negotiations accelerate and the draft Deed of Settlement is being concluded. While it is expected that there will be agreement between the Crown and Ngai Tahu on all key policy issues by 11 April, further issues may well arise from the detailed drafting To conclude the settlement, officials are likely to require regular direction from Ministers. At some point officials will not be able to conclude the negotiations within their mandate and Ministers will need to be directly involved in the negotiations. Experience from the Ngai Tahu Heads suggests that a small group of Ministers should be delegated authority to act in the Ngai Tahu negotiations. Previously in the Ngai Tahu negotiations Cabinet authorised the Minister in Charge of Treaty of Waitangi Negotiations to determine, in consultation with the Prime Minister and Minister of Finance, matters within the parameters agreed by Cabinet which may arise in the context of negotiations [CAB (96) M 19/21 refers]. It is proposed that this delegation be confirmed in the context of concluding agreement on a Deed of Settlement. In practice other Ministers have been involved by the Minister in Charge of Treaty of Waitangi Negotiations as their portfolios are affected. It is proposed to continue this practice. The final Deed will need by approved by Cabinet before it is signed by the Crown.

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- Similarly, the final form of the settlement legislation will need to be approved by Cabinet.

Ngai Tahu ratification of the Deed / introduction and passage of legislation

49. Ngai Tahu are currently proposing a $2^1/_2$ month ratification process, leaving a three month period for the introduction and passage of the settlement legislation through the House before Ngai Tahu's annual hui-a-iwi. To achieve this timetable the legislation will need to be drafted while Ngai Tahu is ratifying the Deed. This will require co-operation from Parliamentary Counsel. The legislation will also require careful management through the House, particularly through the Select Committee process.

50. There is a serious risk that Ngai Tahu will not be able to fulfil its part of the commitment to have the legislation before the House with a view to having it passed before the annual hui-a-tau. It may well be that due to the demands of the ratification process Ngai Tahu will not be able to commit the time required to the drafting of the legislation.

Financial Implications

51. There are no financial implications arising directly from this submission. Any settlement with Ngai Tahu will be charged to Vote: Treaty Negotiations: Non-Departmental Other Expense, multi year appropriation, "Historical Treaty of Waitangi Settlements". The multi year appropriation allows the Government to commit expenditure up to five years. The appropriation 1995/96 - 1999/00 is $496 million.

Legislative Implications

52. There are no legislative implications arising directly from this submission. However, a Deed of Settlement will be conditional on the passage of legislation.

Consultation

53. Land Information New Zealand has asked that its comments on the paper be reproduced in their entirety. Their comments are as follows:

> Land Information has had less than an hour to provide comment on the final paper.
>
> The changes to the redress package include an increase from 36 to 54 mahinga kai sites for which SAs and or DoRs will be required, and an increase in the number of nohoanga sites from 64 to a maximum of 72. This extension of the scope of the Heads of Agreement will entail a significant increase in the work required to be undertaken by Land Information NZ over an extremely limited period of time. Of particular concern is that until Ngai Tahu has completed and notified its selection of sites, we are not even in a position to assess whether it will in fact be possible to complete the work within the proposed timelines, notwithstanding strenuous efforts. It is already evident that it will not be possible to complete the SAs and DoRs by the 18 April when the draft Deed of Settlement is due to be completed.
>
> Land Information NZ is also concerned that its obligations to produce SAs and DoRs for the increased number of mahinga kai sites, together with general issue of managing Ngai Tahu's expectations in the regard, has already significantly increased the level of risk to the Crown. The risk to the Crown will further escalate if the negotiations relating to the SAs and particularly all of the DoRs are not completed prior to settlement.
>
> Land Information NZ notes the following additional points:
>
> - not all rivers and lakes are Crown-owned. Moreover, even where there is Crown ownership of a riverbed, it may related only to part of that riverbed. The Deeds of Recognition will need to reflect the fact that the Crown can only offer kaitiaki or manawhenua recognition in respect

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of areas owned by the Crown. This excludes those parts of riverbeds where the Crown has previously yielded ad medium filium rights.

- specific reference to hydro-electricity easements as explicit contractual obligations of the Crown to ECNZ is required in item 1 of the Annex.
- a 'fair' or 'equitable' distribution must take into account the size of each runanga area, the number of people in it and, last but not least, the significance and importance of the sites.

Given that there are significant risks to the Crown associated with the work that is required to be done by Land Information NZ for the Deed of Settlement, it would be appropriate to include the Minister of Lands in the group of Ministers authorised to decide matters that may arise in the context of negotiations and which fall within the parameters agreed by Cabinet.

54. This submission has been prepared in consultation with Treasury, Crown Law Office, Department of Prime Minister and Cabinet, Department of Conservation, Land Information New Zealand and the Ministry for the Environment.

Recommendations

55. It is recommended that you:

a. note that on 18 December Cabinet endorsed the Heads of Agreement signed by the Crown and Te Runanga o Ngai Tahu on 5 October 1996 [CAB(96) M 49/11 refers];

Timetable and process

b. note that it is proposed to follow the key steps and timetable outlined below to conclude the Ngai Tahu settlement:

Date	Task
18 April 1997	draft Deed of Settlement complete
21 April	draft Deed of Settlement agreed to by Crown and Ngai Tahu principals
25 April - 5 July	Ngai Tahu ratification of settlement
18 June or 16 July	Deed signed
22 July	settlement legislation introduced to the House
31 October	legislation passed
10 November 1997	Crown and Ngai Tahu to confirm legislation
31 January 1999	settlement implementation complete

Settlement package

c. note that we expect the draft Deed of Settlement will be largely consistent with the Heads of Agreement;

d. note that the settlement will be a full and final settlement of all Ngai Tahu's historical claims relating to land, water, minerals and other resources;

e. note that a question has arisen over whether Wai 158 concerning Southland indigenous forests should be covered by the settlement of Ngai Tahu's historical claims, or by the Ministry of Forestry as a contemporary issue;

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f. note that the Crown acknowledgments are unchanged from that agreed to in the Heads and that the apology is of a form similar to that used in previous settlements with Waikato and Whakatohea;

g. note that at this stage the details of the following redress have been agreed largely in accordance with the Heads:

i. Deferred Selection Process (DSP);

ii. Greenstone, Elfin bay and Routeburn high country stations;

iii. SILNA claims (South Island Landless Natives Act)

iv. relativity clause;

Commercial assets

h. note that Ngai Tahu and the Crown are yet to agree on the "agreed parts of Timberlands West Coast" which will be included in the settlement;

i. note that Ngai Tahu has raised issues in respect of the Right of First Refusal (RFR) which contradict the principles of the Heads, but that officials are continuing discussions with Ngai Tahu to establish the process of the RFR without moving substantially beyond the principles established by the Heads;

Mahinga kai

j. note that Ngai Tahu and the Crown are yet to agree on the "agreed parts of Timberlands West Coast" which will be included in the Deferred Selection process;

k. note that the key departures from the Heads are in mahinga kai redress (see Annex 1) and were agreed to by the Minister in Charge of Treaty of Waitangi Negotiations in consultation with the Ministers of Conservation, Environment and Lands, subject to Cabinet approval;

l. agree to the extended mahinga kai redress set out in Annex 1 to this paper;

m. note that there is a substantial amount of work left to identify the specific mahinga kai sites, but that the complete Deed of Settlement will contain all this information and will need to be ratified by Cabinet;

n. note that there is a fundamental difference between the Crown and Ngai Tahu over whether the Minister of Conservation should retain the discretion for triggering the tendering process which will result in Ngai Tahu receiving 10% of tendered coastal space;

ancillary claims

o. note that for the ancillary claims there will be some variation from the Heads of Agreement as far as specific sites are concerned, but that the revised redress does not raise any new policy or financial issues for the Crown;

specific sites

p. note that redress proposals for Rarotoka, Whenua Hou, Crown Titi Islands and the Arahura Valley have been agreed consistent with the Heads of Agreement but that drafting has been contentious in respect of the purposes of the reserves covering the Crown Titi Islands and the Arahura Valley;

Ngai Tahu acknowledgments

q. note that the majority of the acknowledgments to be made by Ngai Tahu have been agreed consistent with the Heads of Agreement, but that Ngai Tahu has reservations about acknowledging the settlement as fair;

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Settlement legislation

r. note that the Deed of Settlement will be conditional on legislation being passed by a majority of the House satisfactory to the Crown and that a similar provision was contained in the Waikato settlement;

s. note that the settlement legislation will not come into force unless Ngai Tahu have provided a statement in writing to the Crown that the legislation is acceptable as enacted. The Crown will request prior to introduction of the Bill that Ngai Tahu confirm in writing that if the Bill is enacted in the form introduced, then the legislation is acceptable and Ngai Tahu may not withhold their consent;

t. note that as negotiations accelerate officials will need to seek regular direction from Ministers and ministerial involvement in the negotiations;

Authority to act

u. confirm Cabinet's previous authorisation of the Minister in Charge of Treaty of Waitangi Negotiations to determine, in consultation with the Prime Minister and Minister of Finance, matters within the parameters agreed by Cabinet which may arise in the context of negotiations [CAB (96) M 19/21 refers];

v. agree that other Ministers also be consulted by the Minister in Charge of Treaty of Waitangi Negotiations as required;

Land Information New Zealand recommendations

w. note that extending the scope of the Deed of Settlement beyond what has been provided in the Heads of Agreement has exposed the Crown to additional risk especially in terms of the tight timeframes for negotiation and completion of documentation of SAs and DoRs; and

x agree that the Minister of Lands be added to the group of Ministers in recommendation (u) above.

