CABINET

CAB (97) M 43/21

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Minister in Charge of Treaty of Waitangi Negotiations

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COPIES TO:

Prime Minister
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Treasurer
Minister of Finance
Minister of Maori Affairs
Attorney-General
Minister of Conservation
Chief Parliamentary Counsel
Legislation Coordinator

NGAI TAHU SETTLEMENT: RATIFICATION, ADDITIONAL REDRESS AND APPROVAL FOR SIGNING

Reference: CAB (97) 983

At the meeting on 17 November 1997 Cabinet:

a noted that the Ngai Tahu Deed of Settlement will be ready for signing by the Crown and Ngai Tahu on 21 November 1997, following acceptance of the Settlement Offer by Te Runanga o Ngai Tahu on 15 November 1997;

b approved the following additional items of redress requested by Ngai Tahu:

i an interval of seven days between the vesting of title to Aoraki/Mount Cook and its gifting back to the people of New Zealand by Ngai Tahu, pursuant to the settlement legislation;

ii the creation of an historic reserve of up to 22 acres Lake Forsyth/Wairewa, to be vested in Te Runanga o Ngai Tahu;

c declined to create and vest in Te Runanga o Ngai Tahu a recreation reserve at the outlet of Lake Forsyth/Wairewa;

d i declined an option in favour of Te Runanga a Makawhio to purchase up to five acres of Department of Conservation land at Bruce Bay as a location for a marae;

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ii invited the Minister of Conservation to discuss an alternative site for a marae with Te Runanga;

e noted that $10 million of the balance of the settlement quantum will be paid to Ngai Tahu on signing of the Deed of Settlement;

f authorised the Prime Minister proceed to sign the Ngai Tahu Deed of Settlement on behalf of the Crown.

Secretary of the Cabinet

Released under the Official Information Act 1982

CAB(97) 983

Office of the Minister in Charge of Treaty of Waitangi Negotiations

Chair,

Cabinet
Minister of Conservation

Late Paper: 17 November 1997

Ngai Tahu Settlement: Ratification, Additional Redress and Approval for Signing

Purpose

1. This item notes that the Ngai Tahu Deed of Settlement will ready for signing by the Prime Minister on Friday 21 November 1997 and asks Ministers to consider three additional items of redress for inclusion in the settlement package.

Background

2. Cabinet approved the basis for the Settlement Offer on 1 September 1997 [CAB (97) M 33/18 refers]. The Settlement Offer was initialled on behalf of the Crown and Ngai Tahu on 23 September 1997. Cabinet also authorised the Prime Minister to sign the final Deed of Settlement on behalf of the Crown.

3. During the last 8 weeks Ngai Tahu have conducted a consultation process through regional hui and a postal ballot. Provisional results from the postal ballot are that over 50% of eligible voters participated with 94% in favour of acceptance. The final decision on acceptance rests with Te Runanga O Ngai Tahu (the governing body comprising the 18 Papatipu Runanga representatives) which was due to consider the matter on Saturday 15 November. **[Minister to advise Te Runanga decision verbally]**

Additional Items of Redress

4. Following on from the consultation process Ngai Tahu have requested three additional items of redress, which I have agreed to take to Cabinet. The indication of Crown willingness to consider these additional matters has significantly facilitated acceptance of the Settlement Offer at the local level, and has avoided the perception that the Settlement Offer was a *fait accompli*. Details follow:

5. ***Aoraki/Mount Cook*** Ngai Tahu have proposed that they hold title for seven days following granting of title under the settlement legislation, before gifting the mountain to the people of New Zealand. In their view, this interval would provide greater dignity to the process for Ngai Tahu and recognise Ngai Tahu mana in respect of the mountain..

6. The amended Deed wording is attached as **Annex 1**. It provides for:

   - The definition of Gift Date as being seven days after Vesting Date (3.1)
   - Aoraki/Mount Cook to remain part of the National Park, and for all enactments, regulations and other instruments to have uninterrupted effect notwithstanding the vesting in Ngai Tahu for the period between the Vesting Date and the Gift Date (3.4.3)
   - An Escrow arrangement whereby the counterpart Deed of Gift will be delivered to an Escrow Agent **[Minister to advise identity]** on the Vesting Date. If Ngai Tahu fails to deliver the Deed of Gift on Gift date the Escrow Agent is bound to do so on notice from the Prime Minister. A separate Deed will bind the Escrow Agent to carry out this clause (3.5)

Released under the Official Information Act 1982

7. ***Reserves at Lake Forsyth/Wairewa*** Ngai Tahu have requested that the following reserves be created and vested in them under the Reserves Act 1977:

   - *An historic reserve* of approximately 16 acres comprising 8 acres of existing historic reserve plus a small recreation reserve and conservation area adjoining the lake, with provision for up to 6 acres legal but unformed roads to be added subject to approval of the Banks Peninsula District Council (total 22 acres)
   - *A recreation reserve* of approximately 36 acres at the lake outlet being part conservation area (13 acres) and part unalienated Crown land (23 acres), with provision for 2 acres of legal but unformed road to be added, and the provision of an easement to the banks Peninsula District Council for flood control (total 38 acres).

8. *Historic reserve* officials recommend approval of this proposal.

9. *Recreation reserve* officials consider that this proposal raises significant difficulties and complex issues involving:

   - The granting of management rights to Ngai Tahu in a popular recreation area
   - The appropriateness of creating a reserve over a foreshore and flood control area
   - The current public use of the area for gathering gemstones and how this could be managed under the Reserves Act
   - Ngai Tahu's wish to exempt their current customary fishing activities from any Reserves Act provisions which might apply.

10. Officials therefore consider that the proposal contains too many risks and uncertainties for approval to be given at this stage. It could be given further consideration under normal statutory process at a later stage.

11. ***Option to purchase 5 acres at Bruce Bay*** Ngai Tahu seek an option for Te Runanga o Makawhio to purchase up to 5 acres of Department of Conservation administered land at Bruce Bay. The purchase would be at market valuation from Makawhio's resources.

Office of Treaty Settlements Comment

12. As explained to the Office of Treaty Settlements by Te Runanga O Ngai Tahu, this proposal involved land which had been under consideration by the Department of Conservation and the Runanga for some time. (The Department advises that it was only mentioned informally, and that a more formal application was made only 10 days ago). The land is sought as a location for a marae. The Office of Treaty Settlements supports this proposal if a suitable site can be located before Deed signing.

Department of Conservation and Treasury Comment

13. Other officials oppose providing an option for Makawhio Runanga to purchase five acres at Bruce Bay because:

   - the area has very high conservation values, including tall kahikatea trees and extensive wetlands;
   - based upon the principles used throughout the negotiations process to decide whether particular conservation land could be available as redress, officials would have recommended that this area not be available;

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- there has been no consultation with the relevant conservation board or other bodies;
- the area was not raised during 18 months of negotiations and accordingly [we] question its importance to Ngai Tahu;
- the area is part of the South Westland World Heritage area;
- Because of its high conservation value, there is a risk that the Crown will be put under significant pressure to reverse its agreement to sell the land, and buy its way out of a contractual agreement.

14. The Department of Conservation is willing to work with the Runanga to explore whether there is a suitable site using standard departmental and statutory processes.

Coalition Agreement

15. The proposed Ngai Tahu settlement is consistent with the Coalition Agreement, particularly in setting a further useful benchmark for the Treaty claims settlement process.

Financial Implications

16. Ministers may wish to note that $10 million will be paid to Ngai Tahu on signing of the Deed of Settlement [CAB (97) M 33/18 refers]. This is an advance on the balance of $160m remaining from the settlement quantum of $170m ($10m having been paid on account in June 1996).

17. There are no financial implications from the additional redress for Aoraki, or the option to purchase. The additional reserves will result in a slight increase to the value of the mahinga kai redress being gifted to Ngai Tahu.

Legislative Implications – Progress with Settlement Legislation

18. The settlement legislation currently being drafted will incorporate appropriate provisions for the additional redress proposed. Significant progress has been made on the bill drafting, and it is proposed to introduce the bill by 4 December 1997.

Consultation

19. I have consulted the Ministers of Finance and Conservation in the preparation of this paper. The Office of Treaty Settlements has consulted the Department of Conservation, Te Puni Kokiri, Department of Prime Minister and Cabinet, Treasury and the Crown Law Office.

Recommendations

20. I recommend that Cabinet:

a. **note** that the Ngai Tahu Deed of Settlement will be ready for signing by the Crown and Ngai Tahu on 21 November 1997, following acceptance of the Settlement Offer by Te Runanga o Ngai Tahu;

b. **approve** the following additional items of redress requested by Ngai Tahu:

i. an interval of seven days between the vesting of title to Aoraki/Mount Cook and its gifting back to the people of New Zealand by Ngai Tahu, pursuant to the settlement legislation;

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ii. the creation of an historic reserve of up to 22 acres Lake Forsyth/Wairewa, to be vested in Te Runanga o Ngai Tahu;

c. **decline** to create and vest in Te Runanga o Ngai Tahu a recreation reserve at the outlet of Lake Forsyth/Wairewa;

d. EITHER (Office of Treaty Settlements)

i. **approve** an option in favour of Te Runanga o Makawhio to purchase up to five acres of Department of Conservation land at Bruce Bay, subject to agreement between the Department and the Runanga, prior to Deed signing, on the location of the land to be made available;

OR (Department of Conservation, Treasury)

ii. decline an option in favour of Te Runanga o Makawhio to purchase up to five acres of Department of Conservation land at Bruce Bay,

e. **note** that $10 million of the balance of the settlement quantum will be paid to Ngai Tahu on signing of the Deed of Settlement;

f. **agree** that the Prime Minister proceed to sign the Ngai Tahu Deed of Settlement on behalf of the Crown.

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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CABINET

CAB (97) 983

14 November 1997

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NGAI TAHU SETTLEMENT: RATIFICATION, ADDITIONAL REDRESS AND APPROVAL FOR SIGNING

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

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

a note that the Ngai Tahu Deed of Settlement will be ready for signing by the Crown and Ngai Tahu on 21 November 1997, following acceptance of the Settlement Offer by Te Runanga o Ngai Tahu;

b approve the following additional items of redress requested by Ngai Tahu:

i an interval of seven days between the vesting of title to Aoraki/Mount Cook and its gifting back to the people of New Zealand by Ngai Tahu, pursuant to the settlement legislation;

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c decline to create and vest in Te Runanga o Ngai Tahu a recreation reserve at the outlet of Lake Forsyth/Wairewa;

d **EITHER** *[Office of Treaty Settlements]*

i approve an option in favour of Te Runanga o Makawhio to purchase up to five acres of Department of Conservation land at Bruce Bay, subject to agreement between the Department and the Runanga, prior to Deed signing, on the location of the land to be made available;

OR *[Department of Conservation, Treasury]*

ii decline an option in favour of Te Runanga a Makawhio to purchase up to five acres of Department of Conservation land at Bruce Bay;

e note that $10 million of the balance of the settlement quantum will be paid to Ngai Tahu on signing of the Deed of Settlement;

f agree that the Prime Minister proceed to sign the Ngai Tahu Deed of Settlement on behalf of the Crown.

(Signed) Sarah Egan
for Secretary of the Cabinet

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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

14 NOV 1997

Mrs Marie Shroff
Secretary of Cabinet
Parliament Buildings

Dear Mrs Shroff

Late Paper: Ngai Tahu Settlement

I seek leave for the attached paper to be submitted as a late paper.

The paper concerns possible additional items of redress for inclusion in the Ngai Tahu settlement. They have been raised by Ngai Tahu during the last few days. With the signing of the final Deed scheduled for 21 November, there was insufficient time to follow the normal Cabinet Committee processes.

Thank you for your assistance.

Yours sincerely

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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Office of the Minister in Charge of Treaty of Waitangi Negotiations

Chair,

Cabinet
Minister of Conservation

Late Paper: 17 November 1997

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Purpose

1. This item notes that the Ngai Tahu Deed of Settlement will ready for signing by the Prime Minister on Friday 21 November 1997 and asks Ministers to consider three additional items of redress for inclusion in the settlement package.

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Department of Conservation and Treasury Comment

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   - based upon the principles used throughout the negotiations process to decide whether particular conservation land could be available as redress, officials would have recommended that this area not be available;

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- there has been no consultation with the relevant conservation board or other bodies;
- the area was not raised during 18 months of negotiations and accordingly [we] question its importance to Ngai Tahu;
- the area is part of the South Westland World Heritage area;
- Because of its high conservation value, there is a risk that the Crown will be put under significant pressure to reverse its agreement to sell the land, and buy its way out of a contractual agreement.

14. The Department of Conservation is willing to work with the Runanga to explore whether there is a suitable site using standard departmental and statutory processes.

Coalition Agreement

15. The proposed Ngai Tahu settlement is consistent with the Coalition Agreement, particularly in setting a further useful benchmark for the Treaty claims settlement process.

Financial Implications

16. Ministers may wish to note that $10 million will be paid to Ngai Tahu on signing of the Deed of Settlement [CAB (97) M 33/18 refers]. This is an advance on the balance of $160m remaining from the settlement quantum of $170m ($10m having been paid on account in June 1996).

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Legislative Implications – Progress with Settlement Legislation

18. The settlement legislation currently being drafted will incorporate appropriate provisions for the additional redress proposed. Significant progress has been made on the bill drafting, and it is proposed to introduce the bill by 4 December 1997.

Consultation

19. I have consulted the Ministers of Finance and Conservation in the preparation of this paper. The Office of Treaty Settlements has consulted the Department of Conservation, Te Puni Kokiri, Department of Prime Minister and Cabinet, Treasury and the Crown Law Office.

Recommendations

20. I recommend that Cabinet:

a. **note** that the Ngai Tahu Deed of Settlement will be ready for signing by the Crown and Ngai Tahu on 21 November 1997, following acceptance of the Settlement Offer by Te Runanga o Ngai Tahu;

b. **approve** the following additional items of redress requested by Ngai Tahu:

i. an interval of seven days between the vesting of title to Aoraki/Mount Cook and its gifting back to the people of New Zealand by Ngai Tahu, pursuant to the settlement legislation;

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ii. the creation of an historic reserve of up to 22 acres Lake Forsyth/Wairewa, to be vested in Te Runanga o Ngai Tahu;

c. **decline** to create and vest in Te Runanga o Ngai Tahu a recreation reserve at the outlet of Lake Forsyth/Wairewa;

d. EITHER (Office of Treaty Settlements)

i. **approve** an option in favour of Te Runanga o Makawhio to purchase up to five acres of Department of Conservation land at Bruce Bay, subject to agreement between the Department and the Runanga, prior to Deed signing, on the location of the land to be made available;

OR (Department of Conservation, Treasury)

ii. decline an option in favour of Te Runanga o Makawhio to purchase up to five acres of Department of Conservation land at Bruce Bay,

e. **note** that $10 million of the balance of the settlement quantum will be paid to Ngai Tahu on signing of the Deed of Settlement;

f. **agree** that the Prime Minister proceed to sign the Ngai Tahu Deed of Settlement on behalf of the Crown.

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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SECTION 3: AORAKI/MOUNT COOK

PREAMBLE

A In the spirit of co-operation, compromise and good faith which has brought about the Settlement, and in special recognition of the significance of Aoraki/Mount Cook to Ngāi Tahu Whānui, the Crown wishes to restore to Te Rūnanga title to Aoraki/Mount Cook.

B Te Rūnanga in the same spirit wishes thereupon to make a gift to the Crown, on behalf of the people of New Zealand, of the title so restored in order that Aoraki/Mount Cook will remain and continue to be part of the National Park.

C As further recognition of the significance to Aoraki/Mount Cook to Ngāi Tahu Whānui, this Deed also provides for a Statutory Acknowledgement, Deed of Recognition, Topūni and Statutory Advisor role for Te Rūnanga in relation to Aoraki/Mount Cook, and for the name of Mount Cook to be changed to Aoraki/Mount Cook.

3.1 DEFINITIONS

In this *Section 3*:

Aoraki/Mount Cook means the mountain known as Aoraki or Mount Cook being the land which lies within the National Park and which is identified as Aoraki/Mount Cook in *Deed Map MS 1*;

Gift Date means the day which is seven days after the Vesting Date;

National Park means the national park known as the Mount Cook National Park, constituted under the National Parks Act 1980;

Vesting Date means the Settlement Date or such other date as may be agreed in writing between Te Rūnanga and the Crown;

Terms defined in *Section 12* (Mahinga Kai - General) have the same meanings in this *Section 3*.

3.2 VESTING OF AORAKI/MOUNT COOK BY CROWN

The Settlement Legislation will provide that an Order in Council vesting in Te Rūnanga an estate in fee simple in Aoraki/Mount Cook will be made on the Vesting Date.

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3.3 GIFT OF AORAKI/MOUNT COOK

Te Rūnanga wishes to transfer the estate in fee simple in Aoraki/Mount Cook by way of gift to the people of New Zealand. This will occur on the ~~Vesting~~ Gift Date ~~(once the Order in Council referred to in *clause 3.2* has come into effect)~~ and the terms of such gift shall be those set out in the Deed of Gift between Te Rūnanga and the Crown set out in *Attachment 3.1* (or such other terms as may be agreed in writing between Te Rūnanga and the Crown). Te Rūnanga will deliver the executed Deed of Gift to the Prime Minister or the Prime Minister's nominee on the ~~Vesting~~ Gift Date.

3.4 PROVISIONS IN SETTLEMENT LEGISLATION

The Settlement Legislation will ~~provide that~~:

3.4.1 provide that the Order in Council referred to in *clause 3.2* shall be made on the Vesting Date, and that such Order in Council shall take effect on that date notwithstanding anything in the National Parks Act 1980, section 11 and Part X of the Resource Management Act 1991 or any other enactment;

3.4.2 provide that upon delivery to the Prime Minister or the Prime Minister's nominee of the Deed of Gift referred to in *clause 3.3* on the ~~Vesting~~ Gift Date, the estate in Aoraki/Mount Cook vested in Te Rūnanga pursuant to the Order in Council referred to in *clause 3.2* will be vested in the Crown, in order to give effect to the gift made by Te Rūnanga to the Crown on behalf of the people of New Zealand;

3.4.3 provide that Aoraki/Mount Cook shall be and remain part of the National Park, and every regulation, lease, licence and other instrument previously subsisting in respect of the National Park under the National Parks Act 1980 or any other enactment shall have uninterrupted effect as if Aoraki/Mount Cook had remained Crown land at all times notwithstanding section 7(1)(a) of the National Parks Act 1980 and any other enactment and notwithstanding the vesting referred to in *clause 3.2* ~~and~~ the gift back referred to in *clause 3.3* and the fact that Aoraki/Mount Cook will remain vested in Te Runanga for the period between the Vesting Date and the Gift Date; ~~and~~

3.4.4 provide that no gift duty will be payable by Te Rūnanga in respect of the gift of Aoraki/Mount Cook made by Te Rūnanga to the Crown on behalf of the people of New Zealand ~~.~~; and

3.4.5 include such provisions as are required to give effect to the Escrow Arrangement referred to in *clause 3.5*.

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3.5 ESCROW ARRANGEMENT

Definition

3.5.1 In this clause 3.5.1:

the Counterpart means the executed counterpart of the Deed of Gift delivered to the Escrow Agent under *clause 3.5.2*;

Escrow Agent means [name];

Escrow Arrangement

3.5.2 Te Rūnanga shall, on the Vesting Date (contemporaneously with the coming into effect of the Order in Council referred to in *clause 3.2*) deliver to the Escrow Agent an executed counterpart of the Deed of Gift, with an instruction to the Escrow Agent to hold the Deed of Gift in escrow on the following terms:

(a) the Escrow Agent shall hold the Counterpart in a secure place during the term of the escrow arrangement;

(b) if Te Rūnanga delivers the Deed of Gift to the Prime Minister or the Prime Minister's nominee on the Gift Date, the Escrow Agent shall return the Counterpart to Te Rūnanga on the date following the Gift Date;

(c) If Te Rūnanga has not delivered the Deed of Gift to the Prime Minister or the Prime Minister's nominee by 3.00 pm on the Gift Date, then the Prime Minister or the Prime Minister's nominee may give a notice to that effect to the Escrow Agent. Upon receipt of such a notice, the Escrow Agent shall, immediately after receipt of such notice, deliver to the Prime Minister or the Prime Minister's nominee the Counterpart.