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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Annex 1 : Changes to mahinga kai redress

	Heads of Agreement	Proposed change
1	Statutory Acknowledgements (SA) and Deeds of Recognition (DoR) offered over Crown-owned land only (in the case of water bodies, the beds only)	SAs and DoRs to cover entire lakes, rivers and wetlands with an explicit statement that they do not confer any property rights or commercial rights or interfere with existing third party rights (e.g. public access, existing concessions and easements, and rights to apply for renewal). Management input for Ngai Tahu under DoRs will be restricted to Crown-owned land only.
2	Ngai Tahu must choose between a SA or DoR for 10 wetlands, 13 lakebeds, and 10 specific sites. Ngai Tahu may have DoRs over 3 riverbeds.	• The SA will now authorise the DoR and both instruments will be offered together. • Ngai Tahu may choose the sites where it wishes to have a DoR as well as a SA. • "Basket approach" - SAs and DoRs will be available for up to 18 wetlands, 18 rivers and 18 lakes so that there may be one for each Runanga (in response to Ngai Tahu's wish to distribute redress across each of its Papatipu Runanga). Ngai Tahu may reallocate the sites amongst runanga provided they are relatively evenly distributed.
3	For sites covered by an SA, the Crown will acknowledge that Ngai Tahu has standing greater than the public generally under s274 of the Resource Management Act (RMA), and is a person directly affected under section 14 and 20(1) of the Historic Places Act.	The SA will also acknowledge that the Crown considers that, in respect of sites covered by an SA, Ngai Tahu is likely to be a person directly affected for the purposes of sections 93 and 94 of the RMA (relating to the notification of and consultation on consent applications). There is no need to amend the RMA.
4	No mention of registering SAs or DoRs on local authority plans.	Settlement legislation will direct local authorities to record SAs in their regions on plans (to ensure they are fully aware that sites are covered by SAs) and to have regard to the SAs in forming opinions under the relevant sections of the RMA.
	For 10 wahi tapu sites Ngai Tahu may choose between either fee simple title with management solely by the Crown, or no ownership interest but with restricted management input.	There will be provision for Ngai Tahu values to be taken into account in the management of land to be vested in fee simple title in Ngai Tahu subject to protective mechanisms. Options include the vested land being declared protected private land in perpetuity (which provides for the Crown to consult Ngai Tahu on management), or through the development of the Department of Conservation protocols.
6	Ngai Tahu have a statutory advisor role over 15 of 36 wahi tapu sites.	Ngai Tahu have a Statutory Advisor role over all 36 sites.
7	Up to 64 nohoanga (campsite) entitlements over 13 lakes and 19 rivers.[2]	• Ngai Tahu will be offered up to four nohoanga entitlements per runanga (i.e. a total of 72 entitlements).

⇒ [2] nohoanga entitlements will be granted only on Crown owned land and not in respect of National Park land, esplanade reserves, marginal strips and scientific and nature reserves;

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	Nohoanga entitlements must be renewed every five years	Ngai Tahu may allocate the sites differently amongst runanga provided they are relatively evenly distributed. • The nohoanga entitlements may be situated on Crown owned land (with the same restrictions as before) beside any lakes or rivers Ngai Tahu may nominate within their rohe, and agreed to by the Crown. • 10 year renewal period
8	DOC protocols not enforceable	Under the settlement legislation the protocols will be enforceable by means of public law remedies only (i.e. not damages). A breach of the protocols would not constitute a breach of the Deed of Settlement.

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CONSULTATION ON CABINET AND CABINET COMMITTEE SUBMISSIONS/ RELATIONSHIP TO COALITION AGREEMENT

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: [tick appropriate box]

- ☐ relates to policy developed in accordance with the National-New Zealand First Coalition Agreement
- ☑ relates to matters not covered by the policies of the Coalition Agreement

and has implications for the following departments, whose views have been sought and are accurately reflected in the submission:

TREASURY, CROWN LAW OFFICE, DEPARTMENT OF CONSERVATION, LAND INFORMATION NEW ZEALAND, MINISTRY FOR THE ENVIRONMENT.

Signature	Name and Title	Date
B. Roche.	BRIAN ROCHE CHIEF CROWN NEGOTIATOR, NGAI TAHU CLAIMS	4/2/1997

Certification by Minister:

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

I certify that the attached submission: [tick appropriate box]

- ☐ relates to policy developed in accordance with the National-New Zealand First Coalition Agreement
- ☑ relates to matters not covered by the policies of the Coalition Agreement

and that consultation on the issues raised in this paper with:

	Has taken place	Will be needed	Is not required
the National party caucus			✓
the New Zealand First party caucus			✓
other parliamentary parties[1]			✓
other interested groups[2]			✓

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

.....

(2) List main interested groups: .....

.....

Signature	Name and Portfolio	Date
L		3/1/97

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CABINET

CAB (97) M 14/3D

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Chair, Cabinet Committee on Strategy
and Priorities

B. Clark
H. Te Kohe
J. Craig
B. Roache
S. Macaskill

Copies to:

Prime Minister
Deputy Prime Minister
Treasurer
Minister of Finance
Minister of Revenue
Minister of State Services
Minister of Justice
Minister in Charge of Treaty of Waitangi Negotiations
Minister of Maori Affairs
Attorney-General
Minister for the Environment
Minister of Lands
Minister of Commerce
Minister of Labour
Minister of Social Welfare
Minister of Women's Affairs
Minister of Conservation
Minister of Youth Affairs
Secretary, CSP

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REPORT OF THE CABINET COMMITTEE ON STRATEGY AND PRIORITIES: WEEK ENDED 18 APRIL 1997

Reference: CAB (97) 215

At the meeting on 21 April 1997 Cabinet made the following decisions on the work of the Cabinet Committee on Strategy and Priorities for the week ended 18 April 1997.

Committee Minute	Title	Cabinet decision
CSP (97) M 10	Ngai Tahu Negotiations: Draft Deed of Settlement	Separate minute; see CAB (97) M 14/4

Out of scope

[redacted]

for Secretary of the Cabinet

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CABINET COMMITTEE ON STRATEGY AND PRIORITIES

CSP (97) M 10

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MINUTES of a meeting of the Committee held on **Wednesday, 16 April 1997** at **9.30am**

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PRESENT:	Rt Hon James Bolger (Chair)	B Clark
	Hon Winston Peters	
	Hon Jenny Shipley (part of item)	B Roche
	Hon Douglas Graham	
	Hon Tau Henare	
	Hon Simon Upton	
	Hon John Delamere	
ALSO PRESENT:	Hon John Luxton	
	Hon Roger Sowry (part of item)	
	Hon Dr Nick Smith	
IN ATTENDANCE:	Officials from	Department of the Prime Minister and Cabinet
		Treasury
		State Services Commission
		Office of Treaty Settlements
		Te Puni Kokiri
		Office of the Deputy Prime Minister
		Office of the Minister of Finance

NGAI TAHU NEGOTIATIONS: DRAFT DEED OF SETTLEMENT

Reference: CSP (97) 54

The Committee:

a referred the submission under CSP (97) 54 to Cabinet for consideration on 21 April 1997;

b invited the Minister in Charge of Treaty of Waitangi Negotiations to review the recommendations in the light of the discussion at the meeting, including the timetable and proposed amendments to recommendations (d) and (l) of the submission under CSP (97) 54, and to submit an amended set of recommendations to Cabinet.

Sue Sharp
Secretary

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Cabinet Committee on Strategy and Priorities
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  Miriama Evans [PM&C]
Secretary to the Treasury
  John Wilson [Treasury]
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Secretary for Justice
  Matthew Palmer [Minister of Justice]
Director, Office of Treaty Settlements
Chief Executive, Te Puni Kokiri
  John Tamahori [TPK]
Solicitor-General
Secretary for the Environment
Minister of Lands
  Chief Executive, LINZ
Minister of Conservation
  Director-General of Conservation

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CABINET COMMITTEE ON STRATEGY AND PRIORITIES

CSP (97) M 9/7

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MINUTES of a meeting of the Committee held on **Tuesday, 8 April 1997** at **5.30pm**

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10 APR 1997
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MINISTERIALS

PRESENT:	Rt Hon James Bolger (Chair)	B Clark
	Hon Winston Peters	B Roche
	Hon Jenny Shipley	P Dersen
	Hon Douglas Graham	
	Hon Tau Henare	
	Dr Hon Lockwood Smith	
	Hon Bill English	
	Hon John Delamere	
ALSO PRESENT:	Hon Roger Sowry	
	Hon Neil Kirton	
IN ATTENDANCE:	Officials from	Department of the Prime Minister and Cabinet
		Treasury
		State Services Commission
		Office of Treaty Settlements
		Office of the Deputy Prime Minister
		Office of the Minister of Finance

NGAI TAHU NEGOTIATIONS: DRAFT DEED OF SETTLEMENT

Reference: CSP (97) 54

The Committee deferred consideration of the submission under CSP (97) 54 until the next CSP meeting on 16 April 1997.

Sue Sharp
Secretary

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Cabinet Committee on Strategy and Priorities
Chief Executive, PM&C
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Secretary to the Treasury
  John Wilson [Treasury]
State Services Commissioner
Secretary for Justice
  Matthew Palmer [Minister of Justice]
Director, Office of Treaty Settlements
Chief Executive, Te Puni Kokiri
  John Tamahori [TPK]
Solicitor-General
Secretary for the Environment
Minister of Lands
  Chief Executive, LINZ
Minister of Conservation
  Director-General of Conservation
Monitoring System

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IN CONFIDENCE

BRIAN ROCHE

Document 16

CABINET COMMITTEE ON STRATEGY AND PRIORITIES

CSP (97) 54

4 April 1997

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Title

NGAI TAHU NEGOTIATIONS: DRAFT DEED OF SETTLEMENT

Purpose

The paper proposes a process and a timetable for negotiating a Deed of Settlement with Ngai Tahu.

Previous Consideration

The background to the negotiations to date is set out in paragraphs 7 to 11 of the submission. On 15 April 1996 Cabinet agreed that the Crown should recommence negotiations with Ngai Tahu for a comprehensive settlement of all of their historical Treaty claims within a total redress package [CAB (96) M 13/4A(2) refers].

On 18 December 1996 Cabinet endorsed the Heads of Agreement signed by the Crown and Ngai Tahu [CAB (96) M 49/11 refers].

Summary

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MINISTERIALS

While the bulk of the settlement has been agreed between the Crown and Ngai Tahu, some issues are outstanding and further issues are likely to arise. This paper provides Ministers with an overview of what the Ngai Tahu settlement will look like. The final Deed will need to be approved by Cabinet before it is signed by the Crown. Similarly, the final form of the settlement legislation will need to be approved by Cabinet.

To move from the Heads of a Deed of Settlement the Crown and Ngai Tahu must agree details of all redress and how that redress will be provided.

The Deed of Settlement will have the following 11 sections setting out redress and the process for delivering this redress:

- ☐ Definitions and Interpretation
- ☐ Crown acknowledgements and apology
- ☐ Transfer of assets
- ☐ High Country stations
- ☐ Mahinga Kai
- ☐ Ancillary claims
- ☐ SILNA (South Island Landless Natives Act)
- ☐ Specific sites
- ☐ Relativity mechanism

B Clark
B Roche
P Dennen

- ❒ Ngai Tahu's acknowledgements
- ❒ Conditions and legislation

The paper addresses each of the above topics separately.

An Executive Summary is provided on pages 1 and 2 of the paper.

Baseline Implications	No implications arising from this submission.
Legislative Implications	Settlement legislation is proposed to be introduced on 22 July and passed by 31 October 1997.
Timing Issues	A proposed timetable is set out in paragraphs 13 and 14.
Announcement	Not applicable.
Consultation	Treasury, Crown Law Office, Department of the Prime Minister and Cabinet, Department of Conservation, Land Information New Zealand, Ministry for the Environment.

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

a note that on 18 December 1996 Cabinet endorsed the Heads of Agreement signed by the Crown and Te Runanga o Ngai Tahu on 5 October 1996 [CAB (96) M 49/11 refers];

TIMETABLE AND PROCESS

b note that it is proposed to follow the key steps and timetable outlined below to conclude the Ngai Tahu settlement:

Date	Task
18 April 1997	draft Deed of Settlement complete
21 April	draft Deed of Settlement agreed to by Crown and Ngai Tahu principals
25 April - 5 July	Ngai Tahu ratification of settlement
18 June or 16 July	Deed signed
22 July	settlement legislation introduced to the House
31 October	legislation passed
10 November 1997	Crown and Ngai Tahu to confirm legislation
31 January 1999	settlement implementation complete

SETTLEMENT PACKAGE

c note that it is expected that the draft Deed of Settlement will be largely consistent with the Heads of Agreement;

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d note that the settlement will be a full and final settlement of all Ngai Tahu's historical claims relating to land, water, minerals and other resources;

e note that a question has arisen over whether Wai 158 concerning Southland indigenous forests should be covered by the settlement of Ngai Tahu's historical claims, or by the Ministry of Forestry as a contemporary issue;

f note that the Crown acknowledgments are unchanged from that agreed to in the Heads and that the apology is of a form similar to that used in previous settlements with Waikato and Whakatohea;

g note that at this stage the details of the following redress have been agreed largely in accordance with the Heads:

i Deferred Selection Process (DSP);

ii Greenstone, Elfin bay and Routeburn high country stations;

iii SILNA claims (Southland Island Landless Natives Act);

iv relativity clause;

COMMERCIAL ASSETS

h note that Ngai Tahu and the Crown are yet to agree on the "agreed parts of Timberlands West Coast" which will be included in the settlement;

i note that Ngai Tahu has raised issues in respect of the Right of First Refusal (RFR) which contradict the principles of the Heads, but that officials are continuing discussions with Ngai Tahu to establish the process of RFR without moving substantially beyond the principles established by the Heads;

MAHINGA KAI

j note that Ngai Tahu and the Crown are yet to agree on the "agreed parts of Timberlands West Coast" which will be included in the Deferred Selection process;

k note that the key departures from the Heads are in mahinga kai redress (see Annex 1) and were agreed to by the Minister in Charge of Treaty of Waitangi Negotiations in consultation with the Ministers of Conservation, Environment and Lands, subject to Cabinet approval;

l agree to the extended mahinga kai redress set out in Annex 1 to this paper;

m note that there is a substantial amount of work left to identify the specific mahinga kai sites, but that the complete Deed of Settlement will contain all this information and will need to be ratified by Cabinet;

n note that there is a fundamental difference between the Crown and Ngai Tahu over whether the Minister of Conservation should retain the discretion for triggering the tendering process which will result in Ngai Tahu receiving 10% of tendered coastal space;

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ANCILLARY CLAIMS

o note that for the ancillary claims there will be some variation from the Heads of Agreement as far as specific sites are concerned, but that the revised redress does not raise any new policy or financial issues for the Crown;

SPECIFIC SITES

p note that redress proposals for Rarotoka, Whenua Hou, Crown Titi Islands and the Arahura Valley have been agreed consistent with the Heads of Agreement but that drafting has been contentious in respect of the purposes of the reserves covering the Crown Titi Islands and the Arahura Valley;

NGAI TAHU ACKNOWLEDGEMENTS

q note that the majority of the acknowledgements to be made by Ngai Tahu have been agreed consistent with the Heads of Agreement, but that Ngai Tahu has reservations about acknowledging the settlement as fair;