Counterpart

3.5.3 If the Escrow Agent delivers the Counterpart to the Prime Minister or the Prime Minister's nominee in accordance with *clause 3.5.2(c)*, then Te Rūnanga will be deemed for all purposes to have delivered the executed Deed of Gift to the Prime Minister or the Prime Minister's nominee in accordance with *clause 3.3*, and the provision in the Settlement Legislation referred to in *clause 3.4.2* shall apply accordingly.

Released under the Official Information Act 1982

Agreement of Escrow Agent

3.5.4 Te Rūnanga shall, on or before the Vesting Date, deliver to the Prime Minister or the Prime Minister's nominee a deed in favour of the Crown executed by the Escrow Agent pursuant to which the Escrow Agent covenants in favour of the Crown to comply in all respects with this *clause 3.5.*

3.6 OTHER PROVISIONS RELATING TO AORAKI/MOUNT COOK

Te Rūnanga and the Crown record that provision is also made in this Deed for:

3.6.1 a Statutory Acknowledgement in relation to Aoraki/Mount Cook;

3.6.2 a Deed of Recognition in relation to Aoraki/Mount Cook;

3.6.3 a Tōpuni in relation to Aoraki/Mount Cook;

3.6.4 a Statutory Adviser role for Te Rūnanga, in relation to Aoraki/Mount Cook;

3.6.5 the change of the name of Mount Cook to Aoraki/Mount Cook; and

3.6.6 the change of the name of the National Park to Aoraki National Park.

Released under the Official Information Act 1982

ATTACHMENT 3.1
DEED OF GIFT FOR AORAKI/MOUNT COOK

(Clause 3.3)

Date:

BETWEEN:

1 **TE RŪNANGA O NGĀI TAHU** *(Te Rūnanga)*

2 **HER MAJESTY THE QUEEN** in right of New Zealand acting by and through the Minister of Conservation *(the Crown)*.

BACKGROUND

A. Under the Deed of Settlement, pursuant to which the parties agreed to settle the Ngāi Tahu Claims, the Crown agreed to make provision for the vesting in Te Rūnanga of an estate in fee simple in Aoraki/Mount Cook and for the recognition of the significance of Aoraki/Mount Cook to Ngāi Tahu Whānui.

B The vesting of the estate in fee simple in Aoraki/Mount Cook took place on [*date to be inserted*].

~~B~~C. Te Rūnanga has accepted the vesting of Aoraki/Mount Cook under the Deed of Settlement in the spirit of co-operation, compromise and good faith which brought about the settlement of the Ngāi Tahu Claims and, in the same spirit, wishes to gift back to the people of New Zealand the estate in fee simple in Aoraki/Mount Cook.

NOW THEREFORE the parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless the context otherwise requires:

Aoraki/Mount Cook means the mountain known as Aoraki or Mount Cook being the land which lies within the National Park and which is identified as Aoraki/Mount Cook on the map attached to the Deed of Settlement as *Deed Map MS 1*;

Deed of Settlement means the Deed of Settlement between Te Rūnanga and the Crown dated [ ] 1997;

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National Park means the national park known as the Mount Cook National Park, constituted under the National Parks Act 1980;

and other terms used with capitalised initial letters in this Deed which have been defined in the Deed of Settlement will have the same meanings in this Deed as they have in the Deed of Settlement.

1.2 Clause 1.3 of the Deed of Settlement shall apply to, and be read as part of, this Deed.

2 GIFT BY TE RŪNANGA OF AORAKI/MOUNT COOK

In the spirit of co-operation, compromise and good faith which has brought about the settlement effected by the Deed of Settlement, Te Rūnanga hereby unconditionally gifts solely and exclusively to the Crown, on behalf of the people of New Zealand, an estate in fee simple in Aoraki/Mount Cook.

3 ACCEPTANCE BY CROWN OF GIFT OF AORAKI/MOUNT COOK

The Crown accepts the gift by Te Rūnanga made pursuant to *clause 2* on behalf of the people of New Zealand in the same spirit with which the gift was made and confirms that it holds and manages Aoraki/Mount Cook subject to the National Parks Act 1980 and the relevant provisions of the Deed of Settlement and the Ngāi Tahu Claims Settlement Act [ ].

4 OTHER PROVISIONS RELATING TO AORAKI/MOUNT COOK

Te Rūnanga and the Crown record that provision is also made in the Deed of Settlement for:

4.1 a Statutory Acknowledgement in relation to Aoraki/Mount Cook;

4.2 a Deed of Recognition in relation to Aoraki/Mount Cook;

4.3 a Topūni a relation to Aoraki/Mount Cook;

4.4 a Statutory Adviser role for Te Rūnanga, in relation to Aoraki/Mount Cook;

4.5 the change of the name of Mount Cook to Aoraki/Mount Cook; and

4.6 the change of the name of the National Park to Aoraki National Park.

EXECUTED as a deed on the date first written above.

[*insert appropriate execution provisions*]

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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:

Te Puni Kokiri, Dept of PM + Cabinet, Dept of Conservation, Crown Law Office, Treasury

Signature of Official	Name and Title	Date
H Clark	Director, OTS	13 / 11 / 97

Certification by Minister:

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 Coalition Partner Spokesperson			✓
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 of Minister	Name and Portfolio	Date
	on behalf of Hon Douglas Graham Minister in charge of Treaty of Waitangi negotiations	14/11/97

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Document 3

CABINET

CAB (97) M 33/18

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B Clark
M Dugdale
R Doring

Minister in Charge of Treaty of Waitangi Negotiations

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Attorney-General
Minister of Lands
Minister of Conservation
Chief of Staff, Office of the Prime Minister
Chief of Staff, Office of the Deputy Prime Minister
Chief Parliamentary Counsel
Legislation Coordinator
Secretary, CSP

NGAI TAHU NEGOTIATIONS: APPROVAL OF BASIS FOR DEED OF SETTLEMENT

References: CAB (97) 681, CSP (97) M 31/3

At the meeting on 1 September 1997, following reference from the Cabinet Committee on Strategy and Priorities, Cabinet:

a noted that Cabinet has approved the following major steps in relation to settlement of the Ngai Tahu Treaty claim:

i June 1996: total settlement redress of $170 million (in 1996 dollars) [CAB (96) M 13/4A(2)];

ii September 1996: proposed terms of Heads of Agreement between the Crown and Ngai Tahu [CAB (96) M 37/15] and the status of aboriginal rights following Treaty settlements [CAB (96) M 37/14];

iii October 1996: amendments to the Heads of Agreement, agreed between Ministers and Ngai Tahu prior to signing of the Heads on 5 October 1996 [CAB (96) M 38/16];

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iv December 1996: endorsement of Heads of Agreement by the incoming Coalition Government [CAB (96) M 49/11];

v April 1997: material changes from the Heads of Agreement in relation to redress for mahinga kai, the financial cap for the Deferred Settlement Portfolio, and refinements to the Right of First Refusal [CAB (97) M 15/5, 15/6 and 15/17];

vi April 1997: authorisation of the Prime Minister, Minister of Finance, Minister of Maori Affairs and Minister in Charge of Treaty of Waitangi Negotiations, assisted as required by the Ministers of Conservation and Lands, to determine matters within the parameters agreed by Cabinet which might arise in the context of negotiations [CAB (97) M 15/5];

PROGRESS AND FURTHER APPROVALS REQUIRED

b noted that two substantive meetings between the relevant Ministers and Ngai Tahu representatives took place in mid-June and mid-August 1997, resulting in agreement on all outstanding issues;

c endorsed the changes to mahinga kai redress approved by authorised Ministers during negotiations with Ngai Tahu, as summarised in Annexes 1 and 2 of this minute;

d noted that there are four matters (relating to the scope of the settlement, ancillary claims, Mount Cook/Aoraki and part payment) agreed during the June and August negotiations requiring Cabinet approval in view of the movement from the Heads of Agreement (paragraphs (e) to (h) below refer);

e agreed to amend the definition clause "Meaning of Ngai Tahu claims" in the Deed of Settlement so as to exclude Wai 158, apart from any part of the claim that might relate to the original allocation of land under the South Island Landless Natives Act 1906;

f agreed to increase the cap for the settlement of the Ngai Tahu Ancillary Claims from $1 million to $2.5 million;

g agreed to the provision of redress in respect of Mount Cook/Aoraki involving vesting of the mountain in Ngai Tahu followed immediately by gifting back from Ngai Tahu to the people of New Zealand;

h approved the payment of $10 million to Ngai Tahu, on account of settlement redress, upon the signing of the Deed of Settlement by the Crown and Ngai Tahu (ie subsequent to Ngai Tahu ratification of the Deed);

DEED OF SETTLEMENT

i noted that the next step is for the final text of the Deed of Settlement to be initialled by Crown and Ngai Tahu representatives, so that Ngai Tahu can present the Deed of Settlement to the claimant group with a view to ratification by Ngai Tahu by early November 1997;

j approved the completion of drafting of the final text of the Deed of Settlement between the Crown and Ngai Tahu covering the following matters and putting into effect the Heads of Agreement and approved amendments:

i definitions and interpretations;

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ii crown acknowledgements and apology;

iii valuation and transfer of assets;

iv right of first refusal;

v high country stations;

vi mahinga kai;

vii ancillary claims;

viii Southland Island Landless Natives Act 1906;

ix specific sites;

x relativity mechanism;

xi Ngai Tahu's acknowledgements;

xii conditions and legislation;

xiii taxation matters;

xiv miscellaneous matters;

k authorised the following Ministers to approve the final text of the Deed of Settlement as described in general terms in paragraph (j) above:

i Prime Minister;

ii Minister of Finance;

iii Minister of Conservation;

iv Minister of Lands;

v Minister of Maori Affairs; and

vi Minister in Charge of Treaty of Waitangi Negotiations;

l authorised the Minister in Charge of Treaty of Waitangi Negotiations to initial the Deed of Settlement with Ngai Tahu on behalf of the Crown, and the Prime Minister to sign the Deed of Settlement on behalf of the Crown following ratification by Ngai Tahu;

FUNDING

m noted that the increase in the cap for the settlement of Ngai Tahu Ancillary Claims referred to in paragraph (f) above, and the $10 million part payment of settlement redress, referred to in paragraph (h) above, are Crown expenses and will be charged to Vote: Treaty Negotiations, Non Departmental Other Expense Multi Year Appropriation "Historical Treaty of Waitangi Settlements";

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LEGISLATION

n noted that officials will prepare the Ngai Tahu settlement legislation while Ngai Tahu is undertaking its ratification process, with a view to introducing settlement legislation by mid-November 1997;

COMMUNICATIONS STRATEGY

o noted that the Office of Treaty Settlements is preparing a detailed communication strategy to provide appropriate information on the Ngai Tahu settlement to Members of Parliament, local authorities, interest groups and members of the public;

p invited the Minister in Charge of Treaty of Waitangi Negotiations to arrange for Government caucuses to be briefed on the settlement on 2 September 1997.

Secretary of the Cabinet

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Annex 1: Definitions of Instruments relating to Mahinga Kai Redress for Ngai Tahu

Statutory Acknowledgement (SA)

SAs acknowledge the special spiritual, cultural, historical and/or traditional association of Ngai Tahu to specified sites. For lands and waterways, the SA requires decision-making bodies to "have regard to" Ngai Tahu's assertion of such associations, in administering the Resource Management Act 1991 and the Historic Places Act 1993. The content of the acknowledgement does not, however, constitute a "deemed fact" which is binding on decision-makers and third parties. The SA is given expression through settlement legislation and is therefore a public acknowledgement by the Crown of Ngai Tahu's assertion of its association to certain sites. It also empowers the Crown to enter into Deeds of Recognition over specific sites. **Affects 18 lakes, 18 rivers, 18 wetlands, 5 coastal areas, 10 sites of significance, and taonga plant, mammal, bird and fish species.**

Deed of Recognition (DoR)

The DoR sets out an agreement 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, as asserted in the SA, and specifies the nature of Ngai Tahu's input into management of that site. This input will be restricted to Crown-owned land only (e.g. lakebeds, riverbeds). In the main, the Crown's obligations will be to consult with and have particular regard to Ngai Tahu views in relation to specified management functions. **64 areas**

Topuni (overlay classification for sites of special significance)

One meaning of "topuni" is cloak. In the Ngai Tahu settlement this concept has been developed into an instrument involving the creation of a separate statutory "overlay" classification over land administered under the Conservation, National Parks or Reserves Acts. A Topuni instrument will acknowledge Ngai Tahu's cultural, spiritual, historic or traditional values in respect of the site. The existing general classification of the site still has precedence, but within this Ngai Tahu will have enhanced rights to advise and be consulted by the administering body, to ensure that the recognised Ngai Tahu values are not harmed or diminished. **14 areas**

Nohoanga (campsites)

These allow Ngai Tahu to have exclusive camping rights, to provide Ngai Tahu with access to waterways to undertake lawful fishing and gathering of other natural resources. They are redress for the Crown's failure to provide Ngai Tahu with access to customary fisheries. A nohoanga is a renewable entitlement to **temporarily occupy** specific categories of Crown land, adjacent to waterways but set back from the marginal strip. Occupation rights may be exercised for up to 210 days per year between mid-August and the end of April. The entitlement is subject to all legislation, bylaws and regulations, and does not affect public access to rivers or fishing rights. Nohoanga sites will not be granted in respect of National Park land, esplanade reserves, marginal strips and scientific and nature reserves. **72 sites**

Customary fishing entitlements (part of Canterbury Ancillary Claims redress)

This redress responds to grievances arising within ancillary claims relating to the loss or non-allocation of "Fenton Reserves" which provided areas where Ngai Tahu were able to exercise their customary fishing rights. The renewable entitlements grant exclusive rights to temporarily use a portion of lake or riverbed up to 100 metres in length for non-commercial harvesting of customary species or other natural resources. These rights apply for up to 210 days per year between mid August and the end of April. Public access along the relevant waterways is maintained. **6 sites**

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Annex 2:

SUMMARY OF AGREED CHANGES TO MAHINGA KAI REDRESS FOR NGAI TAHU

	Heads of Agreement	Proposed Final Deed - incorporating changes approved by Cabinet in April 1997, and subsequently by authorised Ministers [CAB (97) M 15/5 and 15/17 refer]
1	*Statutory Acknowledgements* (SA) and Deeds of Recognition (DoR) offered over Crown-owned land only (i.e. lakebeds, riverbeds)	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 requires decision- making bodies to have regard to Ngai Tahu's assertion of traditional associations with specified areas, in relation to standing and notification decisions. The SA may be used in evidence in substantive hearings but is not a deemed fact binding on decision-makers or third parties. Disclaimers provide that the SA: Has no weighting in substantive hearings (but can be evidence) Does not create or evidence property or aboriginal rights Does not affect third party rights Information flow (send a copy) provisions apply for 20 years. *See further details in para 32 of CAB (97) 681.*
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)
5	For 10 of 13 *wahi tapu/significant 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. (Remaining 3 sites are lakebeds being vested in fee simple).	Options include • fee simple with covenants (Ngai Tahu manage) • fee simple with Protected Private Land status (DoC manage) • vesting in Ngai Tahu as reserve (Reserves Act 1977 applies)

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6	Ngai Tahu have a *Statutory Advisor* role over 15 of 36 wahi tapu sites.	Ngai Tahu have a Statutory Advisor role over 19 sites
7	Up to 64 *nohoanga* (campsite) entitlements over 13 lakes and 19 rivers. Nohoanga entitlements must be renewed every five years	• Ngai Tahu will be offered up to four nohoanga entitlements per runanga (i.e. a total of 72 entitlements). 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.
9	*Customary fisheries* – increased Ngai Tahu participation in management, recognition of Ngai Tahu's special relationship with certain species and providing Ngai Tahu with a RFR to 30% of TACC with respect to five shellfish species should they be entered into the QMS	Customary Fisheries Regulations relating to Mataitai Reserves also to be brought into force in 1998
10	*Coastal tendering* – Ngai Tahu to receive authorisations at the tender price for 10% of coastal space allocated under coastal tendering for Kaikoura, Banks Peninsula, Fiordland, Otakou and Foveaux Strait/Rakiura, if tendered. Space to be at fair average quality.	Ngai Tahu will have available to it 10% of the space allocated under any mechanism in which the Crown has a role. The space made available will be no less than fair average quality. Ngai Tahu will receive 10% of total space tendered/allocated in their takiwa. *See para 34 for discussion.* (CAB (97) 681).
11	*Place Names* – changes to 78 place names with provision for joint Maori/English names, and amendment of NZ Geographic Board Act to encourage use of Maori names, provision of one seat on NZ Geographic Board.	Increased to 88 place names.

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CAB (97) 681

28 August 1997

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NGAI TAHU NEGOTIATIONS: APPROVAL OF BASIS FOR DEED OF SETTLEMENT

The Cabinet Committee on Strategy and Priorities recommends that Cabinet:

a note that Cabinet has approved the following major steps in relation to settlement of the Ngai Tahu Treaty claim:

i June 1996: total settlement redress of $170 million (in 1996 dollars) [CAB (96) M 13/4A(2)];

ii September 1996: proposed terms of Heads of Agreement between the Crown and Ngai Tahu [CAB (96) M 37/15] and the status of aboriginal rights following Treaty settlements [CAB (96) M 37/14];

iii October 1996: amendments to the Heads of Agreement, agreed between Ministers and Ngai Tahu prior to signing of the Heads on 5 October 1996 [CAB (96) M 38/16];

iv December 1996: endorsement of Heads of Agreement by the incoming Coalition Government [CAB (96) M 49/11];

v April 1997: material changes from the Heads of Agreement in relation to redress for mahinga kai, the financial cap for the Deferred Settlement Portfolio, and refinements to the Right of First Refusal [CAB (97) M 15/5, 15/6 and 15/17];

vi April 1997: authorisation of the Prime Minister, Minister of Finance, Minister of Maori Affairs and Minister in Charge of Treaty of Waitangi Negotiations, assisted as required by the Ministers of Conservation and Lands, to determine matters within the parameters agreed by Cabinet which might arise in the context of negotiations [CAB (97) M 15/5];

PROGRESS AND FURTHER APPROVALS REQUIRED

b note that two substantive meetings between the relevant Ministers and Ngai Tahu representatives took place in mid-June and mid-August 1997, resulting in agreement on all outstanding issues;

c endorse the changes to mahinga kai redress approved by authorised Ministers during negotiations with Ngai Tahu, as summarised in Annexes 1 and 2 of this submission;

d note that:

i there are four matters (relating to the scope of the settlement, ancillary claims, Mount Cook/Aoraki and part payment) agreed during the June and August negotiations requiring Cabinet approval in view of the movement from the Heads of Agreement;

ii these are set out in paragraphs (e)-(h) below;

e agree to amend the definition clause "Meaning of Ngai Tahu claims" in the Deeds of Settlement so as to exclude Wai 158, apart from any part of the claim that might relate to the original allocation of land under the South Island Landless Natives Act 1906;

f agree to increase the cap for the settlement of the Ngai Tahu Ancillary Claims from $1 million to $2.5 million;

g agree to the provision of redress in respect of Mount Cook/Aoraki involving vesting of the mountain in Ngai Tahu followed immediately by gifting back from Ngai Tahu to the people of New Zealand;

h approve the payment of $10 million to Ngai Tahu, on account of settlement redress, upon the signing of the Deed of Settlement by the Crown and Ngai Tahu (ie subsequent to Ngai Tahu ratification of the Deed);

DEED OF SETTLEMENT

i note that the next step is for the final text of the Deed of Settlement to be initialled by Crown and Ngai Tahu representatives, so that Ngai Tahu can present the Deed of Settlement to the claimant group with a view to ratification by Ngai Tahu by early November 1997;

j approve the completion of drafting of the final text of the Deed of Settlement between the Crown and Ngai Tahu covering the following matters and putting into effect the Heads of Agreement and approved amendments:

i definitions and interpretations;

ii crown acknowledgements and apology;

iii valuation and transfer of assets;

iv right of first refusal;

v high country stations;

vi mahinga kai;

vii ancillary claims;

viii Southland Island Landless Natives Act 1906;

ix specific sites;

x relativity mechanism;

xi Ngai Tahu's acknowledgements;

xii conditions and legislation;

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xiii taxation matters;

xiv miscellaneous matters;

k authorise the following Ministers to approve the final text of the Deed of Settlement as described in general terms in paragraph (j) above:

i Prime Minister;

ii Minister of Finance;

iii Minister of Conservation;

iv Minister of Lands;

v Minister of Maori Affairs; and

vi Minister in Charge of Treaty of Waitangi Negotiations;

l authorise the Minister in Charge of Treaty of Waitangi Negotiations to initial the Deed of Settlement with Ngai Tahu on behalf of the Crown, and the Prime Minister to sign the Deed of Settlement on behalf of the Crown following ratification by Ngai Tahu;

FUNDING

m note that the increase in the cap for the settlement of Ngai Tahu Ancillary Claims referred to in paragraph (f) above, and the $10 million part payment of settlement redress, referred to in paragraph (h) above, are Crown expenses and will be charged to Vote: Treaty Negotiations, Non Departmental Other Expense Multi-Year Appropriation "Historical Treaty of Waitangi Settlements";

LEGISLATION

n note that officials will prepare the Ngai Tahu settlement legislation while Ngai Tahu is undertaking its ratification process, with a view to introducing settlement legislation by mid-November 1997;

COMMUNICATIONS STRATEGY

o note that the Office of Treaty Settlements is preparing a detailed communication strategy to provide appropriate information on the Ngai Tahu settlement to Members of Parliament, local authorities, interest groups and members of the public.