SETTLEMENT LEGISLATION

r note that the Deed of Settlement will be conditional on legislation being passed by a majority of the House satisfactory to the Crown and that a similar provision was contained in the Waikato settlement;

s note that the settlement legislation will not come into force unless Ngai Tahu have provided a statement in writing to the Crown that the legislation is acceptable as enacted. The Crown will request prior to introduction of the Bill that Ngai Tahu confirm in writing that if the Bill is enacted in the form introduced, then the legislation is acceptable and Ngai Tahu may not withhold their consent;

t note that as negotiations accelerate officials will need to seek regular direction from Ministers and ministerial involvement in the negotiations;

AUTHORITY TO ACT

u confirm Cabinet's previous authorisation of the Minister in Charge of Treaty of Waitangi Negotiations to determine, in consultation with the Prime Minister and Minister of Finance, matters within the parameters agreed by Cabinet which may arise in the context of negotiations [CAB (96) M 19/22 refers];

v agree that other Ministers also be consulted by the Minister in Charge of Treaty of Waitangi Negotiations as required;

LAND INFORMATION NEW ZEALAND RECOMMENDATIONS

w note that extending the scope of the Deed of Settlement beyond what has been provided in the Heads of Agreement has exposed the Crown to additional risk especially in terms of the tight timeframes for negotiation and completion of documentation of Statutory Acknowledgements and Deeds of Recognition; and

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x agree that the Minister of Lands be added to the group of Ministers in paragraph (u) above.

(Signed) Martin A Bell

COPIES TO:

Cabinet Committee on Strategy and Priorities
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State Services Commissioner
Secretary for Justice
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Director, Office of Treaty Settlements
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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

- 3 APR 1997

Martin Bell
Cabinet Office
PARLIAMENT BUILDINGS

Dear Mr Bell

Please accept the attached submission "Ngai Tahu negotiations: Draft Deed of Setttlement" for consideration by the Cabinet Strategy and Priorities Committee on 8 April 1997.

The submission sets out the proposed Ngai Tahu settlement for Cabinet consideration. Due to the complexity and significance of the issues involved in the settlement it has not been possible to complete the paper within the 10 page limit. Many agencies and departments are affected by this critical paper and have expressly asked that their views be fully reported and that the full implications of the settlement be spelt out. I have agreed that the significance of the subject warrants such comprehensive treatment and accordingly ask that the 10 page limit be waived in this case.

Yours sincerely

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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Parliament Buildings, Wellington, New Zealand
Whare Pāremata, Te Whanga-nui-a-Tara, Aotearoa.
Telephone: 64 4 471 9950
Waea: 64 4 471 9950
Facsimile: 64 4 471 2922
Waea whakaahua: 64 4 471 2922

Chair
Cabinet Strategy and Priorities Committee

Ngai Tahu negotiations: Draft Deed of Settlement

Executive Summary

1. This paper:

   i. seeks approval from Ministers to the process and timetable for negotiating a Deed of Settlement with Ngai Tahu for the full and final settlement of Ngai Tahu's historical claims

   ii. sets out the redress contained in a draft Deed of Settlement and where that redress will vary materially from that agreed in the Heads of Agreement signed by the Crown and Ngai Tahu on 5 October 1996

   iii. enables Ministers to review the key issues which will need to be agreed to finalise a Deed of Settlement with Ngai Tahu

2. While the bulk of the settlement has been agreed between the Crown and Ngai Tahu, some issues are outstanding and further issues are likely to arise due to the dynamic and iterative nature of the negotiation process. This paper provides Ministers with an overview of what the Ngai Tahu settlement will look like. As negotiations accelerate over the final aspects of the settlement it is proposed that a small group of Ministers provide directions on agreeing a draft Deed of Settlement, within parameters decided by Cabinet. The final Deed will need to be approved by Cabinet before it is signed by the Crown. Similarly, the final form of the settlement legislation will need to be approved by Cabinet.

3. To move from the Heads to a Deed of Settlement the Crown and Ngai Tahu must agree details of all redress and how that redress will be provided. Officials have been working with Ngai Tahu since the signing of the Heads to complete a draft Deed of Settlement. Once a Deed has been drafted and agreed (18 April) Ngai Tahu will carry out a ratification process amongst their beneficiaries (completed by 5 July). Following execution of the Deed the settlement will be conditional on legislation (introduced 22 July, passed 31 October). This tight timetable is being driven by Ngai Tahu's desire to have the settlement concluded before their annual hui-a-tau set down for 21-23 November 1997. The process and timetable for concluding a settlement is discussed further below (see paragraphs 14-15 and 48-50).

4. The draft Deed of Settlement is being negotiated largely within the parameters of the Heads of Agreement. The significant departures from the Heads have been made in the nature and extent of the redress package covering claims to mahinga kai. The Minister in Charge of Treaty of Waitangi Negotiations, in consultation with the Ministers of Conservation, Environment and Lands has agreed to the revised redress (see Annex 1), subject to Cabinet approval. In addition the Crown has made some compromises in the commercial assets area, for instance "certain Landcorp farms" as described in the Heads has become all Landcorp farms. In addition Ngai Tahu will have the opportunity

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to purchase stock and plant from Landcorp. Other examples of movement from the Heads are changing the specific properties being used to settle the ancillary claims. These changes have not fundamentally changed the nature or extent of the ancillary claims redress.

5. There are some key outstanding issues still to be agreed between the Crown and Ngai Tahu. Specifically:

   - *Right of First Refusal* - the Crown and Ngai Tahu are still working to agree the process by which the RFR will be implemented
   - *Timberlands West Coast* - the Crown and Ngai Tahu are yet to agree the parts of Timberlands West Coast that will be included in the settlement
   - *Coastal Tendering* - there is a disagreement between the Crown and Ngai Tahu on what will trigger Ngai Tahu's allocation of 10% of tendered coastal space

Coalition Agreement

6. This submission and the proposed Ngai Tahu settlement is consistent with the Coalition Agreement, particularly in setting a further useful benchmark for the Treaty claims settlement process.

Background

7. *February 1991* The Waitangi Tribunal report on the Ngai Tahu claim (Wai 27) was released and negotiations with the Crown commenced in May 1991.

8. *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 their wider interests. Negotiations subsequently lapsed.

9. *July 1995* Ngai Tahu took a series of proceedings against the Crown seeking redress of their claim through the courts and the Waitangi Tribunal.

10. *Late 1995 to May 1996* there were five informal meetings between the Prime Minister and Sir Tipene O'Regan to explore the possibility of the Crown and Ngai Tahu recommencing formal negotiations

11. *June 1996* Cabinet:

    confirmed that the total redress quantum was to be $170 million (in 1996 dollars) and that the Crown should recommence negotiations with Ngai Tahu for a comprehensive settlement of all of their historical Treaty claims within the parameters agreed by Cabinet [CAB (96) M13/4A(2) refers]

    authorised the Minister in Charge of Treaty of Waitangi Negotiations to determine, in consultation with the Prime Minister and Minister of Finance, matters within the parameters agreed by Cabinet which may arise in the context of negotiations. [CAB (96) M 19/21 refers]*5 October 1996* the Minister in Charge of Treaty of Waitangi Negotiations signed, on behalf of the Crown, a Heads of Agreement with Ngai Tahu.

The Ngai Tahu Settlement

12. The Crown has a strategic interest in finalising the settlement proposed in the Ngai Tahu Heads of Agreement. The Ngai Tahu claim is one of the largest, most complex

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and significant Treaty claims and has a high political profile. It involves a number of publicly controversial issues particularly concerning the conservation estate and natural resources. The settlement will provide:

- further confirmation of the Crown's settlement framework, including establishing a robust benchmark for settlement quantums and an approach to aboriginal title
- evidence to both claimants and the wider public that the claims settlement process can continue to achieve settlements
- a significant comprehensive settlement, particularly in redressing grievances covering natural resources and the conservation estate
- certainty for the Crown in managing its assets in the Ngai Tahu claim area, particularly by ensuring discontinuance of the raft of proceedings brought by Ngai Tahu against the Crown

Process and Timetable

13. The Heads of Agreement sets out the terms of a proposed full and final settlement with Ngai Tahu of all its historical Treaty claims relating to land, water, minerals and other resources in its rohe. The Heads is an agreement-in-principle and is not legally binding, but contains commitments from both parties to negotiate and agree on a legally binding Deed of Settlement. The Heads has a finite life of six months. On 27 March 1997 the Crown and Ngai Tahu negotiating teams agreed to extend the lifetime of the Heads beyond 6 April 1997. The parties are currently working to conclude the settlement on the basis of the steps and timetable outlined below. Ministers should be aware that discussions between the Crown and Ngai Tahu are continuing on the timing of the Deed being signed and the settlement legislation being introduced. The timetable should therefore be viewed as indicative.