(Signed) Sue Sharp
for Secretary of the Cabinet

NOTE FOR MINISTERS:

On 27 August 1997 CSP referred the attached paper to Cabinet because of the significance of the issues. The Committee's recommendations are set out above.

CSP (97) M 143 and CSP (97) M 31/3 refer.

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CABINET COMMITTEE ON STRATEGY AND PRIORITIES

CSP (97) 143

22 August 1997

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Title

NGAI TAHU NEGOTIATIONS: APPROVAL OF BASIS FOR DEED OF SETTLEMENT

Purpose

The paper updates Ministers on progress in the Ngai Tahu negotiations, sets out the redress proposed to be contained in the Deed of Settlement and identifies where that redress varies materially from that agreed in the Heads of Agreement, seeks approval for the proposed basis for the Deed of Settlement, and asks CSP to delegate approval of the final text to a group of Ministers.

Previous Consideration

The paper relates to policy developed in accordance with the Coalition Agreement.

In April 1997 Cabinet approved a number of adjustments to the proposed settlement [CAB (97) M 15/5, CAB (97) M 15/6 and CAB (97) M 15/17 refer]. Details of the background to the claim and other key decisions to date are supplied in paragraphs 9 to 15.

Summary

The Crown and the Ngai Tahu negotiating teams have now reached agreement on all significant issues. The next step, subject to Ministerial approval of the final text, is for the Crown and Ngai Tahu to initial the Deed of Settlement. That document is in effect a final offer from the Crown to Ngai Tahu in discharge of the claim. Te Runanga o Ngai Tahu will then present the Deed of Settlement to the claimant group. The mandating process will be undertaken over a period of 8-10 weeks commencing in mid-September and concluding in early November. As a parallel process settlement legislation will be prepared with a view to introduction in mid-November following ratification of the Deed by Ngai Tahu.

When last considering the Ngai Tahu claim in April, Cabinet appointed a sub-committee of Ministers to determine matters within the parameters agreed by Cabinet which might arise in the context of the negotiations. Since then there have been two substantive meetings involving Ngai Tahu and those Ministers - Prime Minister, Minister of Finance, Minister of Maori Affairs and Minister in Charge of Treaty of Waitangi Negotiations, assisted as required by the Ministers of Conservation and Lands. Trade-offs agreed during these meetings are outlined in the paper.

For ease of reading significant changes since April 1997 are shown in the paper in italics.

	The paper asks CSP to delegate approval of the final text of the Deed of Settlement to the Prime Minister, Minister of Finance, Minister of Conservation, Minister of Lands, Minister of Maori Affairs and Minister in Charge of Treaty of Waitangi Negotiations.
Baseline Implications	Approval is sought to increase the cap for the ancillary claims redress to $2.5 million and to pay $10 million to Te Runanga o Ngai Tahu on account of approved settlement redress. Both expenses will be charged to Vote Treaty Negotiations, Non Departmental Other Expense Multi-year Appropriation.
Legislative Implications	It is intended that settlement legislation will be introduced by mid-November 1997.
Timing Issues	None indicated.
Announcement	The paper notes that the magnitude and complexity of the settlement means that a diverse range of institutions, interest groups and members of the public will be affected by the settlement. Widespread acceptance of the settlement as fair and positive for Ngai Tahu and New Zealand as a whole requires a comprehensive communications strategy. The Office of Treaty Settlements is currently developing a plan and supporting documentation to provide information to Members of Parliament, local authorities, interest groups such as the Fish and Game Council and Federated Farmers, and members of the public.
Consultation	OTS, CLO, Conservation, DPM&C, LINZ, TPK, Treasury. The Minister has indicated that consultation with the Coalition Partner Spokesperson and Government caucuses will be required.

The Minister in Charge of Treaty of Waitangi Negotiations recommends that the Committee agree to recommend that Cabinet:

BACKGROUND

a note that Cabinet has approved the following major steps in relation to settlement of the Ngai Tahu Treaty claim:

i June 1996: total settlement redress of $170 million (in 1996 dollars) [CAB (96) M 13/4A(2)];

ii September 1996: proposed terms of Heads of Agreement between the Crown and Ngai Tahu [CAB (96) M 37/15] and the status of aboriginal rights following Treaty settlements [CAB (96) M 37/14];

iii October 1996: amendments to the Heads of Agreement, agreed between Ministers and Ngai Tahu prior to signing of the Heads on 5 October 1996 [CAB (96) M 38/16];

iv December 1996: endorsement of Heads of Agreement by the incoming Coalition Government [CAB (96) M 49/11;

v April 1997: material changes from the Heads of Agreement in relation to redress for mahinga kai, the financial cap for the Deferred Settlement

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Portfolio, and refinements to the Right of First Refusal [CAB (97) M 15/5, 15/6 and 15/17];

vi April 1997: authorisation of the Prime Minister, Minister of Finance, Minister of Maori Affairs and Minister in Charge of Treaty of Waitangi Negotiations, assisted as required by the Ministers of Conservation and Lands, to determine matters within the parameters agreed by Cabinet which might arise in the context of negotiations [CAB (97) M 15/5];

PROGRESS AND FURTHER APPROVALS REQUIRED

b note that two substantive meetings between the relevant Ministers and Ngai Tahu representatives took place in mid-June and mid-August 1997, resulting in agreement on all outstanding issues;

c endorse the changes to mahinga kai redress approved by authorised Ministers during negotiations with Ngai Tahu, as summarised in Annexes 1 and 2 of this submission;

d note that:

i there are four matters (relating to the scope of the settlement, ancillary claims, Mount Cook/Aoraki and part payment) agreed during the June and August negotiations requiring Cabinet approval in view of the movement from the Heads of Agreement;

ii these are set out in paragraphs (e)-(h) below;

e agree to amend the definition clause "Meaning of Ngai Tahu claims" in the Deeds of Settlement so as to exclude Wai 158, apart from any part of the claim that might relate to the original allocation of land under the South Island Landless Natives Act 1906;

f agree to increase the cap for the settlement of the Ngai Tahu Ancillary Claims from $1 million to $2.5 million;

g agree to the provision of redress in respect of Mount Cook/Aoraki involving vesting of the mountain in Ngai Tahu followed immediately by gifting back from Ngai Tahu to the people of New Zealand;

h approve the payment of $10 million to Ngai Tahu, on account of settlement redress, upon the signing of the Deed of Settlement by the Crown and Ngai Tahu (ie subsequent to Ngai Tahu ratification of the Deed);

DEED OF SETTLEMENT

i note that the next step is for the final text of the Deed of Settlement to be initialled by Crown and Ngai Tahu representatives, so that Ngai Tahu can present the Deed of Settlement to the claimant group with a view to ratification by Ngai Tahu by early November 1997;

j approve the completion of drafting of the final text of the Deed of Settlement between the Crown and Ngai Tahu covering the following matters and putting into effect the Heads of Agreement and approved amendments:

i definitions and interpretations;

ii crown acknowledgements and apology;

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iii valuation and transfer of assets;

iv right of first refusal;

v high country stations;

vi mahinga kai;

vii ancillary claims;

viii Southland Island Landless Natives Act 1906;

ix specific sites;

x relativity mechanism;

xi Ngai Tahu's acknowledgements;

xii conditions and legislation;

xiii taxation matters;

xiv miscellaneous matters;

k authorise the following Ministers to approve the final text of the Deed of Settlement as described in general terms in paragraph (j) above:

i Prime Minister;

ii Minister of Finance;

iii Minister of Conservation;

iv Minister of Lands;

v Minister of Maori Affairs; and

vi Minister in Charge of Treaty of Waitangi Negotiations;

l authorise the Minister in Charge of Treaty of Waitangi Negotiations to initial the Deed of Settlement with Ngai Tahu on behalf of the Crown, and the Prime Minister to sign the Deed of Settlement on behalf of the Crown following ratification by Ngai Tahu;

FUNDING

m note that the increase in the cap for the settlement of Ngai Tahu Ancillary Claims referred to in paragraph (f) above, and the $10 million part payment of settlement redress, referred to in paragraph (h) above, are Crown expenses and will be charged to Vote: Treaty Negotiations, Non Departmental Other Expense Multi Year Appropriation "Historical Treaty of Waitangi Settlements";

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LEGISLATION

n note that officials will prepare the Ngai Tahu settlement legislation while Ngai Tahu is undertaking its ratification process, with a view to introducing settlement legislation by mid-November 1997;

COMMUNICATIONS STRATEGY

o note that the Office of Treaty Settlements is preparing a detailed communication strategy to provide appropriate information on the Ngai Tahu settlement to Members of Parliament, local authorities, interest groups and members of the public.

(Signed) Sue Sharp

COPIES TO:

Cabinet Committee on Strategy and Priorities
Chief Executive, PM&C
Chief of Staff, Office of the Prime Minister
Secretary to the Treasury
Chief of Staff, Office of the Deputy Prime Minister
Mary Anne Thompson, Office of the Deputy Prime Minister
State Services Commissioner
Secretary for Justice
Director, OTS
Chief Executive, Te Puni Kokiri
Solicitor-General
Minister of Lands
Chief Executive, LINZ
Minister of Conservation
Director-General
Chief Parliamentary Counsel

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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

21 AUG 1997

Marie Shroff
Secretary of the Cabinet

Dear Mrs Shroff

Please find attached a paper entitled *Ngai Tahu Negotiations: Approval of basis for Deed of Settlement* to be submitted to the Cabinet Strategy and Priorities Committee.

Because of the scope and complexity of the negotiations and the proposed Deed of Settlement, it was not possible to comply with the "10 page limit" for Cabinet papers. I therefore seek approval for waiver of the Cabinet Office "10 page limit" in this case.

Yours sincerely

Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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Chair,

Cabinet Strategy and Priorities Committee

Ngai Tahu Negotiations: Approval of basis for Deed of Settlement

Executive Summary

1. This paper:

   i. Updates Ministers on progress in the Ngai Tahu negotiations;

   ii. Sets out the redress proposed to be contained in the Deed of Settlement and identifies where that redress varies materially from that agreed in the Heads of Agreement signed by the Crown and Ngai Tahu on 5 October 1996;

   iii. Seeks approval from Ministers for the proposed basis for the Deed of Settlement;

   iv. Asks Ministers to delegate approval of the final text of the Deed of Settlement to the following Ministers: Prime Minister, Minister of Finance, Minister of Conservation, Minister of Lands, Minister of Maori Affairs and Minister in Charge of Treaty of Waitangi Negotiations.

2. The Crown and Ngai Tahu negotiating teams have now reached agreement on all significant issues. The next step, subject to Ministerial approval of the final text, is for the Crown and Ngai Tahu to initial the Deed of Settlement. That document is in effect a final offer from the Crown to Ngai Tahu in discharge of the claim. Te Runanga O Ngai Tahu will then present the Deed of Settlement to the claimant group. The mandating process will be undertaken over a period of 8-10 weeks commencing mid-September and concluding early November. As a parallel process settlement legislation will be prepared with a view to introduction in mid-November, following ratification of the Deed by Ngai Tahu.

3. Cabinet has previously approved the following significant changes since the signing of the Heads:

   - Expansion of the redress offered in relation to mahinga kai;
   - An increase in the cap for the Deferred Settlement Portfolio from $200m to $250m, enabling Ngai Tahu to purchase further Crown assets from its own resources;
   - Refinements to the Right of First Refusal.

4. In its last consideration of the Ngai Tahu negotiations in April 1997, Cabinet appointed a sub-committee of Ministers (the Prime Minister, Minister of Finance, Minister of Maori Affairs and Minister in Charge of Treaty of Waitangi Negotiations, assisted as required by the Ministers of Conservation and Lands) to determine matters within the parameters agreed by Cabinet which might arise in the context of negotiations.

5. Since then there have been two substantive meetings involving these Ministers and Ngai Tahu representatives, in mid June and mid August. During these meetings there were

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numerous trade-offs by both parties. These are set out in general terms in the body of this paper.

6. Further significant changes proposed in this paper for the approval of Ministers are:

   - Amending the scope of the settlement to exclude Wai 158 apart from the historical aspects relating to the original grants of land under the South Island Landless Natives Act 1906;

   - An increase in the cap for the settlement of ancillary claims from $1 million to $2.5 million;

   - Additional redress for Mount Cook/Aoraki involving vesting in Ngai Tahu immediately followed by gifting back from Ngai Tahu to the people of New Zealand.

7. Ministers are also asked to approve the payment of $10 million to Ngai Tahu, on account of settlement redress, on signing of the final Deed, scheduled for late November 1997.

For ease of reading significant changes since April 1997 are shown in italics.

Coalition Agreement

8. 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 to the Process for the Ngai Tahu Claim

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

10. *October 1994* The Crown agreed to make an on account settlement offer to Ngai Tahu as a gesture of good faith and a recognition of three years of negotiations which at times had been difficult and tense. Ngai Tahu rejected the offer as inadequate and disadvantageous to its wider interests. Negotiations subsequently lapsed.

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

12. *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

13. *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 its historical Treaty claims within the parameters agreed by 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) M13/4A(2); CAB (96) M 19/21 refer]

14. *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. This was confirmed by Cabinet on 7 October 1996 [CAB (96) M 37/15 and M 38/16 refer]. The incoming

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Coalition Government endorsed the Heads of Agreement on 18 December 1996 [CAB (96) M 49/11 refers].

15. *April 1997* Cabinet approved the following adjustments to the proposed settlement:

- Expansion of the redress offered in relation to mahinga kai;
- A conditional increase in the cap for the Deferred Settlement Portfolio from $200m to $250m, enabling Ngai Tahu to purchase further Crown assets from its own resources;
- Refinements to the Right of First Refusal.

[CAB (97) M 15/5, M 15/6 and M 15/17 refer].

Strategic Factors

16. 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 and most 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 future settlements;
- 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.

Department of Conservation comment: The Department of Conservation notes that some of the conservation redress in this Settlement may not always be practical or possible in future settlements where there are more iwi in an area or there are cross claims.

Summary of Proposed Deed of Settlement

17. The Deed of Settlement will have the following 18 sections setting out redress and the process for delivering this redress:

1 Definitions and Interpretation
2 Crown acknowledgements and apology
3-7 Valuation and transfer of assets
8 Right of first refusal
9 High Country stations
10 Mahinga Kai
11 Ancillary Claims
12 SILNA (South Island Landless Natives Act 1906)
13 Specific sites (Crown Titi Islands, Whenua Hou, Rarotoka, Arahura Valley, Aoraki)

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14 Relativity Mechanism

15 Ngai Tahu's acknowledgements

16 Conditions and legislation

17 Taxation matters

18 Miscellaneous matters.

18. 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, with particular emphasis (shown in italics) on developments since April 1997.

Definitions and Interpretations

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

20. *In April 1997 Ministers were advised that a question had arisen regarding the inclusion of Wai 158 in the settlement. Wai 158 mainly concerns alleged grievances resulting from the Government's indigenous forest policy since July 1990. The Crown initially took the view that this claim should be included, to the extent of the pre-1992 grievances alleged, to preserve the comprehensiveness of the settlement. The Wai 158 claimants, owners of SILNA forest blocks, strongly oppose inclusion and have not mandated Ngai Tahu to settle Wai 158 on their behalf. Ngai Tahu consider that insistence on inclusion could jeopardise their ratification and potentially frustrate the completion of the settlement. It is also noted that part of the original Wai 158 claim, relating to the Waitutu Forest, is being resolved through a separate agreement outside the historical Treaty settlement process.*

21. *As a compromise it is proposed to exclude Wai 158, apart from any part of the claim that might relate to the original allocation of land under the South Island Landless Natives Act 1906. Any grievances relating to the original allocation are covered by the settlement of the main Wai 27 claim. In addition the Deed and/or settlement legislation will include a provision to the effect that the Crown considers the Wai 158 claim to relate primarily to contemporary indigenous forest policy.*

Crown acknowledgements and apology

22. The Crown acknowledgements 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. The apology is of a form similar to that used in the Waikato-Tainui settlement.

Transfer of assets -general

23. The Heads provided for a Deferred Selection Process (DSP) which would enable Ngai Tahu to select up to $200 million of commercial assets from an agreed schedule ($170m transferred from the Crown and $30m of Ngai Tahu's own money). Subsequent discussions have resulted in the current proposal that the cap be raised to $250 million,

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on the basis that the Crown is unable to make available Timberlands West Coast[1] The DSP covers 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
- Landcorp farms: all 53 Landcorp farms in the Ngai Tahu rohe.

24. Agreed refinements advised to Ministers in April 1997 included:

- 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.

Right of first refusal

25. The settlement includes a Right of First Refusal (RFR) over a range of assets. Apart from the inclusion of an obligation to act in good faith and anti-avoidance provisions the RFR is the same as the Waikato-Tainui RFR.

26. Following extensive discussions between Ministers and Ngai Tahu in June agreement was reached on the final form of the RFR. In reaching agreement the Crown sought to have the following objectives recognised: to

- minimise value loss through maintaining a right to go to the market;
- retain the discretion of the Chief Executive LINZ to certify removal of the RFR memorial;
- establish a transparent process with clear timelines that will endure over time;
- maintain consistency with Waikato-Tainui;
- avoid the disposal of conservation land.

27. *The principal features of the RFR as agreed involve:*

- *the vendor agency obtaining a valuation;*
- *That valuation is then used for negotiations with Ngai Tahu. If agreement is reached Ngai Tahu acquire it. If agreement is not reached the vendor agency is free to sell the property on no worse conditions than those offered by Ngai Tahu for a period of nine months;*
- *Similarly for assets which are not frequently traded (such as shares in Christchurch Airport) the Crown is able to openly market these assets prior to engaging with Ngai Tahu. This process is also available for assets where a valuer determines that the value can only realistically be set in the marketplace;*
- *While the Crown is obliged to act in good faith in RFR negotiations, it has also included a right to act in its own commercial interests.*

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[1] In April 1997 Ministers also authorised officials to negotiate an increase in the DSP cap to $250m, conditional on Ngai Tahu purchasing all of Aoraki forest land and trees. This was intended to resolve difficulties that had arisen in relation to Timberlands West Coast. [CAB (97) M 15/6 refers]. Agreement was unable to be reached with Ngai Tahu on this basis.

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28. *There is scope for disputes to arise. In an attempt to avoid the use of judicial procedures to frustrate the sales process, agreement has been reached on dispute resolution and arbitration clauses. Each has a defined timeline to minimise any disruption.*

High Country stations (Greenstone, Routeburn, Elfin Bay)

29. 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.

Mahinga Kai

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. These claims and associated redress cover Ngai Tahu's interests in reserves, rivers, lakebeds, wetlands, customary fisheries, and other natural resources. A range of instruments has 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 Crown's interests that are transferred to Ngai Tahu will not be offset against the Ngai Tahu quantum. Specific redress for mahinga kai includes:

- Transfer of title or vesting of reserves in Ngai Tahu for to up to 13 specific sites (including three lakebeds)
- mana recognition (through a variety of instruments like Statutory Acknowledgements, Deeds of Recognition and Topuni, **defined in Annex 1**) and a consultative/advisory role over a number of specific sites and specified plant and animal taonga species
- seasonal occupation rights adjacent to certain water bodies for the purposes of customary fishing (nohoanga entitlements[2])
- right to purchase 10% of any specified areas of coastal space that are subject to tendering or other allocations by the Crown in future
- increased participation in the management of customary fisheries
- 88 place names to be given joint English/Maori names *(increased from 78 in the Heads with the approval of authorised Ministers)*
- a dedicated seat on New Zealand Geographic Board and New Zealand Conservation Authority, and dedicated membership on Conservation Boards within the Ngai Tahu claim areas (2 seats on each), membership on Guardians of southern lakes (1 seat on each)
- Ngai Tahu input into improved implementation of the Resource Management Act and review of heritage protection (Historic Places Trust Board)
- development of protocols with the Department of Conservation.

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[2] Nohoanga entitlements do not limit public access to or use of the waterways, and grant no additional rights to Ngai Tahu to fish over and above existing entitlements.

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31. During negotiations Ngai Tahu sought a number of changes to the mahinga kai redress set out in the Heads. The changes largely 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. In April 1997 Cabinet approved a number of changes subject to the provision of satisfactory detail on particular sites and the nature of Ngai Tahu's associations [CAB (97) M 15/5 and M15/17 refer]. Further changes were approved by authorised Ministers during the June and August meetings. **Annex 2** summarises the movement between the Heads and the proposed final Deed in relation to mahinga kai. The most significant developments are discussed below.

32. ***Statutory Acknowledgement*** *Because of both Crown and Ngai Tahu concerns, the Statutory Acknowledgement (SA) proved the most difficult instrument to finalise. The principal objectives of the SA were to remedy the "information gap" faced by Ngai Tahu with respect to the resource consent process and to address their concerns that consent authorities were not appropriately addressing Ngai Tahu's traditional associations in the resource consent process. Ministers have now agreed that the SA will have the following features:*

- *Description of Ngai Tahu special association with defined areas;*
- *Crown acknowledgement of Te Runanga's statement of Ngai Tahu's association, i.e. of what Ngai Tahu claims its association to be – Ngai Tahu may state other associations during substantive hearings;*
- *Local authorities will send Ngai Tahu information about resource consents affecting areas covered by Statutory Acknowledgements (the "send a copy" provision);*
- *20 year sunset on the "send a copy" provision" – Ngai Tahu may waive the SAC before then;*
- *Local authorities "will have regard to" the Crown's acknowledgement of Ngai Tahu's association when determining whether Ngai Tahu is directly affected for the purposes of ss.93 and 94 of the RMA (i.e. when deciding whether Ngai Tahu should be notified in terms of the formal RMA process, or a person whose consent should be obtained prior to avoiding the formal notification process);*
- *Ngai Tahu may include a copy of the Statutory Acknowledgement with submissions at substantive hearing stage, as evidence of its association (but not conclusive proof binding on decision makers or third parties);*
- *Disclaimers relating to:*

  no weighting in substantive hearings (but Ngai Tahu can table the Statutory Acknowledgement as evidence of their association);

  the Statutory Acknowledgement does not create, or provide evidence of, any other rights (including property/aboriginal rights);

  no effect on third party rights.

- *The Crown's position on stating that the SA does not create property rights is to be included in the Deed. Ngai Tahu had sought a mirror of the disclaimer which stated that "nor do they deny any property rights".*

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33. *Work is continuing on the detailed drafting required for each of the instruments. Significant progress has also been made on the identification of specific sites to be affected by the various mahinga kai instruments. Consultation has involved South Island Ministers, MPs and local bodies as well as relevant departments.*

34. ***Coastal tendering*** *The Heads provided for Ngai Tahu to receive 10% of any coastal space allocated under coastal tendering for Kaikoura, Banks Peninsula, Otago, Fiordland and Foveaux Strait/Rakiura. This was a difficult aspect of the negotiations as the coastal tendering system is not yet fully developed, and the Crown and Ngai Tahu disagreed over implementation. At the August meeting agreement was reached on the basis that:*

- *Ngai Tahu will have available to it 10% of the space irrespective of how the space was allocated i.e. they are eligible for 10% of any mechanism in which the Crown has a role. They have no involvement in what local authorities do;*
- *The space made available will be no less than fair average quality (the Heads stated that it would be at fair average quality);*
- *Ngai Tahu receive 10% of the total space tendered/allocated in their takiwa.*

Ancillary Claims

35. 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. In the Heads the Crown agreed to gift the ancillary claims redress which will go to individual beneficiaries - up to a limit of $1 million. Tribal redress will be offset against the settlement quantum. The settlement will establish a trust structure (the Ancillary Claims Trust) to receive properties being transferred to ancillary claimants and a process to identify the beneficiaries as quickly as possible. By region a summary of the ancillary claims redress is:
    - in *Kaikoura* some reserves will be vested in Ngai Tahu and others will be transferred in fee simple to beneficiaries;
    - in *Canterbury* land will be returned at Waihora (Lake Ellesmere) and six "Fenton reserves" (campsites) will be established with associated fishing entitlements;
    - 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.

36. Where areas with significant conservation values are being transferred or vested as reserves, covenants between the Crown and Ngai Tahu will apply to protect matters such as public access or World Heritage area status.

37. ***Increase in Ancillary Claims cap*** *During further detailed work on the ancillary claims redress, it became clear that the $1m cap was a significant underestimation of the actual cost of providing the intended redress. This was due to lack of site specific and valuation information at the time of signing the Heads. A cap of $2.5m is now proposed. This part*

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of the settlement will discharge 38 individual Treaty claims and will have a significant positive impact on Ngai Tahu's overall mandating process.

SILNA (South Island Landless Natives)

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 identify 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. *It should be noted that the identification of SILNA beneficiaries will lead to a further negotiation process. The identified beneficiaries will have as settlement options the vesting of the land concerned, alternative land acceptable to the Crown, or equivalent monetary payment.*

Specific sites

40. Redress will be provided for the following 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 management role through sub-committee of Southland Conservation Board, mutually agreed access conditions for Ngai Tahu (Whenua Hou will also be the subject of a Statutory Acknowledgement and Deed of Recognition);
- 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. ***Mount Cook/Aoraki*** *was left "off the table" at the time of signing the Heads as agreement had not been reached. During negotiations Ngai Tahu continued to emphasise the overwhelming importance for them of formal recognition of their original "ownership" of the mountain. It is now proposed that the settlement include a modified version of the process adopted for Mount Egmont/Taranaki. Aoraki will be vested in Ngai Tahu and then immediately gifted back by Ngai Tahu to the people of New Zealand.*

Relativity Mechanism

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

Ngai Tahu's acknowledgements

43. 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 acknowledgement (in both the Deed of Settlement and in settlement legislation) that the settlement is full and final and that the Crown has acted honourably and reasonably in achieving the settlement;

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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;

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

iv. dismantling of all other protective mechanisms that 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.

Conditions and legislation

44. 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.

Taxation matters

45. This section sets out the parties' agreement that the settlement redress is intended to be free of GST and income tax. The Crown has agreed to indemnify Ngai Tahu in respect of possible liability in respect of the initial receipt of redress. These provisions and indemnities do not extend to subsequent dealings by Ngai Tahu.

Miscellaneous matters

46. This section deals with:

- Mutual acknowledgements by the Crown and Ngai Tahu that the settlement is fair in the circumstances;
- Status of Ngai Tahu's customary or aboriginal rights following settlement (as approved by Cabinet on 30 September 1996 [CAB (96) M 37/14 refers];
- Preservation of Ngai Tahu rights under proposed Maori Reserved Land legislation;
- Intended consistency of the settlement with the Conservation Act 1987;
- Miscellaneous legal matters such as non-derogation from existing legal rights, notices, signatories etc.

Financial Implications

47. The redress quantum of $170 million (in 1996 dollars) was approved by Cabinet in June 1996 [CAB (96) M 13/4A(2) refers]. This excludes the $1 million for ancillary claims redress. Approval is sought:

- *to increase the cap for the ancillary claims redress to $2.5 million*; and

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- *to pay $10 million to Te Runanga O Ngai Tahu*, on account of approved settlement redress, immediately following signing of the ratified Deed of Settlement by the Crown and Ngai Tahu, scheduled for late November 1997. Ngai Tahu funds have been depleted during the negotiations and the immediate part payment will be an appropriate acknowledgement of the significance of the Deed.

Both expenses will be charged to Vote: Treaty Negotiations, Non Departmental Other Expense Multi-year Appropriation.

Legislative Implications

48. it is intended that settlement legislation will be introduced by mid-November 1997.

Communication Strategy

49. The magnitude and complexity of the settlement means that a diverse range of institutions, interest groups and members of the public will be affected by the settlement. Widespread acceptance of the settlement as fair and positive for Ngai Tahu and New Zealand as a whole requires a comprehensive communications strategy. The Office of Treaty Settlements is currently developing a plan and supporting documentation to provide information to the following audiences:

    - Members of Parliament (general and electorate specific information);
    - Local authorities;
    - Interest groups, such as the Fish and Game Council, Federated Farmers;
    - Members of the public.

Consultation

50. The following departments have been consulted: Crown Law Office, Department of Conservation, Department of Prime Minister and Cabinet, Land Information New Zealand, Te Puni Kokiri and Treasury.

Recommendations

51. It is recommended that the Cabinet Strategy and Priorities Committee:

a. note that Cabinet has approved the following major steps in relation to settlement of the Ngai Tahu Treaty claim:

    i. *June 1996* total settlement redress of $170 million (in 1996 dollars) [CAB (96) M13/4A(2)];

    ii. *September 1996* proposed terms of Heads of Agreement between the Crown and Ngai Tahu [CAB (96) M37/15] and the status of aboriginal rights following Treaty settlements [CAB (96) M 37/14];

    iii. *October 1996* amendments to the Heads of Agreement, agreed between Ministers and Ngai Tahu prior to signing of the Heads on 5 October 1996 [CAB (96) M38/16];

    iv. *December 1996* endorsement of the Heads of Agreement by the incoming Coalition Government [CAB (96) M 49/11];

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v. *April 1997* material changes from the Heads of Agreement in relation to redress for mahinga kai, the financial cap for the Deferred Settlement Portfolio, and refinements to the Right of First Refusal [CAB (97) M 15/5, 15/6 and 15/17];

vi. *April 1997* authorisation of the Prime Minister, Minister of Finance, Minister of Maori Affairs and Minister in Charge of Treaty of Waitangi Negotiations, assisted as required by the Ministers of Conservation and Lands, to determine matters within the parameters agreed by Cabinet which might arise in the context of negotiations [CAB (97) M 15/5].

b. note that two substantive meetings between the relevant Ministers and Ngai Tahu representatives took place in mid-June and mid-August 1997, resulting in agreement on all outstanding issues;

c. endorse the changes to mahinga kai redress approved by authorised Ministers during negotiations with Ngai Tahu , as summarised in paragraphs 30-34 and Annexes 1 and 2 of this submission;

d. note that there are four matters (relating to the scope of the settlement, ancillary claims, Mount Cook/Aoraki and part payment) agreed during the June and August negotiations requiring Cabinet approval in view of the movement from the Heads of Agreement and that these are set out in recommendations (e)-(h) below;

e. agree to amend the definition clause "Meaning of Ngai Tahu claims" in the Deed of Settlement so as to exclude Wai 158, apart from any part of the claim that might relate to the original allocation of land under the South Island Landless Natives Act 1906;

f. agree to increase the cap for the settlement of the Ngai Tahu Ancillary Claims from $1 million to $2.5 million;

g. agree to the provision of redress in respect of Mount Cook/Aoraki involving vesting of the mountain in Ngai Tahu followed immediately by gifting back from Ngai Tahu to the people of New Zealand;

h. approve the payment of $10 million to Ngai Tahu, on account of settlement redress, upon the signing of the Deed of Settlement by the Crown and Ngai Tahu (i.e. subsequent to Ngai Tahu ratification of the Deed);

i. note that the next step is for the final text of the Deed of Settlement to be initialled by Crown and Ngai Tahu representatives, so that Ngai Tahu can present the Deed of Settlement to the claimant group with a view to ratification by Ngai Tahu by early November 1997;

j. approve the completion of drafting of the final text of the Deed of Settlement between the Crown and Ngai Tahu covering the following matters and putting into effect the Heads of Agreement and approved amendments:

i. Definitions and Interpretations

ii. Crown acknowledgements and apology

iii. Valuation and transfer of assets

iv. Right of first refusal

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v. High Country stations

vi. Mahinga kai

vii. Ancillary claims

viii. South Island Landless Natives Act 1906

ix. Specific sites

x. Relativity mechanism

xi. Ngai Tahu's acknowledgements

xii. Conditions and legislation

xiii. Taxation matters

xiv. Miscellaneous matters;

k. authorise the following Ministers to approve the final text of the Deed of Settlement as described in general terms in recommendation (i): Prime Minister, Minister of Finance, Minister of Conservation, Minister of Lands, Minister of Maori Affairs, and Minister in Charge of Treaty of Waitangi Negotiations;

l. authorise the Minister in Charge of Treaty of Waitangi Negotiations to initial the Deed of Settlement with Ngai Tahu on behalf of the Crown, and the Prime Minister to sign the Deed of Settlement on behalf of the Crown following ratification by Ngai Tahu;

m. note that the increase in the cap for the settlement of Ngai Tahu Ancillary Claims referred to in recommendation (f) above, and the $10 million part payment of settlement redress, referred to in recommendation (h) above, are Crown expenses and will be charged to Vote: Treaty Negotiations, Non Departmental Other Expense Multi Year Appropriation "Historical Treaty of Waitangi Settlements";

n. note that officials will prepare the Ngai Tahu settlement legislation while Ngai Tahu is undertaking its ratification process, with a view to introducing settlement legislation by mid-November 1997;

o. note that the Office of Treaty Settlements is preparing a detailed communication strategy to provide appropriate information on the Ngai Tahu settlement to Members of Parliament, local authorities, interest groups and members of the public.

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Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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Annex 1: Definitions of Instruments relating to Mahinga Kai Redress for Ngai Tahu

Statutory Acknowledgement (SA)

SAs acknowledge the special spiritual, cultural, historical and/or traditional association of Ngai Tahu to specified sites. For lands and waterways, the SA requires decision-making bodies to "have regard to" Ngai Tahu's assertion of such associations, in administering the Resource Management Act 1991 and the Historic Places Act 1993. The content of the acknowledgement does not, however, constitute a "deemed fact" which is binding on decision-makers and third parties. The SA is given expression through settlement legislation and is therefore a public acknowledgement by the Crown of Ngai Tahu's assertion of its association to certain sites. It also empowers the Crown to enter into Deeds of Recognition over specific sites. **Affects 18 lakes, 18 rivers, 18 wetlands, 5 coastal areas, 10 sites of significance, and taonga plant, mammal, bird and fish species.**

Deed of Recognition (DoR)

The DoR sets out an agreement 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, as asserted in the SA, and specifies the nature of Ngai Tahu's input into management of that site. This input will be restricted to Crown-owned land only (e.g. lakebeds, riverbeds). In the main, the Crown's obligations will be to consult with and have particular regard to Ngai Tahu views in relation to specified management functions. **64 areas**

Topuni (overlay classification for sites of special significance)

One meaning of "topuni" is cloak. In the Ngai Tahu settlement this concept has been developed into an instrument involving the creation of a separate statutory "overlay" classification over land administered under the Conservation, National Parks or Reserves Acts. A Topuni instrument will acknowledge Ngai Tahu's cultural, spiritual, historic or traditional values in respect of the site. The existing general classification of the site still has precedence, but within this Ngai Tahu will have enhanced rights to advise and be consulted by the administering body, to ensure that the recognised Ngai Tahu values are not harmed or diminished. **14 areas**

Nohoanga (campsites)

These allow Ngai Tahu to have exclusive camping rights, to provide Ngai Tahu with access to waterways to undertake lawful fishing and gathering of other natural resources. They are redress for the Crown's failure to provide Ngai Tahu with access to customary fisheries. A nohoanga is a renewable entitlement to **temporarily occupy** specific categories of Crown land, adjacent to waterways but set back from the marginal strip. Occupation rights may be exercised for up to 210 days per year between mid-August and the end of April. The entitlement is subject to all legislation, bylaws and regulations, and does not affect public access to rivers or fishing rights. Nohoanga sites will not be granted in respect of National Park land, esplanade reserves, marginal strips and scientific and nature reserves. **72 sites**

Customary fishing entitlements (part of Canterbury Ancillary Claims redress)

This redress responds to grievances arising within ancillary claims relating to the loss or non-allocation of "Fenton Reserves" which provided areas where Ngai Tahu were able to exercise their customary fishing rights. The renewable entitlements grant exclusive rights to temporarily use a portion of lake or riverbed up to 100 metres in length for non-commercial harvesting of customary species or other natural resources. These rights apply for up to 210 days per year between mid August and the end of April. Public access along the relevant waterways is maintained. **6 sites**

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Annex 2:

SUMMARY OF AGREED CHANGES TO MAHINGA KAI REDRESS FOR NGAI TAHU

	Heads of Agreement	Proposed Final Deed - incorporating changes approved by Cabinet in April 1997, and subsequently by authorised Ministers [CAB (97) M 15/5 and 15/17 refer]
1	*Statutory Acknowledgements* (SA) and Deeds of Recognition (DoR) offered over Crown-owned land only (i.e. lakebeds, riverbeds)	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 requires decision- making bodies to have regard to Ngai Tahu's assertion of traditional associations with specified areas, in relation to standing and notification decisions. The SA may be used in evidence in substantive hearings but is not a deemed fact binding on decision-makers or third parties. Disclaimers provide that the SA: Has no weighting in substantive hearings (but can be evidence) Does not create or evidence property or aboriginal rights Does not affect third party rights Information flow (send a copy) provisions apply for 20 years. *See further details in para 32*
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)
5	For 10 of 13 *wahi tapu/significant 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. (Remaining 3 sites are lakebeds being vested in fee simple).	Options include • fee simple with covenants (Ngai Tahu manage) • fee simple with Protected Private Land status (DoC manage) • vesting in Ngai Tahu as reserve (Reserves Act 1977 applies)

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6	Ngai Tahu have a *Statutory Advisor* role over 15 of 36 wahi tapu sites.	Ngai Tahu have a Statutory Advisor role over 19 sites
7	Up to 64 *nohoanga* (campsite) entitlements over 13 lakes and 19 rivers. Nohoanga entitlements must be renewed every five years	• Ngai Tahu will be offered up to four nohoanga entitlements per runanga (i.e. a total of 72 entitlements). 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.
9	*Customary fisheries* – increased Ngai Tahu participation in management, recognition of Ngai Tahu's special relationship with certain species and providing Ngai Tahu with a RFR to 30% of TACC with respect to five shellfish species should they be entered into the QMS	Customary Fisheries Regulations relating to Mataitai Reserves also to be brought into force in 1998
10	*Coastal tendering* – Ngai Tahu to receive authorisations at the tender price for 10% of coastal space allocated under coastal tendering for Kaikoura, Banks Peninsula, Fiordland, Otakou and Foveaux Strait/Rakiura, if tendered. Space to be at fair average quality.	Ngai Tahu will have available to it 10% of the space allocated under any mechanism in which the Crown has a role. The space made available will be no less than fair average quality. Ngai Tahu will receive 10% of total space tendered/allocated in their takiwa. *See para 34 for discussion.*
11	*Place Names* – changes to 78 place names with provision for joint Maori/English names, and amendment of NZ Geographic Board Act to encourage use of Maori names, provision of one seat on NZ Geographic Board.	Increased to 88 place names.