Date	Task
18 April 1997	draft Deed of Settlement complete
21 April	draft Deed of Settlement agreed to by Crown and Ngai Tahu principals
25 April - 5 July	Ngai Tahu ratification of settlement
18 June or 16 July	Deed signed
22 July	settlement legislation introduced to the House
31 October	legislation passed
10 November 1997	Crown and Ngai Tahu to confirm legislation
31 January 1999	settlement implementation complete

14. The timetable is very ambitious and there is a risk that it will not be met. The timetable is being driven by Ngai Tahu's desire to have the settlement concluded before their annual hui-a-tau set down for 21-23 November 1997. While it is in the Crown's interests to conclude a settlement as soon as possible, it is fair to say that the time pressures will weigh most heavily on Ngai Tahu. This should inform the Crown's judgement as final issues are being negotiated. It may be preferable from the Crown's point of view to let the timetable slip allowing a mutually agreeable solution to be reached, rather than making significant concessions in order to agree the Deed of Settlement.

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15. Ngai Tahu will ratify the draft Deed of Settlement through a series of regional hui, a postal ballot and a meeting of Te Runanga o Ngai Tahu. If accepted, the draft Deed will become the final Deed. Parliamentary Counsel is being kept informed of progress in drafting the Deed to minimise the time between the Deed being signed and the legislation being introduced. Ultimately whether the legislation is introduced by 22 July will depend on Parliamentary Counsel. The settlement is conditional on the legislation being passed by a majority of the House satisfactory to the Crown. There was a similar provision to this effect in the Waikato settlement. There will also be a provision requiring confirmation from Ngai Tahu that the legislation is acceptable (see paragraph 47). There will be an implementation period of 15 months after the legislation is passed to deliver the redress. The implementation period is as short as possible and assets will be managed to avoid value loss. The settlement will also establish ongoing Crown commitments, for example the Right of First Refusal and consultation and management rights/obligations arising out of mahinga kai redress.

Shape of the settlement

16. The Deed of Settlement will have the following 11 sections setting out redress and the process for delivering this redress:

    1 Definitions and Interpretation
    2 Crown acknowledgments and apology
    3 Transfer of assets
    4 High Country stations
    5 Mahinga Kai
    6 Ancillary Claims
    7 SILNA (South Island Landless Natives Act)
    8 Specific sites
    9 Relativity Mechanism
    10 Ngai Tahu's acknowledgements
    11 Conditions and legislation

17. Below is a broad description of the content of each section of the Deed and a brief commentary on where redress differs materially from that agreed to in the Heads or significant issues are still outstanding.

<u>Definitions and Interpretations</u>

18. The key element of this section is the "Meaning of Ngai Tahu claims" which defines the claims covered by the settlement.

19. *A question has arisen over the Ngai Tahu settlement covering Wai 158 a claim concerning Southland indigenous forests. Essentially the question is whether grievances occurring as a result of a 1990 Crown policy banning the export of indigenous forest woodchips should be covered by the settlement of Ngai Tahu's historical claims, or by the Ministry of Forestry as a contemporary issue. Officials are currently working to form a view on this issue.*

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Crown acknowledgments and apology

20. The Crown acknowledgments or preamble is a series of recitals setting out the events leading to breaches of the Treaty and Ngai Tahu's attempts to resolve its grievances. The function of the apology is for the Crown to apologise for its actions and the grievances which resulted. The preamble was included in the Heads and follows a whaikorero format, with a karakia to begin and a waiata to finish.

21. *The Crown acknowledgments/preamble is unchanged from that agreed to in the Heads. The apology is of a form similar to that used in previous settlements with Waikato and Whakatohea.*

Transfer of assets

22. Under the Deferred Selection Process (DSP) Ngai Tahu will be able to select up to $200 million of commercial assets from an agreed schedule ($170 transferred from the Crown and $30 of Ngai Tahu's own money). The DSP will cover three categories of assets:

    - commercial properties : the Ngai Tahu landbank, 19 specified properties and Landcorp Permatron properties
    - forestry assets : Aoraki forests, Crown forest licensed lands and "agreed parts" of Timberlands West Coast
    - Landcorp farms : all 53 Landcorp farms in the Ngai Tahu rohe

    There will be separate provisions in the Deed for the valuation, selection and transfer of each of these categories of assets.

23. *At this stage the details of the DSP have been agreed largely in accordance with the Heads. Concessions agreed to by the Crown include:*

    - *Ngai Tahu being able to select the Aoraki forest at a smaller base unit than individual forests (Crown Forest Licences may also have to be split into a smaller unit than individual licences)*
    - *a revaluation process to take account of value lost from or added to properties after values are agreed and before the properties are selected and transferred*

24. *A key outstanding issue is that Ngai Tahu and the Crown are yet to agree on the "agreed parts of Timberlands West Coast" which will be included in the settlement. The Crown's current offer is all freehold land purchased by Timberlands West Coast (TWC) since it was established (totalling 3510 ha); 2325 ha of exotic forest (trees only) and 2000 ha cutover indigenous forest. The Crown's offer is conditioned by the existence of the West Coast Accord and the overall viability of TWC. If a greater proportion of Timberland's assets were to be made available under the "agreed parts" the company's ongoing viability would be marginal. Ngai Tahu considers that all TWC assets should be considered available, that TWC's viability is of no concern to Ngai Tahu, and that the Crown could contract out of its obligations under the West Coast Accord.*

25. The settlement includes a Right of First Refusal (RFR) over land owned by a range of Crown agencies. The Heads stated that the RFR would be the same as the Waikato RFR, but with an additional requirement for the Crown to convene a meeting to negotiate sale terms in good faith, and will also include anti-avoidance provisions. There will also be a similar RFR over six less frequently traded assets, including Highbank power station and the Crown's shareholding in three airports.

26. *This is one area in the Transfer of assets section that Ngai Tahu is looking to extend beyond the Heads. Specifically Ngai Tahu is seeking that the:*

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- *Crown cannot set a price in the market place before offering a property to Ngai Tahu under the RFR*
- *2 year window during which a vendor agency can sell properties to third parties after Ngai Tahu has declined to purchase a property under the RFR be reduced to 4 months*
- *requirement to hold a meeting to negotiate in good faith be redefined. Ngai Tahu want the requirement to negotiate in good faith to apply to the month period they have to consider a Crown offer under the RFR*
- *RFR notation on property titles should be lifted only once Ngai Tahu notifies the Director-General LINZ that the Crown has fulfilled its obligations*

27. *In the Crown's view the issues raised by Ngai Tahu contradict the principles of the Heads. Discussions are continuing with Ngai Tahu to establish the process by which the RFR is to be implemented. It is envisaged that a process can be agreed that will address Ngai Tahu's concerns without requiring the significant policy changes initially sought by Ngai Tahu (above bullet points).These discussions have included LINZ (the agency with statutory responsibility for the RFR). Good progress has been made and officials consider that agreement can be reached on the detail of the process without moving substantially beyond the principles established by the Heads. There may be a need to involve Ministers if agreement cannot be reached. The RFR is a significant aspect of the settlement to both parties. Careful consideration will need to be given to any agreements reached on this issue because of the potential for financial value transfer from the Crown to Ngai Tahu and for economic costs to be imposed on the process for selling Crown assets if Ngai Tahu's proposals are adopted.*

<u>High Country stations (Greenstone, Routeburn, Elfin Bay)</u>

28. The majority of the three high country stations will be transferred to Ngai Tahu with an immediate leaseback in perpetuity at a peppercorn rental to the Minister of Conservation. Ngai Tahu will receive freehold title to the floors of the valleys (about 10% of the total property) subject to covenants to safeguard public and conservation interests. Ngai Tahu will also have a grazing licence over the Mararoa Valley flats and Home Hill in the Caples Valley for a maximum of 9 years subject to 3-yearly tenure review of ecological sustainability by the Minister of Conservation. High altitude retirement areas will be vested in Ngai Tahu and immediately gifted back to the Crown.

29. *There is no change from the proposal agreed to in the Heads.*

<u>Mahinga kai / natural resources</u>

30. The Heads includes redress for Ngai Tahu's claims to mahinga kai (traditional food sources) and a number of sites of spiritual, historical and cultural significance. The redress covers Ngai Tahu's claims to certain Crown-owned land, rivers, lakebeds wetlands, customary fisheries, and other natural resources. A range of instruments have been developed to address Ngai Tahu's interests. Some are designed to recognise Ngai Tahu's special relationship with sites through either statutory or non statutory means. Others provide Ngai Tahu with certain use rights, greater management input and in a small number of cases title to sites of particular significance. The cost of this redress (including any land transferred to Ngai Tahu) will not be offset against the settlement quantum. Specific redress for mahinga kai includes:
    - ownership rights and title to up to 13 specific sites (including three lakebeds)

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- mana recognition (through a variety of instruments like Statutory Acknowledgements and Deeds of Recognition) and a consultative/advisory role over a number of specific sites and specified plant and animal species
- seasonal occupation rights adjacent to certain water bodies for the purposes of customary fishing (nohoanga entitlements)
- right to purchase 10% of certain specified areas of coastal space that are subject to tendering in future
- increased participation in the management of customary fisheries and a right of first refusal to buy a portion of Crown quota in certain shellfish should they be entered into the Quota Management System
- 78 place names to be given joint English/Maori names
- dedicated seat on New Zealand Geographic Board and New Zealand Conservation Authority, and dedicated membership on Conservation Boards within the Ngai Tahu claim areas, membership on guardians of southern lakes
- Ngai Tahu input into monitoring of the Resource Management Act and review of heritage protection by the Historic Places Trust
- development of protocols with the Department of Conservation

31. *Following feedback from their 18 papatipu runanga Ngai Tahu recently sought a number of changes to the mahinga kai redress set out in the Heads. The changes related to the nature of the generic redress instruments (e.g. Statutory Acknowledgements, Deeds of Recognition, the Statutory Advisor role and Nohoanga entitlements) and application of these instruments to additional sites. The Minister in Charge of Treaty of Waitangi Negotiations, in consultation with the Ministers of Conservation, Environment and Lands, has agreed to some changes sought by Ngai Tahu, subject to Cabinet approval. The agreed changes to mahinga kai redress are set out in the attached table (Annex 1). Other aspects of mahinga kai redress are unchanged from the Heads. Ngai Tahu have indicated that the changes meet most of their concerns, and will assist them with the settlement ratification process.*

32. *The main risk areas to the Crown from the changes are in the amendments to the nature and application of the Statutory Acknowledgements (SAs) and Deeds of Recognition (DoRs).*[1] *The instruments, as drafted in the Heads, already pose some risks to the Crown; there is considerable uncertainty about their precise legal effect. Applying the instruments to cover entire lakes rivers and wetlands and increasing the number of sites increases this uncertainty. Crown Law Office has advised, however, that the risks are manageable provided that the scope of the instruments is circumscribed and clearly defined, that they do not confer any property rights or commercial rights or interfere with existing third party rights, and are expressly limited to*

[1] SAs and DoRs acknowledge the special spiritual, cultural, historical and/or traditional association of Ngai Tahu to specified sites. The SA may be used by the iwi as leverage and in legal terms may require decision-makers exercising powers under conservation or resource management legislation to give greater weight to Ngai Tahu interests when making decisions in respect of the site to which the instrument relates. The SA is given expression through settlement legislation and is therefore a public acknowledgement by the Crown of Ngai Tahu's association to certain sites. It also authorises DoRs over specific sites.

The DoR is a contract between the administering Crown body (either the Minister of Conservation or Minister of Lands) and Ngai Tahu which recognises Ngai Tahu's special association with a site and specifies Ngai Tahu's input into management of that site. This input will be restricted to Crown-owned land and certain lakes and rivers.

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specified sections in the Resource Management Act and Historic Places Act. Current drafting reflects these limits. The Crown and Ngai Tahu are working to identify all sites subject to the instruments. Additional certainty will be gained by finalising the Deeds of Recognition before the Deed of Settlement is signed.

33. *It is envisaged that most mahinga kai Deed drafting will be completed by the end of April 1997. Generic instruments (e.g. Statutory Acknowledgements, Deeds of Recognition and Topuni reserves), Department of Conservation protocols and a number of site definitions will not be completed within this timeframe, but will be finalised for inclusion in the Deed when it is signed.*

34. *The Department of Conservation and Land Information New Zealand are devoting considerable time and resources to the mahinga kai aspect of the settlement. It may be difficult to complete all work on mahinga kai redress within the timeframe outlined above. The focus of the work will involve site identification, establishing the legal definition of sites and setting out the nature of Ngai Tahu's relationship with the site. Until all sites are identified by Ngai Tahu, officials will be unable to provide any specifics about the location of the sites.*

35. *Issues of coastal tendering have proved to be difficult, particularly as the Crown is yet to consider generically how the coastal tendering policy is to be implemented. The Crown and Ngai Tahu are continuing discussions on coastal tendering but it is unlikely that agreement will be reached. The fundamental difference between the Crown and Ngai Tahu is what triggers the Order-in-Council, which in the Heads of Agreement is the trigger for Ngai Tahu receiving 10% of the tendered coastal space. The Crown considers that the trigger should be retained at the discretion of the Minister of Conservation, Ngai Tahu consider the trigger should be a more automatic process relating to some other event. To give Ngai Tahu control over the trigger would be a fundamental change to the coastal tendering provisions of the RMA and would require amendment to that Act.*

<u>Ancillary Claims</u>

36. All Ngai Tahu ancillary claims will be included in the overall settlement. Most of them relate to the loss of property by individuals or families, rather than Ngai Tahu as a whole, but a few are claims on behalf of tribal interests. The Crown has agreed to gift the ancillary claims redress which will go to individual beneficiaries - up to a limit of $1 million. Ancillary claims redress which will go to tribal interests will be offset against the settlement quantum. The settlement will establish a trust structure to receive properties being transferred to individual beneficiaries and a process to identify the beneficiaries as quickly as possible. A summary of the ancillary claims redress by region is:

    - in *Kaikoura* some reserves will be transferred to Ngai Tahu and others will be transferred in fee simple to beneficiaries
    - in *Canterbury* land will be returned at Waihora (Lake Ellesmere) and five fishing reserves will be established
    - in *Arahura* (West Coast) a number of properties will be transferred in fee simple to beneficiaries and to Mawhera Incorporation; Mawhera will also receive approx. 58 acres of indigenous forest
    - in *Otago* a number of sites, including land at Hawea and Wanaka will be transferred to beneficiaries
    - in *Murihiku* (Southland) three areas of land will be transferred to beneficiaries and Matariki Island will be vested in Ngai Tahu

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37. *There will be some variation from the Heads as far as specific sites are concerned, for example where on the ground site inspections have shown a site to be inappropriate. The revised redress does not pose any new policy or financial issues for the Crown.*

SILNA (South Island Landless Natives Act)

38. The settlement will cover three claims (Hawea/Wanaka; Whakapoai; Port Adventure/Toi Toi) relating to land allocated under the South Island Landless Natives Act (SILNA). The Crown will vest land in the descendants of the beneficial owners of land that was allocated under the South Island Landless Natives Act 1906 but never transferred. A number of the beneficial owners are not Ngai Tahu beneficiaries. As the effective value of the Crown's interest in land allocated but never transferred is zero, land vested in the beneficial owners will not be offset against the Ngai Tahu quantum.

39. *Redress for SILNA claims is essentially unchanged from that agreed in the Heads.*

Specific sites

40. Redress will be provided for four sites of special significance to Ngai Tahu:

- Rarotoka (Centre Island) - freehold title gifted to Ngai Tahu, subject to a lease to the Maritime Safety Authority covering a lighthouse. Fisheries management regime established approximately 450-500 metres offshore
- Whenua Hou (Codfish island) - Ngai Tahu to have a management advisory role through a committee of the Southland Conservation Board with mutually agreed access conditions for Ngai Tahu
- Crown Titi Islands - freehold title gifted to Ngai Tahu, Islands managed as a nature reserve subject to the traditional rights of Rakiura Maori to take titi.
- Arahura Valley - legal but unformed roads along the river gifted to Ngai Tahu, reserve covering catchment of the top third of the valley vested in Ngai Tahu

41. *These redress proposals have been developed with no substantive deviation from the Heads. However, discussions with Ngai Tahu on drafting have been difficult, particularly in respect of the purposes of the reserves covering the Crown Titi Islands and the Arahura Valley.*

Relativity Mechanism

42. The settlement includes a relativity clause on the basis that any top-up payments to Ngai Tahu are the same as those provided under the Waikato relativity clause.