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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:

Crown Law Office, Dept. of Conservation, Dept. of Prime Minister & Cabinet, Land Information New Zealand, Te Puni Kokiri, Treasury

Signature of Official	Name and Title	Date
B. Roche	Chief Negotiator	21/8/97

Certification by Minister:

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 Coalition Partner Spokesperson		✓	
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 of Minister	Name and Portfolio	Date
	TOW	21/8/97

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CABINET COMMITTEE ON STRATEGY AND PRIORITIES

CSP (97) M 31/3

Copy No: 30

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MINUTES of a meeting of the Committee held on **Wednesday, 27 August 1997 at 9.15am**

PRESENT: Hon Winston Peters (Chair)
Hon Douglas Graham
Hon Peter McCardle

ALSO PRESENT: Hon Roger Sowry
Hon Dr Nick Smith

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

NGAI TAHU NEGOTIATIONS: APPROVAL OF BASIS FOR DEED OF SETTLEMENT

Reference: CSP (97) 243

The Committee referred the submission under CSP (97) 243 to Cabinet for consideration on 1 September 1997.

Sue Sharp
Secretary

COPIES TO: [see over]

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~~S. MACASKILL~~
M. DUGDALE
R. DORLING

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Secretary to the Treasury
  Chief of Staff, Office of the Deputy Prime Minister
  Mary Anne Thompson, Office of the Deputy Prime Minister
State Services Commissioner
Secretary for Justice
  Director, OTS
Chief Executive, Te Puni Kokiri
Solicitor-General
Minister of Lands
  Chief Executive, LINZ
Minister of Conservation
  Director-General
Chief Parliamentary Counsel

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CABINET COMMITTEE ON STRATEGY AND PRIORITIES

CSP (97) 143

22 August 1997

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Title

NGAI TAHU NEGOTIATIONS: APPROVAL OF BASIS FOR DEED OF SETTLEMENT

Purpose

The paper updates Ministers on progress in the Ngai Tahu negotiations, sets out the redress proposed to be contained in the Deed of Settlement and identifies where that redress varies materially from that agreed in the Heads of Agreement, seeks approval for the proposed basis for the Deed of Settlement, and asks CSP to delegate approval of the final text to a group of Ministers.

Previous Consideration

The paper relates to policy developed in accordance with the Coalition Agreement.

In April 1997 Cabinet approved a number of adjustments to the proposed settlement [CAB (97) M 15/5, CAB (97) M 15/6 and CAB (97) M 15/17 refer]. Details of the background to the claim and other key decisions to date are supplied in paragraphs 9 to 15.

Summary

The Crown and the Ngai Tahu negotiating teams have now reached agreement on all significant issues. The next step, subject to Ministerial approval of the final text, is for the Crown and Ngai Tahu to initial the Deed of Settlement. That document is in effect a final offer from the Crown to Ngai Tahu in discharge of the claim. Te Runanga o Ngai Tahu will then present the Deed of Settlement to the claimant group. The mandating process will be undertaken over a period of 8-10 weeks commencing in mid-September and concluding in early November. As a parallel process settlement legislation will be prepared with a view to introduction in mid-November following ratification of the Deed by Ngai Tahu.

When last considering the Ngai Tahu claim in April, Cabinet appointed a sub-committee of Ministers to determine matters within the parameters agreed by Cabinet which might arise in the context of the negotiations. Since then there have been two substantive meetings involving Ngai Tahu and those Ministers - Prime Minister, Minister of Finance, Minister of Maori Affairs and Minister in Charge of Treaty of Waitangi Negotiations, assisted as required by the Ministers of Conservation and Lands. Trade-offs agreed during these meetings are outlined in the paper.

For ease of reading significant changes since April 1997 are shown in the paper in italics.

~~R. DORLING~~
~~M. DUGDALE~~
~~S. MACASKILL~~
~~A. BRIDGEMAN~~
~~P. DENSEM~~
~~J. CRAIG~~
~~H. TE KOHA~~
~~B. CLARK~~
16.9.97

	The paper asks CSP to delegate approval of the final text of the Deed of Settlement to the Prime Minister, Minister of Finance, Minister of Conservation, Minister of Lands, Minister of Maori Affairs and Minister in Charge of Treaty of Waitangi Negotiations.
Baseline Implications	Approval is sought to increase the cap for the ancillary claims redress to $2.5 million and to pay $10 million to Te Runanga o Ngai Tahu on account of approved settlement redress. Both expenses will be charged to Vote Treaty Negotiations, Non Departmental Other Expense Multi-year Appropriation.
Legislative Implications	It is intended that settlement legislation will be introduced by mid-November 1997.
Timing Issues	None indicated.
Announcement	The paper notes that the magnitude and complexity of the settlement means that a diverse range of institutions, interest groups and members of the public will be affected by the settlement. Widespread acceptance of the settlement as fair and positive for Ngai Tahu and New Zealand as a whole requires a comprehensive communications strategy. The Office of Treaty Settlements is currently developing a plan and supporting documentation to provide information to Members of Parliament, local authorities, interest groups such as the Fish and Game Council and Federated Farmers, and members of the public.
Consultation	OTS, CLO, Conservation, DPM&C, LINZ, TPK, Treasury. The Minister has indicated that consultation with the Coalition Partner Spokesperson and Government caucuses will be required.

The Minister in Charge of Treaty of Waitangi Negotiations recommends that the Committee agree to recommend that Cabinet:

BACKGROUND

a note that Cabinet has approved the following major steps in relation to settlement of the Ngai Tahu Treaty claim:

i June 1996: total settlement redress of $170 million (in 1996 dollars) [CAB (96) M 13/4A(2)];

ii September 1996: proposed terms of Heads of Agreement between the Crown and Ngai Tahu [CAB (96) M 37/15] and the status of aboriginal rights following Treaty settlements [CAB (96) M 37/14];

iii October 1996: amendments to the Heads of Agreement, agreed between Ministers and Ngai Tahu prior to signing of the Heads on 5 October 1996 [CAB (96) M 38/16];

iv December 1996: endorsement of Heads of Agreement by the incoming Coalition Government [CAB (96) M 49/11;

v April 1997: material changes from the Heads of Agreement in relation to redress for mahinga kai, the financial cap for the Deferred Settlement

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Portfolio, and refinements to the Right of First Refusal [CAB (97) M 15/5, 15/6 and 15/17];

vi April 1997: authorisation of the Prime Minister, Minister of Finance, Minister of Maori Affairs and Minister in Charge of Treaty of Waitangi Negotiations, assisted as required by the Ministers of Conservation and Lands, to determine matters within the parameters agreed by Cabinet which might arise in the context of negotiations [CAB (97) M 15/5];

PROGRESS AND FURTHER APPROVALS REQUIRED

b note that two substantive meetings between the relevant Ministers and Ngai Tahu representatives took place in mid-June and mid-August 1997, resulting in agreement on all outstanding issues;

c endorse the changes to mahinga kai redress approved by authorised Ministers during negotiations with Ngai Tahu, as summarised in Annexes 1 and 2 of this submission;

d note that:

i there are four matters (relating to the scope of the settlement, ancillary claims, Mount Cook/Aoraki and part payment) agreed during the June and August negotiations requiring Cabinet approval in view of the movement from the Heads of Agreement;

ii these are set out in paragraphs (e)-(h) below;

e agree to amend the definition clause "Meaning of Ngai Tahu claims" in the Deeds of Settlement so as to exclude Wai 158, apart from any part of the claim that might relate to the original allocation of land under the South Island Landless Natives Act 1906;

f agree to increase the cap for the settlement of the Ngai Tahu Ancillary Claims from $1 million to $2.5 million;

g agree to the provision of redress in respect of Mount Cook/Aoraki involving vesting of the mountain in Ngai Tahu followed immediately by gifting back from Ngai Tahu to the people of New Zealand;

h approve the payment of $10 million to Ngai Tahu, on account of settlement redress, upon the signing of the Deed of Settlement by the Crown and Ngai Tahu (ie subsequent to Ngai Tahu ratification of the Deed);

DEED OF SETTLEMENT

i note that the next step is for the final text of the Deed of Settlement to be initialled by Crown and Ngai Tahu representatives, so that Ngai Tahu can present the Deed of Settlement to the claimant group with a view to ratification by Ngai Tahu by early November 1997;

j approve the completion of drafting of the final text of the Deed of Settlement between the Crown and Ngai Tahu covering the following matters and putting into effect the Heads of Agreement and approved amendments:

i definitions and interpretations;

ii crown acknowledgements and apology;

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iii valuation and transfer of assets;

iv right of first refusal;

v high country stations;

vi mahinga kai;

vii ancillary claims;

viii Southland Island Landless Natives Act 1906;

ix specific sites;

x relativity mechanism;

xi Ngai Tahu's acknowledgements;

xii conditions and legislation;

xiii taxation matters;

xiv miscellaneous matters;

k authorise the following Ministers to approve the final text of the Deed of Settlement as described in general terms in paragraph (j) above:

i Prime Minister;

ii Minister of Finance;

iii Minister of Conservation;

iv Minister of Lands;

v Minister of Maori Affairs; and

vi Minister in Charge of Treaty of Waitangi Negotiations;

l authorise the Minister in Charge of Treaty of Waitangi Negotiations to initial the Deed of Settlement with Ngai Tahu on behalf of the Crown, and the Prime Minister to sign the Deed of Settlement on behalf of the Crown following ratification by Ngai Tahu;

FUNDING

m note that the increase in the cap for the settlement of Ngai Tahu Ancillary Claims referred to in paragraph (f) above, and the $10 million part payment of settlement redress, referred to in paragraph (h) above, are Crown expenses and will be charged to Vote: Treaty Negotiations, Non Departmental Other Expense Multi Year Appropriation "Historical Treaty of Waitangi Settlements";

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LEGISLATION

n note that officials will prepare the Ngai Tahu settlement legislation while Ngai Tahu is undertaking its ratification process, with a view to introducing settlement legislation by mid-November 1997;

COMMUNICATIONS STRATEGY

o note that the Office of Treaty Settlements is preparing a detailed communication strategy to provide appropriate information on the Ngai Tahu settlement to Members of Parliament, local authorities, interest groups and members of the public.

(Signed) Sue Sharp

COPIES TO:

Cabinet Committee on Strategy and Priorities
Chief Executive, PM&C
  Chief of Staff, Office of the Prime Minister
Secretary to the Treasury
  Chief of Staff, Office of the Deputy Prime Minister
  Mary Anne Thompson, Office of the Deputy Prime Minister
State Services Commissioner
Secretary for Justice
  Director, OTS
Chief Executive, Te Puni Kokiri
Solicitor-General
Minister of Lands
  Chief Executive, LINZ
Minister of Conservation
  Director-General
Chief Parliamentary Counsel

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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

21 AUG 1997

Marie Shroff
Secretary of the Cabinet

Dear Mrs Shroff

Please find attached a paper entitled *Ngai Tahu Negotiations: Approval of basis for Deed of Settlement* to be submitted to the Cabinet Strategy and Priorities Committee.

Because of the scope and complexity of the negotiations and the proposed Deed of Settlement, it was not possible to comply with the "10 page limit" for Cabinet papers. I therefore seek approval for waiver of the Cabinet Office "10 page limit" 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
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Chair,

Cabinet Strategy and Priorities Committee

Ngai Tahu Negotiations: Approval of basis for Deed of Settlement

Executive Summary

1. This paper:

   i. Updates Ministers on progress in the Ngai Tahu negotiations;

   ii. Sets out the redress proposed to be contained in the Deed of Settlement and identifies where that redress varies materially from that agreed in the Heads of Agreement signed by the Crown and Ngai Tahu on 5 October 1996;

   iii. Seeks approval from Ministers for the proposed basis for the Deed of Settlement;

   iv. Asks Ministers to delegate approval of the final text of the Deed of Settlement to the following Ministers: Prime Minister, Minister of Finance, Minister of Conservation, Minister of Lands, Minister of Maori Affairs and Minister in Charge of Treaty of Waitangi Negotiations.

2. The Crown and Ngai Tahu negotiating teams have now reached agreement on all significant issues. The next step, subject to Ministerial approval of the final text, is for the Crown and Ngai Tahu to initial the Deed of Settlement. That document is in effect a final offer from the Crown to Ngai Tahu in discharge of the claim. Te Runanga O Ngai Tahu will then present the Deed of Settlement to the claimant group. The mandating process will be undertaken over a period of 8-10 weeks commencing mid-September and concluding early November. As a parallel process settlement legislation will be prepared with a view to introduction in mid-November, following ratification of the Deed by Ngai Tahu.

3. Cabinet has previously approved the following significant changes since the signing of the Heads:

   - Expansion of the redress offered in relation to mahinga kai;
   - An increase in the cap for the Deferred Settlement Portfolio from $200m to $250m, enabling Ngai Tahu to purchase further Crown assets from its own resources;
   - Refinements to the Right of First Refusal.

4. In its last consideration of the Ngai Tahu negotiations in April 1997, Cabinet appointed a sub-committee of Ministers (the Prime Minister, Minister of Finance, Minister of Maori Affairs and Minister in Charge of Treaty of Waitangi Negotiations, assisted as required by the Ministers of Conservation and Lands) to determine matters within the parameters agreed by Cabinet which might arise in the context of negotiations.

5. Since then there have been two substantive meetings involving these Ministers and Ngai Tahu representatives, in mid June and mid August. During these meetings there were

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numerous trade-offs by both parties. These are set out in general terms in the body of this paper.

6. Further significant changes proposed in this paper for the approval of Ministers are:

   - Amending the scope of the settlement to exclude Wai 158 apart from the historical aspects relating to the original grants of land under the South Island Landless Natives Act 1906;
   - An increase in the cap for the settlement of ancillary claims from $1 million to $2.5 million;
   - Additional redress for Mount Cook/Aoraki involving vesting in Ngai Tahu immediately followed by gifting back from Ngai Tahu to the people of New Zealand.

7. Ministers are also asked to approve the payment of $10 million to Ngai Tahu, on account of settlement redress, on signing of the final Deed, scheduled for late November 1997.

For ease of reading significant changes since April 1997 are shown in italics.

Coalition Agreement

8. 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 to the Process for the Ngai Tahu Claim

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

10. *October 1994* The Crown agreed to make an on account settlement offer to Ngai Tahu as a gesture of good faith and a recognition of three years of negotiations which at times had been difficult and tense. Ngai Tahu rejected the offer as inadequate and disadvantageous to its wider interests. Negotiations subsequently lapsed.

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

12. *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

13. *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 its historical Treaty claims within the parameters agreed by 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) M13/4A(2); CAB (96) M 19/21 refer]

14. *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. This was confirmed by Cabinet on 7 October 1996 [CAB (96) M 37/15 and M 38/16 refer]. The incoming

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Coalition Government endorsed the Heads of Agreement on 18 December 1996 [CAB (96) M 49/11 refers].

15. *April 1997* Cabinet approved the following adjustments to the proposed settlement:

- Expansion of the redress offered in relation to mahinga kai;
- A conditional increase in the cap for the Deferred Settlement Portfolio from $200m to $250m, enabling Ngai Tahu to purchase further Crown assets from its own resources;
- Refinements to the Right of First Refusal.

[CAB (97) M 15/5, M 15/6 and M 15/17 refer].

Strategic Factors

16. 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 and most 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 future settlements;
- 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.

Department of Conservation comment: The Department of Conservation notes that some of the conservation redress in this Settlement may not always be practical or possible in future settlements where there are more iwi in an area or there are cross claims.

Summary of Proposed Deed of Settlement

17. The Deed of Settlement will have the following 18 sections setting out redress and the process for delivering this redress:

1 Definitions and Interpretation
2 Crown acknowledgements and apology
3-7 Valuation and transfer of assets
8 Right of first refusal
9 High Country stations
10 Mahinga Kai
11 Ancillary Claims
12 SILNA (South Island Landless Natives Act 1906)
13 Specific sites (Crown Titi Islands, Whenua Hou, Rarotoka, Arahura Valley, Aoraki)

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14 Relativity Mechanism

15 Ngai Tahu's acknowledgements

16 Conditions and legislation

17 Taxation matters

18 Miscellaneous matters.

18. 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, with particular emphasis (shown in italics) on developments since April 1997.

Definitions and Interpretations

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

20. *In April 1997 Ministers were advised that a question had arisen regarding the inclusion of Wai 158 in the settlement. Wai 158 mainly concerns alleged grievances resulting from the Government's indigenous forest policy since July 1990. The Crown initially took the view that this claim should be included, to the extent of the pre-1992 grievances alleged, to preserve the comprehensiveness of the settlement. The Wai 158 claimants, owners of SILNA forest blocks, strongly oppose inclusion and have not mandated Ngai Tahu to settle Wai 158 on their behalf. Ngai Tahu consider that insistence on inclusion could jeopardise their ratification and potentially frustrate the completion of the settlement. It is also noted that part of the original Wai 158 claim, relating to the Waitutu Forest, is being resolved through a separate agreement outside the historical Treaty settlement process.*

21. *As a compromise it is proposed to exclude Wai 158, apart from any part of the claim that might relate to the original allocation of land under the South Island Landless Natives Act 1906. Any grievances relating to the original allocation are covered by the settlement of the main Wai 27 claim. In addition the Deed and/or settlement legislation will include a provision to the effect that the Crown considers the Wai 158 claim to relate primarily to contemporary indigenous forest policy.*

Crown acknowledgements and apology

22. The Crown acknowledgements 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. The apology is of a form similar to that used in the Waikato-Tainui settlement.

Transfer of assets -general

23. The Heads provided for a Deferred Selection Process (DSP) which would enable Ngai Tahu to select up to $200 million of commercial assets from an agreed schedule ($170m transferred from the Crown and $30m of Ngai Tahu's own money). Subsequent discussions have resulted in the current proposal that the cap be raised to $250 million,

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on the basis that the Crown is unable to make available Timberlands West Coast[1] The DSP covers 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
- Landcorp farms: all 53 Landcorp farms in the Ngai Tahu rohe.

24. Agreed refinements advised to Ministers in April 1997 included:
    - 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.

Right of first refusal

25. The settlement includes a Right of First Refusal (RFR) over a range of assets. Apart from the inclusion of an obligation to act in good faith and anti-avoidance provisions the RFR is the same as the Waikato-Tainui RFR.

26. Following extensive discussions between Ministers and Ngai Tahu in June agreement was reached on the final form of the RFR. In reaching agreement the Crown sought to have the following objectives recognised: to
    - minimise value loss through maintaining a right to go to the market;
    - retain the discretion of the Chief Executive LINZ to certify removal of the RFR memorial;
    - establish a transparent process with clear timelines that will endure over time;
    - maintain consistency with Waikato-Tainui;
    - avoid the disposal of conservation land.

27. *The principal features of the RFR as agreed involve:*
    - *the vendor agency obtaining a valuation;*
    - *That valuation is then used for negotiations with Ngai Tahu. If agreement is reached Ngai Tahu acquire it. If agreement is not reached the vendor agency is free to sell the property on no worse conditions than those offered by Ngai Tahu for a period of nine months;*
    - *Similarly for assets which are not frequently traded (such as shares in Christchurch Airport) the Crown is able to openly market these assets prior to engaging with Ngai Tahu. This process is also available for assets where a valuer determines that the value can only realistically be set in the marketplace;*
    - *While the Crown is obliged to act in good faith in RFR negotiations, it has also included a right to act in its own commercial interests.*

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[1] In April 1997 Ministers also authorised officials to negotiate an increase in the DSP cap to $250m, conditional on Ngai Tahu purchasing all of Aoraki forest land and trees. This was intended to resolve difficulties that had arisen in relation to Timberlands West Coast. [CAB (97) M 15/6 refers]. Agreement was unable to be reached with Ngai Tahu on this basis.

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28. *There is scope for disputes to arise. In an attempt to avoid the use of judicial procedures to frustrate the sales process, agreement has been reached on dispute resolution and arbitration clauses. Each has a defined timeline to minimise any disruption.*

High Country stations (Greenstone, Routeburn, Elfin Bay)

29. 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.

Mahinga Kai

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. These claims and associated redress cover Ngai Tahu's interests in reserves, rivers, lakebeds, wetlands, customary fisheries, and other natural resources. A range of instruments has 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 Crown's interests that are transferred to Ngai Tahu will not be offset against the Ngai Tahu quantum. Specific redress for mahinga kai includes:

- Transfer of title or vesting of reserves in Ngai Tahu for to up to 13 specific sites (including three lakebeds)
- mana recognition (through a variety of instruments like Statutory Acknowledgements, Deeds of Recognition and Topuni, **defined in Annex 1**) and a consultative/advisory role over a number of specific sites and specified plant and animal taonga species
- seasonal occupation rights adjacent to certain water bodies for the purposes of customary fishing (nohoanga entitlements[2])
- right to purchase 10% of any specified areas of coastal space that are subject to tendering or other allocations by the Crown in future
- increased participation in the management of customary fisheries
- 88 place names to be given joint English/Maori names *(increased from 78 in the Heads with the approval of authorised Ministers)*
- a dedicated seat on New Zealand Geographic Board and New Zealand Conservation Authority, and dedicated membership on Conservation Boards within the Ngai Tahu claim areas (2 seats on each), membership on Guardians of southern lakes (1 seat on each)
- Ngai Tahu input into improved implementation of the Resource Management Act and review of heritage protection (Historic Places Trust Board)
- development of protocols with the Department of Conservation.

[2] Nohoanga entitlements do not limit public access to or use of the waterways, and grant no additional rights to Ngai Tahu to fish over and above existing entitlements.

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31. During negotiations Ngai Tahu sought a number of changes to the mahinga kai redress set out in the Heads. The changes largely 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. In April 1997 Cabinet approved a number of changes subject to the provision of satisfactory detail on particular sites and the nature of Ngai Tahu's associations [CAB (97) M 15/5 and M15/17 refer]. Further changes were approved by authorised Ministers during the June and August meetings. **Annex 2** summarises the movement between the Heads and the proposed final Deed in relation to mahinga kai. The most significant developments are discussed below.

32. ***Statutory Acknowledgement*** *Because of both Crown and Ngai Tahu concerns, the Statutory Acknowledgement (SA) proved the most difficult instrument to finalise. The principal objectives of the SA were to remedy the "information gap" faced by Ngai Tahu with respect to the resource consent process and to address their concerns that consent authorities were not appropriately addressing Ngai Tahu's traditional associations in the resource consent process. Ministers have now agreed that the SA will have the following features:*

- *Description of Ngai Tahu special association with defined areas;*
- *Crown acknowledgement of Te Runanga's statement of Ngai Tahu's association, i.e. of what Ngai Tahu claims its association to be – Ngai Tahu may state other associations during substantive hearings;*
- *Local authorities will send Ngai Tahu information about resource consents affecting areas covered by Statutory Acknowledgements (the "send a copy" provision);*
- *20 year sunset on the "send a copy" provision" – Ngai Tahu may waive the SAC before then;*
- *Local authorities "will have regard to" the Crown's acknowledgement of Ngai Tahu's association when determining whether Ngai Tahu is directly affected for the purposes of ss.93 and 94 of the RMA (i.e. when deciding whether Ngai Tahu should be notified in terms of the formal RMA process, or a person whose consent should be obtained prior to avoiding the formal notification process);*
- *Ngai Tahu may include a copy of the Statutory Acknowledgement with submissions at substantive hearing stage, as evidence of its association (but not conclusive proof binding on decision makers or third parties);*
- *Disclaimers relating to:*

  no weighting in substantive hearings (but Ngai Tahu can table the Statutory Acknowledgement as evidence of their association);

  the Statutory Acknowledgement does not create, or provide evidence of, any other rights (including property/aboriginal rights);

  no effect on third party rights.

- *The Crown's position on stating that the SA does not create property rights is to be included in the Deed. Ngai Tahu had sought a mirror of the disclaimer which stated that "nor do they deny any property rights".*

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33. *Work is continuing on the detailed drafting required for each of the instruments. Significant progress has also been made on the identification of specific sites to be affected by the various mahinga kai instruments. Consultation has involved South Island Ministers, MPs and local bodies as well as relevant departments.*

34. ***Coastal tendering*** *The Heads provided for Ngai Tahu to receive 10% of any coastal space allocated under coastal tendering for Kaikoura, Banks Peninsula, Otago, Fiordland and Foveaux Strait/Rakiura. This was a difficult aspect of the negotiations as the coastal tendering system is not yet fully developed, and the Crown and Ngai Tahu disagreed over implementation. At the August meeting agreement was reached on the basis that:*

- *Ngai Tahu will have available to it 10% of the space irrespective of how the space was allocated i.e. they are eligible for 10% of any mechanism in which the Crown has a role. They have no involvement in what local authorities do;*
- *The space made available will be no less than fair average quality (the Heads stated that it would be at fair average quality);*
- *Ngai Tahu receive 10% of the total space tendered/allocated in their takiwa.*

Ancillary Claims

35. 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. In the Heads the Crown agreed to gift the ancillary claims redress which will go to individual beneficiaries - up to a limit of $1 million. Tribal redress will be offset against the settlement quantum. The settlement will establish a trust structure (the Ancillary Claims Trust) to receive properties being transferred to ancillary claimants and a process to identify the beneficiaries as quickly as possible. By region a summary of the ancillary claims redress is:
    - in *Kaikoura* some reserves will be vested in Ngai Tahu and others will be transferred in fee simple to beneficiaries;
    - in *Canterbury* land will be returned at Waihora (Lake Ellesmere) and six "Fenton reserves" (campsites) will be established with associated fishing entitlements;
    - 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.

36. Where areas with significant conservation values are being transferred or vested as reserves, covenants between the Crown and Ngai Tahu will apply to protect matters such as public access or World Heritage area status.

37. ***Increase in Ancillary Claims cap*** *During further detailed work on the ancillary claims redress, it became clear that the $1m cap was a significant underestimation of the actual cost of providing the intended redress. This was due to lack of site specific and valuation information at the time of signing the Heads. A cap of $2.5m is now proposed. This part*

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of the settlement will discharge 38 individual Treaty claims and will have a significant positive impact on Ngai Tahu's overall mandating process.

SILNA (South Island Landless Natives)

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 identify 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. *It should be noted that the identification of SILNA beneficiaries will lead to a further negotiation process. The identified beneficiaries will have as settlement options the vesting of the land concerned, alternative land acceptable to the Crown, or equivalent monetary payment.*

Specific sites

40. Redress will be provided for the following 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 management role through sub-committee of Southland Conservation Board, mutually agreed access conditions for Ngai Tahu (Whenua Hou will also be the subject of a Statutory Acknowledgement and Deed of Recognition);
- 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. ***Mount Cook/Aoraki*** *was left "off the table" at the time of signing the Heads as agreement had not been reached. During negotiations Ngai Tahu continued to emphasise the overwhelming importance for them of formal recognition of their original "ownership" of the mountain. It is now proposed that the settlement include a modified version of the process adopted for Mount Egmont/Taranaki. Aoraki will be vested in Ngai Tahu and then immediately gifted back by Ngai Tahu to the people of New Zealand.*

Relativity Mechanism

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

Ngai Tahu's acknowledgements

43. 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 acknowledgement (in both the Deed of Settlement and in settlement legislation) that the settlement is full and final and that the Crown has acted honourably and reasonably in achieving the settlement;

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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;

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

iv. dismantling of all other protective mechanisms that 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.

Conditions and legislation

44. 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.

Taxation matters

45. This section sets out the parties' agreement that the settlement redress is intended to be free of GST and income tax. The Crown has agreed to indemnify Ngai Tahu in respect of possible liability in respect of the initial receipt of redress. These provisions and indemnities do not extend to subsequent dealings by Ngai Tahu.

Miscellaneous matters

46. This section deals with:

- Mutual acknowledgements by the Crown and Ngai Tahu that the settlement is fair in the circumstances;
- Status of Ngai Tahu's customary or aboriginal rights following settlement (as approved by Cabinet on 30 September 1996 [CAB (96) M 37/14 refers];
- Preservation of Ngai Tahu rights under proposed Maori Reserved Land legislation;
- Intended consistency of the settlement with the Conservation Act 1987;
- Miscellaneous legal matters such as non-derogation from existing legal rights, notices, signatories etc.

Financial Implications

47. The redress quantum of $170 million (in 1996 dollars) was approved by Cabinet in June 1996 [CAB (96) M 13/4A(2) refers]. This excludes the $1 million for ancillary claims redress. Approval is sought:

- *to increase the cap for the ancillary claims redress to $2.5 million*; and

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- *to pay $10 million to Te Runanga O Ngai Tahu*, on account of approved settlement redress, immediately following signing of the ratified Deed of Settlement by the Crown and Ngai Tahu, scheduled for late November 1997. Ngai Tahu funds have been depleted during the negotiations and the immediate part payment will be an appropriate acknowledgement of the significance of the Deed.

Both expenses will be charged to Vote: Treaty Negotiations, Non Departmental Other Expense Multi-year Appropriation.

Legislative Implications

48. it is intended that settlement legislation will be introduced by mid-November 1997.

Communication Strategy

49. The magnitude and complexity of the settlement means that a diverse range of institutions, interest groups and members of the public will be affected by the settlement. Widespread acceptance of the settlement as fair and positive for Ngai Tahu and New Zealand as a whole requires a comprehensive communications strategy. The Office of Treaty Settlements is currently developing a plan and supporting documentation to provide information to the following audiences:

    - Members of Parliament (general and electorate specific information);
    - Local authorities;
    - Interest groups, such as the Fish and Game Council, Federated Farmers;
    - Members of the public.

Consultation

50. The following departments have been consulted: Crown Law Office, Department of Conservation, Department of Prime Minister and Cabinet, Land Information New Zealand, Te Puni Kokiri and Treasury.

Recommendations

51. It is recommended that the Cabinet Strategy and Priorities Committee:

a. note that Cabinet has approved the following major steps in relation to settlement of the Ngai Tahu Treaty claim:

    i. *June 1996* total settlement redress of $170 million (in 1996 dollars) [CAB (96) M13/4A(2)];

    ii. *September 1996* proposed terms of Heads of Agreement between the Crown and Ngai Tahu [CAB (96) M37/15] and the status of aboriginal rights following Treaty settlements [CAB (96) M 37/14];

    iii. *October 1996* amendments to the Heads of Agreement, agreed between Ministers and Ngai Tahu prior to signing of the Heads on 5 October 1996 [CAB (96) M38/16];

    iv. *December 1996* endorsement of the Heads of Agreement by the incoming Coalition Government [CAB (96) M 49/11];

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v. *April 1997* material changes from the Heads of Agreement in relation to redress for mahinga kai, the financial cap for the Deferred Settlement Portfolio, and refinements to the Right of First Refusal [CAB (97) M 15/5, 15/6 and 15/17];

vi. *April 1997* authorisation of the Prime Minister, Minister of Finance, Minister of Maori Affairs and Minister in Charge of Treaty of Waitangi Negotiations, assisted as required by the Ministers of Conservation and Lands, to determine matters within the parameters agreed by Cabinet which might arise in the context of negotiations [CAB (97) M 15/5].

b. note that two substantive meetings between the relevant Ministers and Ngai Tahu representatives took place in mid-June and mid-August 1997, resulting in agreement on all outstanding issues;

c. endorse the changes to mahinga kai redress approved by authorised Ministers during negotiations with Ngai Tahu , as summarised in paragraphs 30-34 and Annexes 1 and 2 of this submission;

d. note that there are four matters (relating to the scope of the settlement, ancillary claims, Mount Cook/Aoraki and part payment) agreed during the June and August negotiations requiring Cabinet approval in view of the movement from the Heads of Agreement and that these are set out in recommendations (e)-(h) below;

e. agree to amend the definition clause "Meaning of Ngai Tahu claims" in the Deed of Settlement so as to exclude Wai 158, apart from any part of the claim that might relate to the original allocation of land under the South Island Landless Natives Act 1906;

f. agree to increase the cap for the settlement of the Ngai Tahu Ancillary Claims from $1 million to $2.5 million;

g. agree to the provision of redress in respect of Mount Cook/Aoraki involving vesting of the mountain in Ngai Tahu followed immediately by gifting back from Ngai Tahu to the people of New Zealand;

h. approve the payment of $10 million to Ngai Tahu, on account of settlement redress, upon the signing of the Deed of Settlement by the Crown and Ngai Tahu (i.e. subsequent to Ngai Tahu ratification of the Deed);

i. note that the next step is for the final text of the Deed of Settlement to be initialled by Crown and Ngai Tahu representatives, so that Ngai Tahu can present the Deed of Settlement to the claimant group with a view to ratification by Ngai Tahu by early November 1997;

j. approve the completion of drafting of the final text of the Deed of Settlement between the Crown and Ngai Tahu covering the following matters and putting into effect the Heads of Agreement and approved amendments:

i. Definitions and Interpretations

ii. Crown acknowledgements and apology

iii. Valuation and transfer of assets

iv. Right of first refusal

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v. High Country stations

vi. Mahinga kai

vii. Ancillary claims

viii. South Island Landless Natives Act 1906

ix. Specific sites

x. Relativity mechanism

xi. Ngai Tahu's acknowledgements

xii. Conditions and legislation

xiii. Taxation matters

xiv. Miscellaneous matters;

k. authorise the following Ministers to approve the final text of the Deed of Settlement as described in general terms in recommendation (i): Prime Minister, Minister of Finance, Minister of Conservation, Minister of Lands, Minister of Maori Affairs, and Minister in Charge of Treaty of Waitangi Negotiations;

l. authorise the Minister in Charge of Treaty of Waitangi Negotiations to initial the Deed of Settlement with Ngai Tahu on behalf of the Crown, and the Prime Minister to sign the Deed of Settlement on behalf of the Crown following ratification by Ngai Tahu;

m. note that the increase in the cap for the settlement of Ngai Tahu Ancillary Claims referred to in recommendation (f) above, and the $10 million part payment of settlement redress, referred to in recommendation (h) above, are Crown expenses and will be charged to Vote: Treaty Negotiations, Non Departmental Other Expense Multi Year Appropriation "Historical Treaty of Waitangi Settlements";

n. note that officials will prepare the Ngai Tahu settlement legislation while Ngai Tahu is undertaking its ratification process, with a view to introducing settlement legislation by mid-November 1997;

o. note that the Office of Treaty Settlements is preparing a detailed communication strategy to provide appropriate information on the Ngai Tahu settlement to Members of Parliament, local authorities, interest groups and members of the public.

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Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

Annex 1: Definitions of Instruments relating to Mahinga Kai Redress for Ngai Tahu

Statutory Acknowledgement (SA)

SAs acknowledge the special spiritual, cultural, historical and/or traditional association of Ngai Tahu to specified sites. For lands and waterways, the SA requires decision-making bodies to "have regard to" Ngai Tahu's assertion of such associations, in administering the Resource Management Act 1991 and the Historic Places Act 1993. The content of the acknowledgement does not, however, constitute a "deemed fact" which is binding on decision-makers and third parties. The SA is given expression through settlement legislation and is therefore a public acknowledgement by the Crown of Ngai Tahu's assertion of its association to certain sites. It also empowers the Crown to enter into Deeds of Recognition over specific sites. **Affects 18 lakes, 18 rivers, 18 wetlands, 5 coastal areas, 10 sites of significance, and taonga plant, mammal, bird and fish species.**

Deed of Recognition (DoR)

The DoR sets out an agreement 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, as asserted in the SA, and specifies the nature of Ngai Tahu's input into management of that site. This input will be restricted to Crown-owned land only (e.g. lakebeds, riverbeds). In the main, the Crown's obligations will be to consult with and have particular regard to Ngai Tahu views in relation to specified management functions. **64 areas**

Topuni (overlay classification for sites of special significance)

One meaning of "topuni" is cloak. In the Ngai Tahu settlement this concept has been developed into an instrument involving the creation of a separate statutory "overlay" classification over land administered under the Conservation, National Parks or Reserves Acts. A Topuni instrument will acknowledge Ngai Tahu's cultural, spiritual, historic or traditional values in respect of the site. The existing general classification of the site still has precedence, but within this Ngai Tahu will have enhanced rights to advise and be consulted by the administering body, to ensure that the recognised Ngai Tahu values are not harmed or diminished. **14 areas**

Nohoanga (campsites)

These allow Ngai Tahu to have exclusive camping rights, to provide Ngai Tahu with access to waterways to undertake lawful fishing and gathering of other natural resources. They are redress for the Crown's failure to provide Ngai Tahu with access to customary fisheries. A nohoanga is a renewable entitlement to **temporarily occupy** specific categories of Crown land, adjacent to waterways but set back from the marginal strip. Occupation rights may be exercised for up to 210 days per year between mid-August and the end of April. The entitlement is subject to all legislation, bylaws and regulations, and does not affect public access to rivers or fishing rights. Nohoanga sites will not be granted in respect of National Park land, esplanade reserves, marginal strips and scientific and nature reserves. **72 sites**

Customary fishing entitlements (part of Canterbury Ancillary Claims redress)

This redress responds to grievances arising within ancillary claims relating to the loss or non-allocation of "Fenton Reserves" which provided areas where Ngai Tahu were able to exercise their customary fishing rights. The renewable entitlements grant exclusive rights to temporarily use a portion of lake or riverbed up to 100 metres in length for non-commercial harvesting of customary species or other natural resources. These rights apply for up to 210 days per year between mid August and the end of April. Public access along the relevant waterways is maintained. **6 sites**

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Annex 2:

SUMMARY OF AGREED CHANGES TO MAHINGA KAI REDRESS FOR NGAI TAHU

	Heads of Agreement	**Proposed Final Deed - incorporating changes approved by Cabinet in April 1997, and subsequently by authorised Ministers [CAB (97) M 15/5 and 15/17 refer]**
1	*Statutory Acknowledgements* (SA) and Deeds of Recognition (DoR) offered over Crown-owned land only (i.e. lakebeds, riverbeds)	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 requires decision- making bodies to have regard to Ngai Tahu's assertion of traditional associations with specified areas, in relation to standing and notification decisions. The SA may be used in evidence in substantive hearings but is not a deemed fact binding on decision-makers or third parties. Disclaimers provide that the SA: Has no weighting in substantive hearings (but can be evidence) Does not create or evidence property or aboriginal rights Does not affect third party rights Information flow (send a copy) provisions apply for 20 years. *See further details in para 32*
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)
5	For 10 of 13 *wahi tapu/significant 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. (Remaining 3 sites are lakebeds being vested in fee simple).	Options include • fee simple with covenants (Ngai Tahu manage) • fee simple with Protected Private Land status (DoC manage) • vesting in Ngai Tahu as reserve (Reserves Act 1977 applies)

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6	Ngai Tahu have a *Statutory Advisor* role over 15 of 36 wahi tapu sites.	Ngai Tahu have a Statutory Advisor role over 19 sites
7	Up to 64 *nohoanga* (campsite) entitlements over 13 lakes and 19 rivers. Nohoanga entitlements must be renewed every five years	• Ngai Tahu will be offered up to four nohoanga entitlements per runanga (i.e. a total of 72 entitlements). 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.
	Customary fisheries – increased Ngai Tahu participation in management, recognition of Ngai Tahu's special relationship with certain species and providing Ngai Tahu with a RFR to 30% of TACC with respect to five shellfish species should they be entered into the QMS	Customary Fisheries Regulations relating to Mataitai Reserves also to be brought into force in 1998
10	*Coastal tendering* – Ngai Tahu to receive authorisations at the tender price for 10% of coastal space allocated under coastal tendering for Kaikoura, Banks Peninsula, Fiordland, Otakou and Foveaux Strait/Rakiura, if tendered. Space to be at fair average quality.	Ngai Tahu will have available to it 10% of the space allocated under any mechanism in which the Crown has a role. The space made available will be no less than fair average quality. Ngai Tahu will receive 10% of total space tendered/allocated in their takiwa. *See para 34 for discussion.*
11	*Place Names* – changes to 78 place names with provision for joint Maori/English names, and amendment of NZ Geographic Board Act to encourage use of Maori names, provision of one seat on NZ Geographic Board.	Increased to 88 place names.