43. *At this stage it is likely that this provision will be agreed consistent with the Heads.*

Ngai Tahu's acknowledgements

44. A number of steps are essential to ensure that a feeling of completion and resolution exist in the minds of claimants and the wider public. The following steps will be agreed between the Crown and Ngai Tahu to ensure this sense of finality:

    i. public acknowledgment (in both the Deed of Settlement and in settlement legislation) that the settlement is fair, final and durable and that both parties have acted honourably and reasonably in achieving the settlement.

    ii. an ouster clause in settlement legislation preventing any court or tribunal from inquiring into the claims settled, the validity of the settlement, or the adequacy of the benefits provided under the settlement;

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iii. the removal of all resumptive memorials from the titles of land within the claim boundaries;

iv. dismantling of all other protective mechanisms which operate for Ngai Tahu within its claim area including its landbank and the Crown Forests Assets Act 1989;

v. ceasing payment of the annuity to Ngai Tahu ($20,000 per year) as provided under the Maori Trust Boards Act 1955 ; and

vi. agreement to discontinue all proceedings before the courts and the Waitangi Tribunal.

45. *There is no change from the Heads on the majority of these issues. Ngai Tahu made a commitment in the Heads that the settlement would be acknowledged as fair but are now expressing a reluctance to repeat this acknowledgment in the Deed of Settlement. Ngai Tahu claim that there will be serious problems selling the settlement to their constituency if the Crown insists on an acknowledgment that the settlement is "fair". Ngai Tahu's view is that the judgement of whether or not the settlement is fair is best left to history. Ngai Tahu has indicated that they would be prepared to consider alternative wording.*

Conditions and legislation

46. The Deed of Settlement will be conditional on legislation being passed by a majority of the House satisfactory to the Crown. A similar provision was contained in the Waikato settlement.

47. *The settlement legislation will also provide that no Order in Council will be made bringing the settlement legislation into force unless Ngai Tahu have provided a statement in writing to the Crown that the legislation is acceptable as enacted. The Crown will request prior to introduction of the Bill that Ngai Tahu confirm in writing that if the Bill is enacted in the form introduced, then the legislation is acceptable and Ngai Tahu may not withhold their consent.*

Process from here

Concluding negotiations on the Deed

48. Treaty negotiations are dynamic and iterative processes as parties crystallise their views on what constitutes an acceptable settlement. There is likely to be significant time pressures as negotiations accelerate and the draft Deed of Settlement is being concluded. While it is expected that there will be agreement between the Crown and Ngai Tahu on all key policy issues by 11 April, further issues may well arise from the detailed drafting To conclude the settlement, officials are likely to require regular direction from Ministers. At some point officials will not be able to conclude the negotiations within their mandate and Ministers will need to be directly involved in the negotiations. Experience from the Ngai Tahu Heads suggests that a small group of Ministers should be delegated authority to act in the Ngai Tahu negotiations. Previously in the Ngai Tahu negotiations Cabinet authorised the Minister in Charge of Treaty of Waitangi Negotiations to determine, in consultation with the Prime Minister and Minister of Finance, matters within the parameters agreed by Cabinet which may arise in the context of negotiations [CAB (96) M 19/21 refers]. It is proposed that this delegation be confirmed in the context of concluding agreement on a Deed of Settlement. In practice other Ministers have been involved by the Minister in Charge of Treaty of Waitangi Negotiations as their portfolios are affected. It is proposed to continue this practice. The final Deed will need by approved by Cabinet before it is signed by the Crown.

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Similarly, the final form of the settlement legislation will need to be approved by Cabinet.

Ngai Tahu ratification of the Deed / introduction and passage of legislation

49. Ngai Tahu are currently proposing a $2^1/_2$ month ratification process, leaving a three month period for the introduction and passage of the settlement legislation through the House before Ngai Tahu's annual hui-a-iwi. To achieve this timetable the legislation will need to be drafted while Ngai Tahu is ratifying the Deed. This will require co-operation from Parliamentary Counsel. The legislation will also require careful management through the House, particularly through the Select Committee process.

50. There is a serious risk that Ngai Tahu will not be able to fulfil its part of the commitment to have the legislation before the House with a view to having it passed before the annual hui-a-tau. It may well be that due to the demands of the ratification process Ngai Tahu will not be able to commit the time required to the drafting of the legislation.

Financial Implications

51. There are no financial implications arising directly from this submission. Any settlement with Ngai Tahu will be charged to Vote: Treaty Negotiations; Non-Departmental Other Expense, multi year appropriation, "Historical Treaty of Waitangi Settlements". The multi year appropriation allows the Government to commit expenditure up to five years. The appropriation 1995/96 - 1999/00 is $496 million.

Legislative Implications

52. There are no legislative implications arising directly from this submission. However, a Deed of Settlement will be conditional on the passage of legislation.

Consultation

53. Land Information New Zealand has asked that its comments on the paper be reproduced in their entirety. Their comments are as follows:

> Land Information has had less than an hour to provide comment on the final paper.
>
> The changes to the redress package include an increase from 36 to 54 mahinga kai sites for which SAs and or DoRs will be required, and an increase in the number of nohoanga sites from 64 to a maximum of 72. This extension of the scope of the Heads of Agreement will entail a significant increase in the work required to be undertaken by Land Information NZ over an extremely limited period of time. Of particular concern is that until Ngai Tahu has completed and notified its selection of sites, we are not even in a position to assess whether it will in fact be possible to complete the work within the proposed timelines, notwithstanding strenuous efforts. It is already evident that it will not be possible to complete the SAs and DoRs by the 18 April when the draft Deed of Settlement is due to be completed.
>
> Land Information NZ is also concerned that its obligations to produce SAs and DoRs for the increased number of mahinga kai sites, together with general issue of managing Ngai Tahu's expectations in the regard, has already significantly increased the level of risk to the Crown. The risk to the Crown will further escalate if the negotiations relating to the SAs and particularly all of the DoRs are not completed prior to settlement.
>
> Land Information NZ notes the following additional points:

- not all rivers and lakes are Crown-owned. Moreover, even where there is Crown ownership of a riverbed, it may related only to part of that riverbed. The Deeds of Recognition will need to reflect the fact that the Crown can only offer kaitiaki or manawhenua recognition in respect

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of areas owned by the Crown. This excludes those parts of riverbeds where the Crown has previously yielded ad medium filium rights.

- specific reference to hydro-electricity easements as explicit contractual obligations of the Crown to ECNZ is required in item 1 of the Annex.
- a 'fair' or 'equitable' distribution must take into account the size of each runanga area, the number of people in it and, last but not least, the significance and importance of the sites.

Given that there are significant risks to the Crown associated with the work that is required to be done by Land Information NZ for the Deed of Settlement, it would be appropriate to include the Minister of Lands in the group of Ministers authorised to decide matters that may arise in the context of negotiations and which fall within the parameters agreed by Cabinet.

54. This submission has been prepared in consultation with Treasury, Crown Law Office, Department of Prime Minister and Cabinet, Department of Conservation, Land Information New Zealand and the Ministry for the Environment.