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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:

Crown Law Office, Dept of Conservation, Dept of Prime Minister + Cabinet, Land Information New Zealand, Te Puni Kokiri, Treasury

Signature of Official	Name and Title	Date
B. Roche	Chief Negotiator	21/8/97

Certification by Minister:

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 Coalition Partner Spokesperson		✓	
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 of Minister	Name and Portfolio	Date
	TOW	21/8/97

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CABINET

CAB (97) M 15/17

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- 1 MAY 1997
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MINISTERIALS

Minister in Charge of Treaty of Waitangi Negotiations

B. Clark
P. Roche
J. Craig
H. Te Kohe
P. Densen
S. Macaskill
M. Dyglak
A. Bridgman

Copies to:

Prime Minister
Deputy Prime Minister
Treasurer
Minister of Finance
Minister of State Services
Minister for State Owned Enterprises
Minister of Justice
Minister of Maori Affairs
Attorney-General
Minister for the Environment
Minister of Lands
Minister of Conservation
Chief Parliamentary Counsel
Legislation Programme Coordinator
Secretary, CSP
Monitoring System

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NGAI TAHU NEGOTIATIONS: STATUTORY ACKNOWLEDGEMENTS

References: CAB (97) 255, CAB (97) M 15/5, CAB (97) M 15/6

At the meeting on 28 April 1997 Cabinet:

BACKGROUND

a noted that the core elements of the Statutory Acknowledgement (SA) (which is a key component of the mahinga kai package within the proposed Ngai Tahu settlement) are as follows:

i a description of Ngai Tahu's special cultural, spiritual, traditional and/or historical association with defined areas;

ii a statutory acknowledgement by the Crown of that association;

iii by reason of the association, an acknowledgement by the Crown that Ngai Tahu is likely to fall within the description of an affected person under certain sections of the Resource Management Act 1991 and Historic Places Act 1993;

iv with respect to fish and other animal and plant species, provision for an input into management (to be specified);

v an authorisation to create Deeds of Recognition over certain areas;

b noted that four key risks have been identified in relation to the SA:

i additional weighting for Ngai Tahu's values in conservation and environmental decision-making;

ii creating or recognising rights including commercial and intellectual property rights, rights in relation to natural resources (including water) and aboriginal title;

iii unintended commercial leverage;

iv an increase in the range of factors relevant to decision-making that would otherwise be required under law;

c noted and deferred for further consideration (paragraphs (f)-(i) below refer) the proposal for a SA applying to 18 lakes, 18 rivers, 18 wetlands, 9 specific land areas, 5 coastal areas and certain fish, plant and animal species (together with the other changes relating to the SA from the Heads of Agreement as outlined in Annex 1 to the submission under CAB (97) 255);

d agreed that any SA proposal would be subject to:

i a review by the Crown of the resource areas nominated by Ngai Tahu for coverage by a Statutory Acknowledgement, and Ngai Tahu's description of its association with each area;

ii inclusion of robust clauses in the instrument disclaiming:

A the creation or recognition of any rights including, without limitation, rights relating to any natural resources, intellectual, commercial, property, and aboriginal title;

B any increase in weighting of Ngai Tahu values in any legal and decision-making processes;

C any impact on any present or future lawful third party rights or interests;

D (in the main Deed) any acceptance of the existence of aboriginal rights by the Crown;

iii not requiring local authorities to note SAs on relevant plans, but rather providing an information programme to ensure that decision-makers operating under the relevant sections of the Resource Management Act and Historic Places Act are aware of SAs [see also paragraph (j) below];

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e noted that the measures referred to in paragraph (d) above are intended to minimise the risks referred to in paragraph (b) above, but those risks cannot be completely eliminated;

NEXT STEPS

f noted that the Solicitor-General has been requested to provide an opinion on the extent to which the risks referred to in paragraph (b) above have been minimised by the measures referred to in paragraph (d) above;

g directed the Crown Negotiating team to invite Ngai Tahu to provide a final list of the specific areas over which SAs are sought, together with a detailed description of the association which Ngai Tahu seeks the Crown to acknowledge;

h agreed to delay confirmation of the SA until Ministers are satisfied that risks associated with those interests have been adequately managed;

i agreed:

i that the Crown will review the resource areas nominated by Ngai Tahu for coverage by a SA, and Ngai Tahu's description of its association with each area before principals initial the draft Deed (which will then be taken by Ngai Tahu for ratification); and

ii that this approach may give rise to some delay in the settlement process (see timetable below):

Date	Task
12 May 1997	draft Deed of Settlement complete
13 May-11 July 1997	Details for Statutory Acknowledgements received and agreed
14 July 1997	draft Deed of Settlement agreed to by Crown and Ngai Tahu principals (initialled by principals)
15 July- 30 September 1997	Ngai Tahu ratification of Deed of Settlement
1 October 1997	Sign final Deed of Settlement
14 October 1997	Deed of Settlement legislation introduced into House
Before end of 1997	Legislation passed/Ngai Tahu and Crown confirm legislation

FURTHER WORK

j directed officials to report to the Cabinet Committee on Strategy and Priorities on who would undertake and fund the information programme referred to in paragraph (d)(iii) above.

Diane Wickens

for Secretary of the Cabinet

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CAB (97) M 15/6

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1 MAY 1997
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MINISTERIALS

Minister in Charge of Treaty of Waitangi Negotiations

B. Clark
R. Roche
W. Craig
H. Tekoha
P. Dersen
S. Macaskill
M. Dugdale
A. Bridgman
R. Darling

Copies to:

Prime Minister
Deputy Prime Minister
Treasurer
Minister of Finance
Minister of State Services
Minister for State Owned Enterprises
Minister of Justice
Minister of Maori Affairs
Attorney-General
Minister of Forestry
Minister for the Environment
Minister of Lands
Minister of Conservation
Chief Parliamentary Counsel
Legislation Programme Coordinator
Secretary, CSP
Monitoring System

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NGAI TAHU: COMMERCIAL ASPECTS: KEY ISSUES

References: CAB (97) 247, CAB (97) M 15/5, CAB (97) M 15/17

At the meeting on 28 April 1997, following reference from the Cabinet Committee on Strategy and Priorities, Cabinet:

BACKGROUND

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

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

RIGHT OF FIRST REFUSAL

d noted 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;

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

i both parties undertaking to act in good faith in the RFR 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;

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f agreed:

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 in accordance with the Heads of Agreement";

g directed officials to develop detailed procedures for inclusion in the legislation, to be followed by the CE of LINZ when determining whether to lift RFR memorials;

h authorised Crown negotiators to continue negotiation on the final form of an RFR on the basis of the compromise referred to 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;

TIMBERLANDS WEST COAST

i noted 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;

j noted 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;

k authorised officials to negotiate an alternative to agreeing parts of TWC, that involves:

i TWC removed from the DSP, but subject to the RFR;

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;

l directed officials to provide advice on the nature of the obligations associated with the West Coast Accord on the Crown or the purchaser, and an assessment of the risks, including fiscal risks, which might be involved, if all or part of Timberlands West Coast is sold to

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Ngai Tahu, or to any other purchaser and to report to the Cabinet Committee on Strategy and Priorities as soon as possible on these issues;

OTHER ISSUES

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

n noted 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;

o noted 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;

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

q directed officials to report to Ministers collectively, or to the group of Ministers established by Cabinet, on further outstanding commercial settlement issues [CAB (97) M 15/5 refers].

Diane Wilcox

for Secretary of the Cabinet

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CAB (97) M 15/5

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1 MAY 1997
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MINISTERIALS

Minister in Charge of Treaty of Waitangi Negotiations

B. Roche.
R. Clark
J. Craig
H. Te Kohe
P. Densen
S. Macaskill
M. Dugdale
A. Bridgman

Copies to:

Prime Minister
Deputy Prime Minister
Treasurer
Minister of Finance
Minister of State Services
Minister for State Owned Enterprises
Minister of Justice
Minister of Maori Affairs
Attorney-General
Minister for the Environment
Minister of Lands
Minister of Conservation
Chief Parliamentary Counsel
Legislation Programme Coordinator
Secretary, CSP
Monitoring System

NGAI TAHU NEGOTIATIONS: DRAFT DEED OF SETTLEMENT:FURTHER INFORMATION

References: CAB (97) 246, CAB (97) M 15/6, CAB (97) M 15/17

At the meeting on 28 April 1997 Cabinet:

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

c noted 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;

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d noted 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 noted 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-Tainui and Whakatohea;

f noted 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 noted 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;

h noted 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;

i noted Cabinet's decisions on commercial assets set out in CAB (97) M 15/17;

ANCILLARY CLAIMS

j noted 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 noted 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 noted 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;

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SETTLEMENT LEGISLATION

m noted 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-Tainui settlement;

n noted 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;

MAHINGA KAI

o noted that the mahinga kai section of the Heads of Agreement 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);

iv the right to purchase 10% of specified areas of coastal space that are subject to tendering in future (see paragraph (p) 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 noted 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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q noted that the key departures from the Heads of Agreement are in mahinga kai redress (see Annex 1 to the submission under CAB (97) 246) 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 i approved the proposed changes to the mahinga kai redress set out in Annex 1, items 5, 6 and 8 on pages 11-12 of the submission under CAB (97) 246;

ii approved the proposed changes to the mahinga kai redress set out in Annex 1, item 7 on pages 11-12 of the submission under CAB (97) 246, subject to the provision by Ngai Tahu of further detail on the specific sites;

iii noted that Cabinet's decisions on the proposed changes to the Statutory Acknowledgement instrument (Annex I items 1-3 on page 11 of the submission under CAB (97) 246, and Annex 1, on page 9 of the submission under CAB (97) 255 refer) are set out in CAB (97) M 15/17;

iv declined the proposed change to the mahinga kai redress set out in Annex 1, item 4 on pages 11-12 of the submission under CAB (97) 246, (see paragraph (d)(iii) of CAB (97) M 15/17);

s noted 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 noted 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) M 15/17 refers];

AUTHORITY TO ACT

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

v authorised the Minister in Charge of Treaty of Waitangi Negotiations, in consultation with the Prime Minister, the Minister of Finance and the Minister of Maori Affairs, to determine matters within the parameters agreed by Cabinet which may arise in the context of negotiations;

w agreed that other Ministers including the Minister for State Owned Enterprises and the Minister of Conservation also be consulted by the Minister in Charge of Treaty of Waitangi Negotiations as required;

x noted 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;

y agreed that the Minister of Lands be added to the group of Ministers referred to in paragraph (v) above for any discussions bearing on the issues referred to in paragraph (x) above;

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NEGOTIATING BRIEF REPORT BACK

z directed officials to report to the Cabinet Committee on Strategy and Priorities at its meeting on 30 April 1997 on the specific negotiating brief to be followed in further discussions with representatives of Ngai Tahu.

Diane Quilter

for Secretary of the Cabinet

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377/5

Document 10

17

CABINET

CAB (97) 255

24 April 1997

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NGAI TAHU NEGOTIATIONS: STATUTORY ACKNOWLEDGEMENTS

LATE PAPER: This paper was received after the Cabinet Deadline

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

a note that the core elements of the Statutory Acknowledgement (SA) (which is a key component of the mahinga kai package within the proposed Ngai Tahu settlement) are as follows:

i a description of Ngai Tahu's special cultural, spiritual, traditional and/or historical association with defined areas;

ii a statutory acknowledgement by the Crown of that association;

iii by reason of the association, an acknowledgement by the Crown that Ngai Tahu is likely to fall within the description of an affected person under certain sections of the Resource Management Act and Historic Places Act;

iv with respect to fish and other animal and plant species, provision for an input into management (to be specified);

v an authorisation to create Deeds of Recognition over certain areas;

b note that four key risks have been identified in relation to the SA:

i additional weighting for Ngai Tahu's values in conservation and environmental decision-making;

ii creating or recognising rights including commercial and intellectual property rights, rights in relation to natural resources (including water) and aboriginal title;

iii unintended commercial leverage;

iv an increase in the range of factors relevant to decision-making than would otherwise be required under law;

c agree in principle to a SA applying to 18 lakes, 18 rivers, 18 wetlands, 9 specific land areas, 5 coastal areas and certain fish, plant and animal species (together with the other changes relating to the SA from the Heads of Agreement as outlined in Annex 1 to the submission under CAB (97) 255), subject to:

i a review by the Crown of the resource areas nominated by Ngai Tahu for coverage by a Statutory Acknowledgement, and Ngai Tahu's description of its association with each area;

ii inclusion of robust clauses in the instrument disclaiming:

A the creation or recognition of any rights, including without limitation, rights relating to any natural resources, intellectual, commercial, property, and aboriginal title;

B any increase in weighting of Ngai Tahu values in any legal and decision-making processes;

C any impact on any present or future lawful third party rights or interests;

D (in the main Deed) any acceptance of the existence of aboriginal rights by the Crown;

iii not requiring local authorities to note SAs on relevant plans, but rather providing an information programme to ensure that decision-makers operating under the relevant sections of the Resource Management Act and Historic Places Act are aware of SAs;

d note that the measures referred to in paragraph (c) above are intended to minimise the risks referred to in paragraph (b) above, however those risks cannot be completely eliminated;

e note that the Solicitor-General has been requested to provide an opinion on the extent to which the risks referred to in paragraph (b) above have been minimised by the measures referred to in paragraph (c) above;

f direct the Crown Negotiating team to invite Ngai Tahu to provide a final list of the specific areas over which SAs are sought, together with a detailed description of the association which Ngai Tahu seeks the Crown to acknowledge;

g agree to delay confirmation of the SA until Ministers are satisfied that risks associated with those interests have been adequately managed;

h agree:

EITHER

i that the Crown will review the resource areas nominated by Ngai Tahu for coverage by a SA, and Ngai Tahu's description of its association with each area before principals initial the draft Deed (which will then be taken by Ngai Tahu for ratification); and

ii that this approach may give rise to a delay to the settlement process of up to two months (see timetable below):

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Date	Task
12 May 1997	draft Deed of settlement complete
13 May-11 July 1997	Details for Statutory Acknowledgements received and agreed
14 July 1997	draft Deed of settlement agreed to by Crown and Ngai Tahu principals (initialled by principals)
15 July- 30 September 1997	Ngai Tahu ratification of settlement
14 October 1997	Settlement legislation introduced into House
1998	Legislation passed/Ngai Tahu and Crown confirm legislation

OR

iii that the draft Deed be initialled before the information for the SA is received but that execution by the Crown of the Deed be conditional on the Crown being satisfied with the detailed information for the SAs, with the resulting timetable:

Date	Task
12 May 1997	draft Deed of settlement agreed to by Crown and Ngai Tahu principals (initialled by principals)
19 May-20 July 1997	• Details for Statutory Acknowledgements received and agreed • Ngai Tahu ratification of settlement
25 July 1997	Deed executed
29 July 1997	Settlement legislation introduced into House
30 October 1997	Legislation passed
17 November 1997	Crown and Ngai Tahu to confirm legislation
7 February 1998	Settlement legislation complete

i note that the consequences of adopting the approach in paragraph (h)(iii) above is that the Crown will lose leverage in terms of negotiating a defined and narrow association of Ngai Tahu with the areas it has nominated for the Statutory Acknowledgement.

(Signed) Sue Sharp
for Secretary of the Cabinet

NOTE FOR MINISTERS

On 23 April 1997 CSP considered two papers on Ngai Tahu, and referred them to Cabinet. The Minister in Charge of Treaty of Waitangi Negotiations was invited to provide a further paper for the Cabinet meeting on 28 April 1997 containing:

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A 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;

B 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.

The attached paper was provided in response to CSP's request.

The companion papers before Cabinet are Ngai Tahu: Commercial Aspects: Key Issues under CAB (97) 247, and Ngai Tahu Negotiations: Draft Deed of Settlement: Further Information under CAB (97) 246.

CSP (97) M 12/7 and 12/8 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

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24 April 1997

Marie Shroff
Secretary to the Cabinet
Cabinet Office

MEMORANDUM FOR CABINET
NGAI TAHU NEGOGIATIONS: DRAFT DEED OF SETTLEMENT: FURTHER INFORMATION

I seek your approval for the above paper to be submitted to Cabinet after the expiry of the deadline. Cabinet Committee on Strategy and Priorities invited me to provide a further paper for the Cabinet meeting on Monday, 28 April 1997 [CSP(97)M12/7].

It was not possible to have the paper ready in time to meet the deadline. The delay was necessary to finalise the paper with appropriate consultation. Due to the complexity and wide range of issues that the paper is required to canvass, it has not proved possible to comply with the 10 page limit on Cabinet papers. I therefore also seek leave for the Cabinet Office restriction on papers exceeding 10 pages to be waived for this paper.

Douglas Graham
Minister of Justice

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

Chair
Cabinet

NGAI TAHU CLAIM: FURTHER ADVICE ON PROGRESS WITH DRAFT DEED OF SETTLEMENT/STATUTORY ACKNOWLEDGEMENT

Executive Summary

1 Over the past few weeks Ministers have considered progress in the Ngai Tahu Settlement and the proposed changes to the mahinga kai section of the Heads of Agreement.

2 Ministers have focused in particular on possible risks arising from the Statutory Acknowledgement instrument and how to manage those risks.

3 This paper:

a describes the proposed Statutory Acknowledgement instrument;

b assesses the risks of the instrument relating to: additional weighting to Tahu; additional rights; unintended leverage; and an increase in the range of factors relevant to decision-making than would otherwise be required under law;

c explains how the proposed instrument addresses those risks; and

d makes recommendations in relation to the SA.

Background

4 On Wednesday 23 April the Cabinet Committee on Strategy and Priorities invited the Minister in Charge of Treaty of Waitangi Negotiations to report back to Cabinet [CSP (97) M 12/7 refers] on various matters associated with the SA.

Description of the Statutory Acknowledgement Instrument

5 The SA was included in the Heads of Agreement to provide redress in respect of certain lakes, wetlands, land areas, coastal areas, customary fisheries and significant species with which Ngai Tahu claim a special association. Since the Heads were signed Ngai Tahu sought a number of changes to the SA, including an increase in the size and number of areas affected. It is proposed that some of Ngai Tahu's changes be approved by Cabinet (see Annex1). Ngai Tahu has provided a list of lakes, rivers and wetlands over which it seeks a SA (see Annex 2).

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6 The SA:

a describes Ngai Tahu's special cultural, spiritual, traditional and/or historical association with defined areas;

b provides for a Statutory Acknowledgement by the Crown of that association;

c provides that, by reason of the association acknowledged by the Crown, Ngai Tahu is likely to fall within the description of an affected person under certain sections of the Resource Management Act and Historic Places Act;

d with respect to fish and other animal and plant species it provides for defined input into management of those species (but not to matters outlined in 6(c) above).

7 The SA is intended to provide Ngai Tahu with greater assurance that, in relation, to the nominated areas, 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 will be a person who must agree where consent applications are to be non-notified (in terms of s94 of the RMA);

c heard by the Historic Places Trust and before the Environment Court in relation to the protection of archaeological sites within the nominated areas (ss14 and 20(1) of the Historic Places Act 1993).

8 The SA does not require decision makers or a court to automatically grant standing but places an additional duty on them to give a higher level of consideration of the Crown's acknowledgement relating to standing in 6 (c) above, and is likely to remove the necessity for Ngai Tahu to prove its standing at every proceedings.

9 The Statutory Acknowledgement also authorises the Crown to enter into Deeds of Recognition in respect of nominated sites. The Deeds of Recognition carry across the Crown's acknowledgement of the Ngai Tahu specified association, and the disclaimers which apply to every Statutory Acknowledgement (see below). Deeds of Recognition provide Ngai Tahu with specified management input into Crown owned land only. They have no application to the management, control or regulation of water or other resources.

Risks of the SA and how these are addressed

10 The SA poses four main risks: additional weighting to Ngai Tahu; additional rights; unintended leverage; and an increase in the range of factors relevant to decision-making than would otherwise be required under law.

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Increased weighting for Ngai Tahu's views/interests

12 Acknowledging Ngai Tahu's association with areas and increasing the likelihood of standing, creates a risk that the SA may be interpreted as requiring decision makers or courts operating under conservation or environmental legislation to give greater weight to Ngai Tahu's views, over and above what they would if a SA did not exist.