Recommendations

55. It is recommended that you:

a. note that on 18 December Cabinet endorsed the Heads of Agreement signed by the Crown and Te Runanga o Ngai Tahu on 5 October 1996 [CAB(96) M 49/11 refers];

Timetable and process

b. note that it is proposed to follow the key steps and timetable outlined below to conclude the Ngai Tahu settlement:

Date	Task
18 April 1997	draft Deed of Settlement complete
21 April	draft Deed of Settlement agreed to by Crown and Ngai Tahu principals
25 April - 5 July	Ngai Tahu ratification of settlement
18 June or 16 July	Deed signed
22 July	settlement legislation introduced to the House
31 October	legislation passed
10 November 1997	Crown and Ngai Tahu to confirm legislation
31 January 1999	settlement implementation complete

Settlement package

c. note that we expect the draft Deed of Settlement will be largely consistent with the Heads of Agreement;

d. note that the settlement will be a full and final settlement of all Ngai Tahu's historical claims relating to land, water, minerals and other resources;

e. note that a question has arisen over whether Wai 158 concerning Southland indigenous forests should be covered by the settlement of Ngai Tahu's historical claims, or by the Ministry of Forestry as a contemporary issue;

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f. note that the Crown acknowledgments are unchanged from that agreed to in the Heads and that the apology is of a form similar to that used in previous settlements with Waikato and Whakatohea;

g. note that at this stage the details of the following redress have been agreed largely in accordance with the Heads:

   i. Deferred Selection Process (DSP);

   ii. Greenstone, Elfin bay and Routeburn high country stations;

   iii. SILNA claims (South Island Landless Natives Act)

   iv. relativity clause;

Commercial assets

h. note that Ngai Tahu and the Crown are yet to agree on the "agreed parts of Timberlands West Coast" which will be included in the settlement;

i. note that Ngai Tahu has raised issues in respect of the Right of First Refusal (RFR) which contradict the principles of the Heads, but that officials are continuing discussions with Ngai Tahu to establish the process of the RFR without moving substantially beyond the principles established by the Heads;

Mahinga kai

j. note that Ngai Tahu and the Crown are yet to agree on the "agreed parts of Timberlands West Coast" which will be included in the Deferred Selection process;

k. note that the key departures from the Heads are in mahinga kai redress (see Annex 1) and were agreed to by the Minister in Charge of Treaty of Waitangi Negotiations in consultation with the Ministers of Conservation, Environment and Lands, subject to Cabinet approval;

l. agree to the extended mahinga kai redress set out in Annex 1 to this paper;

m. note that there is a substantial amount of work left to identify the specific mahinga kai sites, but that the complete Deed of Settlement will contain all this information and will need to be ratified by Cabinet;

n. note that there is a fundamental difference between the Crown and Ngai Tahu over whether the Minister of Conservation should retain the discretion for triggering the tendering process which will result in Ngai Tahu receiving 10% of tendered coastal space;

ancillary claims

o. note that for the ancillary claims there will be some variation from the Heads of Agreement as far as specific sites are concerned, but that the revised redress does not raise any new policy or financial issues for the Crown;

specific sites

p. note that redress proposals for Rarotoka, Whenua Hou, Crown Titi Islands and the Arahura Valley have been agreed consistent with the Heads of Agreement but that drafting has been contentious in respect of the purposes of the reserves covering the Crown Titi Islands and the Arahura Valley;

Ngai Tahu acknowledgments

q. note that the majority of the acknowledgments to be made by Ngai Tahu have been agreed consistent with the Heads of Agreement, but that Ngai Tahu has reservations about acknowledging the settlement as fair;

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Settlement legislation

r. note that the Deed of Settlement will be conditional on legislation being passed by a majority of the House satisfactory to the Crown and that a similar provision was contained in the Waikato settlement;

s. note that the settlement legislation will not come into force unless Ngai Tahu have provided a statement in writing to the Crown that the legislation is acceptable as enacted. The Crown will request prior to introduction of the Bill that Ngai Tahu confirm in writing that if the Bill is enacted in the form introduced, then the legislation is acceptable and Ngai Tahu may not withhold their consent;

t. note that as negotiations accelerate officials will need to seek regular direction from Ministers and ministerial involvement in the negotiations;

Authority to act

u. confirm Cabinet's previous authorisation of the Minister in Charge of Treaty of Waitangi Negotiations to determine, in consultation with the Prime Minister and Minister of Finance, matters within the parameters agreed by Cabinet which may arise in the context of negotiations [CAB (96) M 19/21 refers];

v. agree that other Ministers also be consulted by the Minister in Charge of Treaty of Waitangi Negotiations as required;

Land Information New Zealand recommendations

w. note that extending the scope of the Deed of Settlement beyond what has been provided in the Heads of Agreement has exposed the Crown to additional risk especially in terms of the tight timeframes for negotiation and completion of documentation of SAs and DoRs; and

x agree that the Minister of Lands be added to the group of Ministers in recommendation (u) above.

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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Annex 1 : Changes to mahinga kai redress

	Heads of Agreement	Proposed change
1	Statutory Acknowledgements (SA) and Deeds of Recognition (DoR) offered over Crown-owned land only (in the case of water bodies, the beds only)	SAs and DoRs to cover entire lakes, rivers and wetlands with an explicit statement that they do not confer any property rights or commercial rights or interfere with existing third party rights (e.g. public access, existing concessions and easements, and rights to apply for renewal). Management input for Ngai Tahu under DoRs will be restricted to Crown-owned land only.
2	Ngai Tahu must choose between a SA or DoR for 10 wetlands, 13 lakebeds, and 10 specific sites. Ngai Tahu may have DoRs over 3 riverbeds.	• The SA will now authorise the DoR and both instruments will be offered together. • Ngai Tahu may choose the sites where it wishes to have a DoR as well as a SA. • "Basket approach" - SAs and DoRs will be available for up to 18 wetlands, 18 rivers and 18 lakes so that there may be one for each Runanga (in response to Ngai Tahu's wish to distribute redress across each of its Papatipu Runanga). Ngai Tahu may reallocate the sites amongst runanga provided they are relatively evenly distributed.
3	For sites covered by an SA, the Crown will acknowledge that Ngai Tahu has standing greater than the public generally under s274 of the Resource Management Act (RMA), and is a person directly affected under section 14 and 20(1) of the Historic Places Act.	The SA will also acknowledge that the Crown considers that, in respect of sites covered by an SA, Ngai Tahu is likely to be a person directly affected for the purposes of sections 93 and 94 of the RMA (relating to the notification of and consultation on consent applications). There is no need to amend the RMA.
4	No mention of registering SAs or DoRs on local authority plans.	Settlement legislation will direct local authorities to record SAs in their regions on plans (to ensure they are fully aware that sites are covered by SAs) and to have regard to the SAs in forming opinions under the relevant sections of the RMA.
5	For 10 wahi tapu sites Ngai Tahu may choose between either fee simple title with management solely by the Crown, or no ownership interest but with restricted management input.	There will be provision for Ngai Tahu values to be taken into account in the management of land to be vested in fee simple title in Ngai Tahu subject to protective mechanisms. Options include the vested land being declared protected private land in perpetuity (which provides for the Crown to consult Ngai Tahu on management), or through the development of the Department of Conservation protocols.
6	Ngai Tahu have a statutory advisor role over 15 of 36 wahi tapu sites.	Ngai Tahu have a Statutory Advisor role over all 36 sites.
7	Up to 64 nohoanga (campsite) entitlements over 13 lakes and 19 rivers.[2]	• Ngai Tahu will be offered up to four nohoanga entitlements per runanga (i.e. a total of 72 entitlements).

⇒ [2] nohoanga entitlements will be granted only on Crown owned land and not in respect of National Park land, esplanade reserves, marginal strips and scientific and nature reserves;

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	Nohoanga entitlements must be renewed every five years	Ngai Tahu may allocate the sites differently amongst runanga provided they are relatively evenly distributed. • The nohoanga entitlements may be situated on Crown owned land (with the same restrictions as before) beside any lakes or rivers Ngai Tahu may nominate within their rohe, and agreed to by the Crown. • 10 year renewal period
8	DOC protocols not enforceable	Under the settlement legislation the protocols will be enforceable by means of public law remedies only (i.e. not damages). A breach of the protocols would not constitute a breach of the Deed of Settlement.

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CONSULTATION ON CABINET AND CABINET COMMITTEE SUBMISSIONS/ RELATIONSHIP TO COALITION AGREEMENT

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: [tick appropriate box]

- ☐ relates to policy developed in accordance with the National-New Zealand First Coalition Agreement
- ☑ relates to matters not covered by the policies of the Coalition Agreement

and has implications for the following departments, whose views have been sought and are accurately reflected in the submission:

TREASURY, CROWN LAW OFFICE, DEPARTMENT OF CONSERVATION, LAND INFORMATION NEW ZEALAND, MINISTRY FOR THE ENVIRONMENT.

Signature	Name and Title	Date
B. Roche.	BRIAN ROCHE CHIEF CROWN NEGOTIATOR, NGAI TAHU CLAIMS	4/2/1997

Certification by Minister:

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

I certify that the attached submission: [tick appropriate box]

- ☐ relates to policy developed in accordance with the National-New Zealand First Coalition Agreement
- ☑ relates to matters not covered by the policies of the Coalition Agreement

and that consultation on the issues raised in this paper with:

	Has taken place	Will be needed	Is not required
the National party caucus			✓
the New Zealand First party caucus			✓
other parliamentary parties[1]			✓
other interested groups[2]			✓

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

.....

(2) List main interested groups: .....

.....

Signature	Name and Portfolio	Date
		7.1.97

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