13 It is proposed to minimise this risk by:

a expressly limiting the context in which the SA can apply, namely that it limits the application of the SA to standing under specified sections of legislation;

b including a disclaimer which states that the SA does not affect the power, duty or functions of any person or entity or require a greater level of consideration of Ngai Tahu's views in the exercise of any powers duties or functions. This disclaimer would also expressly provide that the SA does not provide for weight to be given to Ngai Tahu's interests other than is accorded to those interests anyway under the RMA and HPA;

c removing the requirement on local authorities to note SAs on relevant plans and substituting this with an information programme to ensure that decision makers operating under the relevant sections of the RMA and HPA are aware of SAs. (A recent decision of the Environment Court indicates that such a requirement could impact on weighting and increase risks in this area).

14 The above mechanisms will limit risks of undue weighting but cannot completely eliminate them. The reason for this is that the SA increases the chances of direct participation by Ngai Tahu in the decision-making process (through notification and the right to be heard) and is backed by an acknowledgement by the Crown.

Creation or recognition of Additional Rights or Interests

15 There is also a risk that a court may perceive the Crown's acknowledgement of the special relationship as:

a giving greater substance to any future claim by Ngai Tahu based on aboriginal title, particularly in relation to water[1];

b enhancing claims by Ngai Tahu for commercial or other property right/interests (eg intellectual property rights) in nominated areas.

[1] The courts have already acknowledged the possibility of claims being prosecuted on the basis of aboriginal title or customary rights (eg the Ikawhenua case).

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16 It is proposed to minimise this risk by:

a including an overriding clause in the draft Deed of Settlement to provide that the Crown does not recognise or acknowledge aboriginal rights through the settlement;

b expressly stating that the SA does not grant or create any estate or interest in or any other rights of any kind whatsoever relating to the Statutory Area. This is intended to exclude any rights in relation to commercial activities (including intellectual property rights), natural resources (including water) and aboriginal title;

c requiring Ngai Tahu to specify the precise nature of its spiritual, cultural, historical and/or traditional association to be acknowledged before final agreement to the instrument;

d limiting the application of the SA to standing under specified sections of legislation.

17 Once again these mechanisms minimise but cannot completely eliminate risks. It is proposed, as a further measure to reduce risk, that the Crown review the resources areas nominated by Ngai Tahu for Acknowledgement, and Ngai Tahu's description of its association with each area, before finally agreeing to the SA.

Unintended commercial leverage for Ngai Tahu

18 There is a risk that Ngai Tahu may use the SA to:

a block commercial ventures by third parties;

b advance its own commercial prospects.

19 It is proposed to minimise this risk by:

a expressly stating that the SA does not provide for greater weight to be given to Ngai Tahu's interests than is accorded those interests anyway under the RMA and HPA;

b expressly stating that the SA does not grant or create any estate or interest or any other rights of any kind whatsoever relating to the Statutory Area;

c undertaking an information programme to better inform local authorities and interested parties on the SA and its implications for resource consent processes.

20 The SA does not of itself increase Ngai Tahu's leverage to extract payments. The risks would lie in any misunderstanding about the purpose of the SA (ie if developers were under the impression that the SA provided Ngai Tahu views with greater weighting in consent applications). The education programme is intended to address this issue. Once again the risks cannot be eliminated.

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21 It should be noted that the RMA does not preclude any interested party from obtaining payments in return for co-operation over consent applications. The most effective way to counter this practice in a generic way would be through an amendment to the RMA.

An increase in the range of factors relevant to decision-making than would otherwise be required under law

22 The risk here is that a wide and unspecified association with areas covered by SAs could increase the range of factors that a decision making body may perceive as relevant considerations, beyond those which the law already requires it to take into account.

23 It is proposed to minimise this risk by:

a limiting the application of the SA to standing under specified sections of legislation;

b the Crown reviewing the resource areas nominated by Ngai Tahu for Acknowledgement, and Ngai Tahu's description of its association with each area, before confirming agreement to the SA.

Conclusion on Risks

24 The potential risks arising from the SA can be limited as described above. However, there is no way of completely eliminating them.

25 There is a significant level of uncertainty about the instrument at this stage which makes it difficult to fully appreciate and assess risks. To address this uncertainty, it is proposed that the Crown, before confirming agreement to the SA, should review the resource areas nominated by Ngai Tahu for Acknowledgement, and Ngai Tahu's description of its association with each area.

26 This, along with other factors, is likely to result in a delay to completion of the draft Deed. Negotiators will be able to get a clearer sense of that delay following discussions with Ngai Tahu. The delay factor increases the Crown's ability to exert some leverage on Ngai Tahu to provide specific associations with nominated sites.

27 Clearly a range of strategic issues will arise in relation to the negotiation process which will need to be carefully considered. These are issues which the Crown's negotiating team will need to discuss with relevant Ministers, setting out the approach to the next stages in the negotiation process.

28 It is also proposed that the Solicitor General provide an opinion on the extent to which the risks identified above have been effectively minimised by the measures proposed in this paper.

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Consultation

29 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

30 It is recommended that Cabinet:

a note the core elements of the Statutory Acknowledgement (SA) are as follows:

i a description of Ngai Tahu's special cultural, spiritual, traditional and/or historical association with defined areas;

ii a statutory acknowledgement by the Crown of that association;

iii by reason of the association, an acknowledgement by the Crown that Ngai Tahu is likely to fall within the description of an affected person under certain sections of the Resource Management Act and Historic Places Act;

iv with respect to fish and other animal and plant species, provision for an input into management (to be specified);

v an authorisation to create Deeds of Recognition over certain areas;

b note that four key risks have been identified in relation to the SA:

i additional weighting for Ngai Tahu's values in conservation and environmental decision making;

ii creating or recognising rights including commercial and intellectual property rights, rights in relation to natural resources (including water) and aboriginal title;

iii unintended commercial leverage;

iv an increase in the range of factors relevant to decision-making than would otherwise be required under law;

c agree in principle to a Statutory Acknowledgement applying to 18 lakes, 18 rivers, 18 wetlands, 9 specific land areas, 5 coastal areas and certain fish, plant and animal species, (together with the other changes relating to the SA from the Heads of Agreement as outlined in Annex 1) subject to:

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i a review by the Crown of the resource areas nominated by Ngai Tahu for coverage by a Statutory Acknowledgement, and Ngai Tahu's description of its association with each area;

ii inclusion of robust clauses in the instrument disclaiming:

a) the creation or recognition of any rights, including without limitation, rights relating to any natural resources, intellectual, commercial, property, and aboriginal title;

b) any increase in weighting of Ngai Tahu values in any legal and decision making processes;

c) any impact on any present or future lawful third party rights or interests;

d) (in the main Deed) any acceptance of the existence of aboriginal rights by the Crown;

e) not requiring local authorities to note SAs on relevant plans, but rather providing an information programme to ensure that decision makers operating under the relevant sections of the RMA and HPA are aware of SAs;

d note that the measures referred to in (c) above are intended to minimise the risks referred to in (b) above, however those risks cannot be completely eliminated;

e note that the Solicitor General has been requested to provide an opinion on the extent to which the risks referred to in (b) above have been minimised by the measures in (c) above;

f direct the Crown Negotiating team to invite Ngai Tahu to provide a final list of the specific areas over which Statutory Acknowledgements are sought, together with a detailed description of the association which Ngai Tahu seeks the Crown to acknowledge;

g agree to delay confirmation of the SA until Ministers are satisfied that risks associated with those interests have been adequately managed;

h agree:

EITHER

i that the Crown will review the resource areas nominated by Ngai Tahu for coverage by a Statutory Acknowledgement, and Ngai Tahu's description of its association with each area before principals initial the draft Deed (which will then be taken by Ngai Tahu for ratification); and

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ii that this approach may give rise to a delay to the settlement process of up to two months (see timetable below);

Date	Task
12 May 1997	draft Deed of settlement complete
13 May -11 July 1997	Details for Statutory Acknowledgements received and agreed
14 July 1997	draft Deed of settlement agreed to by Crown and Ngai Tahu principals (initialled by principals)
15 July - 30 September 1997	Ngai Tahu ratification of settlement
14 October 1997	Settlement legislation introduced into House
1998	Legislation passed/ Ngai Tahu and Crown confirm legislation

OR

iii that the draft Deed be initialled before the information for the Statutory Acknowledgement is received but that execution by the Crown of the Deed be conditional on the Crown being satisfied with the detailed information for the Statutory Acknowledgements, with the resulting timetable:

Date	Task
12 May 1997	draft Deed of settlement agreed to by Crown and Ngai Tahu principals (initialled by principals)
19 May - 20 July 1997	• Details for Statutory Acknowledgements received and agreed • Ngai Tahu ratification of settlement
25 July 1997	Deed executed
29 July 1997	Settlement legislation introduced into House
30 October 1997	Legislation passed
17 November 1997	Crown and Ngai Tahu to confirm legislation
7 February 1998	Settlement legislation complete

i note that the consequences of adopting the approach in recommendation h(iii) above is that the Crown will lose leverage in terms of negotiating a defined and narrow association of Ngai Tahu with the areas it has nominated for the Statutory Acknowledgement.



Douglas Graham
Minister in Charge of Treaty of Waitangi Negotiations

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ANNEX 1: Proposed Changes to the Statutory Acknowledgement Instrument

	Heads of Agreement	Proposed change
1	Statutory Acknowledgements (SA) offered over Crown-owned land only (in the case of water bodies, the beds only)	SAs 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 lawful third party rights (e.g. public access, existing concessions and easements, and rights to apply for renewal).
2	Ngai Tahu must choose between a SA or DoR for 10 wetlands, 13 lakebeds, and 10 specific sites. .	• The SA will now authorise the DoR and both instruments will be offered together. • "Basket approach" - SAs 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 and non-notification of consent applications). There is no need to amend the RMA.

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

RIVERS

Kaikoura

Conway

West Coast

Taramakau
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-Whakamatau (Lake Coleridge)
Tekapo
Ohau
Whakarukumoana (Lake McGregor)
Wairewa (Lake Forsyth)
Lake Pukaki
Lake Benmore

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West Coast

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

Otago

Lake Hawea
Lake Wanaka
Lake Wakatipu
Catlins Lake

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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Annex 3: Statutory Acknowledgment Clause from the Draft Deed of Settlement

9.7 STATUTORY ACKNOWLEDGEMENTS
[INSTRUMENT SUBJECT TO CROWN REVIEW]

Definitions

9.7.1 In this *clause 9.7 and in clause 9.8* and *Attachment 9.10 and 9.11*;

Deed of Recognition means a deed of recognition as described in this *clause 9.7* to be entered into by the Crown pursuant to *clause 9.8* of this Deed;

Lake means a body of fresh water which is entirely or nearly surrounded by land including lakes controlled by artificial means, but does not include:

(a) any part of the lakebed which is not in Crown ownership or control; or

(b) with respect to lakes not controlled by artificial means, any land which the waters of the lake do not cover at its highest level without exceeding its margin; or

(c) with respect to any lake controlled by artificial means, any land which the waters of the lake do not cover at its maximum operating level as prescribed from time to time by any resource consent or rule of a regional plan or proposed plan within the meaning of the Resource Management Act 1991;

River means a continually or intermittently flowing body of fresh water, including a stream and modified watercourse, but does not include:

(a) any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation and farm drainage canal); or

(b) any part of the riverbed which is not in Crown ownership or control; or

(c) any land which the waters of the river do not cover at its fullest flow without overtopping its banks;

Statutory Acknowledgement means an acknowledgement made by the Crown in the Settlement Legislation in respect of a Statutory Area, comprising the descriptions set out in *clause 9.7.2(a)* and *(b)* and the acknowledgements made by the Crown pursuant to *clauses 9.7.2 (c)* and *(d)*, on the terms set out in this *clause 9.7*;

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Statutory Areas means the areas, rivers, lakes and wetlands described in *Part B* of *Attachment 9.10* ~~in respect of which a statutory acknowledgement is to be made in the Settlement Legislation pursuant to *clause 9.7.2*~~;

Wetland means a permanently or intermittently wet area, shallow water and land water margin that supports a natural ecosystem of plants and animals that are adapted to wet conditions, but does not include:

(a) any part of the wetland bed which is not in Crown ownership or control; or

(b) any land bordering the wetland.

[Will either need maps or detailed descriptions of actual sites for the Attachments]

Provision of Statutory Acknowledgements by Crown

9.7.2 The Crown agrees that the Settlement Legislation will make a Statutory Acknowledgement on the terms set out in this *clause 9.7* and for the purposes of certain sections of the Resource Management Act 1991 and the Historic Places Act 1993 in respect of each of the Statutory Areas, which will comprise:

(a) a description of each of the Statutory Areas as provided in *Part A* of *Attachment 9.10*, including where applicable the definitions of lakes rivers and wetlands set out in *clause 9.7.1*;

(b) a description of the particular cultural, spiritual, historic and/or traditional association of Ngāi Tahu with the Statutory Areas as set out in *Part B* of *Attachment 9.10*; and

[Description to be provided by Ngāi Tahu - please provide as soon as possible for Crown review]

(c) an acknowledgement by the Crown of that association;

~~**Provision of Standing under Statutory Acknowledgement**~~

~~The Crown agrees that the Settlement Legislation will provide that in the Statutory Acknowledgements the Crown will also,~~

(d) by reason of the particular association of Ngāi Tahu to a Statutory Area:

(ia) an acknowledgement by the Crown that Te Rūnanga is a person who is "likely to be directly affected" under section 93(1)(e) of the Resource Management Act 1991 in respect of applications (whether by the

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Crown or otherwise) made under the Resource Management Act 1991 for activities within, adjacent to or impacting directly on that Statutory Area;

(iiб) an acknowledgement by the Crown that Te Rūnanga is a person who "may be adversely affected" under sections 94(1)(c)(ii), 94(2)(b) and 94(3)(c) of the Resource Management Act 1991 by the granting of resource consents (whether by the Crown or otherwise) under the Resource Management Act 1991 for activities within, adjacent to or impacting directly on that Statutory Area;

(iiie) an acknowledgement by the Crown that Te Rūnanga has standing as a person having an interest in proceedings before the Environment Court "greater than the public generally" under section 274 of the Resource Management Act 1991 in respect of applications (whether by the Crown or otherwise) made under the Resource Management Act 1991 for activities within, adjacent to or impacting directly on that Statutory Area;

(ivd) all acknowledgement by the Crown that Te Rūnanga is a person "directly affected" for the purposes of sections 14 and 20(1) of the Historic Places Act 1993 in relation to any archaeological site (as defined in the Historic Places Act 1993) within a Statutory Area.

~~Recording of Statutory Acknowledgements on Statutory Plans~~

~~The Crown agrees that the Settlement Legislation will provide that local authorities within the Ngāi Tahu Claim Area must insert a schedule into all regional policy statements and district and regional plans from time to time (including proposed plans) prepared under the Resource Management Act 1991 recording all statutory acknowledgements affecting Statutory Areas covered wholly or partly by such plans, either by way of reference to the relevant sections of the Settlement Legislation incorporating the Statutory Acknowledgements or by setting out the Statutory Acknowledgements in full.~~

~~First Schedule to Resource Management Act will not apply~~

~~The inclusion of the schedule in any regional policy statement or district or regional plan shall not be subject to the provisions of the First Schedule to the Resource Management Act 1991.~~

[Side letter from Minister regarding informing local authorities]

Local Authorities to have regard to Statutory Acknowledgements

9.7.3 The Crown agrees that the Settlement Legislation shall provide that:

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(a) in forming an opinion under section 93(1)(e) of the Resource Management Act 1991 as to whether Te Rūnanga is a person who is "likely to be directly affected" by an application for activities within, adjacent to or impacting directly on a Statutory Area, the relevant consent authority shall have particular regard to any Statutory Acknowledgement in respect of that Statutory Area;

(b) in forming an opinion under section 94(1)(c)(ii) of the Resource Management Act 1991 as to whether Te Rūnanga is a person who "may be adversely affected" by the granting of a resource consent for activities within, adjacent to or impacting directly on a Statutory Area, the relevant consent authority shall have particular regard to any Statutory Acknowledgement in respect of that Statutory Area;

(c) in satisfying itself under section 94(2)(b) of the Resource Management Act 1991 as to whether Te Rūnanga is a person who "may be adversely affected" by the granting of a resource consent for activities within, adjacent to or impacting directly on a Statutory Area, the relevant consent authority shall have particular regard to any Statutory Acknowledgement in respect of that Statutory Area;

(d) in forming an opinion under section 94(3)(c) of the Resource Management Act 1991 as to whether Te Rūnanga is a person who "may be adversely affected" by the granting of a resource consent for activities within, adjacent to or impacting directly on a Statutory Area, the relevant consent authority shall have particular regard to any Statutory Acknowledgement in respect of that Statutory Area;

(e) in determining under section 274 of the Resource Management Act 1991 whether Te Rūnanga is a person having an interest in the proceedings "greater than the public generally" in respect of applications for resource consents for activities within, adjacent to or impacting directly on a Statutory Area, the Environment Court shall have particular regard to any Statutory Acknowledgement in respect of that Statutory Area;

(f) in forming an opinion under section 14, and for the purpose of section 20(1) of the Historic Places Act 1993, as to whether Te Rūnanga is a person "directly affected" in relation to an archaeological site (as defined in the Historic Places Act 1993) within a Statutory Area, the Historic Places Trust or the Environment Court (as the case may be) shall have particular regard to any Statutory Acknowledgement in respect of that Statutory Area.

[Policy decision: "particular regard"]

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Authorisation to enter into Deeds of Recognition

9.7.4 The Crown agrees that the Settlement Legislation will provide that the Statutory Acknowledgement will empower the Minister responsible for the management or administration of a Statutory Area to enter into a Deed of Recognition in respect of the Statutory Area.

Form and terms of Deeds of Recognition

9.7.5 The Crown agrees that the Settlement Legislation will provide that with respect to the Statutory Area to which it relates, a Deed of Recognition will provide that Te Rūnanga must be consulted by the Minister responsible for the management or administration of the land within the Statutory Area (for the avoidance of doubt, in the case of bodies of water, being the land beneath any body of water which forms part of a Statutory Area) and particular regard had to Te Rūnanga's views in relation to the management or administration of the Statutory Area by the responsible Minister in the manner specified in each particular Deed of Recognition.

Exercise of Powers, Duties and Functions ~~of Responsible Minister~~

9.7.6 Te Rūnanga and the Crown agree that the Settlement Legislation will provide that, except as expressly provided in *clause 9.7.3* and *clause 9.7.5* ~~or in the particular Deeds of Recognition,~~ and without limiting *clause 16.6*, neither a Statutory Acknowledgement nor a Deed of Recognition will:

(a) affect the exercise of any power, duty or function by any person or entity under any statute, or regulations, or bylaw; or~~.~~

(b) without limiting *clause 9.7.6(a)*, require any person or entity, in considering any matter or making any decision or recommendation under statute, regulations or bylaws to give any greater weight to Ngāi Tahu's association to the Statutory Areas (as described in the Statutory Acknowledgements) than that person or entity is required to give under the relevant statute, regulation or by-law, as if no Statutory Acknowledgements or Deeds of Recognition existed.

Rights of Third Parties

9.7.7 Te Rūnanga and the Crown agree that the Settlement Legislation will provide that, unless expressly provided in this *clause 9.7*, neither a Statutory Acknowledgement nor a Deed of Recognition will affect the lawful rights or interests of any third party from time to time.

9.7.8 Te Rūnanga and the Crown agree that the Settlement Legislation will provide that, without limiting *clause 16.6*, neither a Statutory Acknowledgement nor a Deed of

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Recognition will have the effect of granting or creating any estate or interest in or any other rights of any kind whatsoever relating to the Statutory Area *[including without limitation :*

(a) rights to undertake, or interests in, commercial activities in or on a Statutory Area; or

(b) property rights in respect of natural resources.]

[Disclaimer clauses currently subject to review by Crown.

*]*9.8 **DEEDS OF RECOGNITION**

No later than the Transfer Date the Crown will enter into the Deeds of Recognition set out in *Attachments 9.11.1* to *9.11.[*]* in respect of the areas, rivers, lakes and wetlands described in those Attachments.

[*Each Attachment will describe the relevant area and matters to be recognised - please provide drafts as soon as possible for Crown review.]*

Released under the Official Information Act 1982

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:

DPMC, Ministry for Environment, Treasury, Department of Conservation, Lands Information New Zealand, Crown Law Office

Signature	Name and Title	Date
S Clark	S Clark, Director OTS	24/4/97

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
		24/4/97

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